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Single Market Revival

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In the last few years, the EU has suffered from an internal market fatigue. Although inevitably an evergreen on the Union's hit list, the single market became more and more relegated to low-key EU routine. Although legally and technically, it was as crucial as ever in many domains, it was no longer regarded as a driver of economic integration. Inspiration for addressing the EU's socio-economic problems was found elsewhere whilst 'more' internal market assumed a lower priority when catering for the needs of today and tomorrow. Moreover, the message that the single market appeared to be still far from 'single' became a hard sell two decades after the famous 1985 White Paper "Completing the internal market". By 1993 all the deliverables of that landmark initiative were adopted; indeed, much more had been done, including e.g. the beginning of the opening of the network markets.[1] Since that date numerous additional initiatives have been undertaken such as further deepening of the internal market for network industries, a single market action plan in 1997, two successive internal market strategies led by Commissioner Bolkestein, the Financial Services Action Plan (2000-05) aimed at deepening the internal market for financial services and capital and the horizontal services directive 2006/123 (also known from the proposal by Bolkestein). Many scattered initiatives can be remembered as well, to wit, the modestly successful outcome of the debates on the taxation of savings directive, progress on selected aspects of intellectual property rights, a technical VAT reform and the European Company Statute, amongst others. No wonder that every new attempt to declare the internal market 'incomplete' seemed less inspiring to many at the political level. Advocacy became harder, too: precisely when the EU machine began to require 'evidence-based' policy-making, it also turned out to be unusually difficult to supply convincing empirical economic analysis on the shortcomings of the single market to impress EU political leaders and social partners.

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[1] For a survey of the deliverables and accomplishments at that time, see Jacques Pelkmans, "The significance of EC-1992", *The Annals*, American Academy of Political and Social Sciences, No. 531, January 1994 .

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The single market fatigue is exemplified most clearly by the November 2007 internal market review[2] and its follow-up. This Review has remained intentionally low-key and functional, which probably has hindered effective political communication and awareness for the EU at large. And its follow-up has been technical and mainly administrative, which is not to say that it was useless. The consolidation and effective functioning of the single market are very demanding at the legal, administrative and technical level, both for the EU and the Member States as well as amongst Member States. Given the accomplishments and 'depth' of the internal market today, political slogans and high-handed speeches alone are of little use. Worse, they risk undermining the credibility negatively or lead to neglect, if citizens and market players do not observe concrete progress and find practical implementation or enforcement wanting. The follow-up of the Review had little to show after one year,[3] except for initiatives pre-dating the Review itself and, given its low-key nature, some incremental change of a technical and administrative character.[4] In 2009 when the crisis hit the EU with full force, the functional and gradual approach of the review was completely overshadowed by a flurry of regulatory proposals on financial regulation and (micro- and macro) prudential supervision and by the firm resolve to prevent the internal market from being fragmented by creeping protectionism via state aids or discrimination. The latter resolve is one of the good signs for the future of the EU: its hard core, the internal market, was suddenly remembered as its greatest asset, deserving proper and common custody. The former, a fourth generation of EU financial regulation, was not part of the 2007 review for obvious reasons: the Financial Services Action Plan (FSAP) led to the enactment of a third generation of financial regulation just before the Review began to be prepared, with the critical Capital Requirements and revised Banking directives entering the Official Journal only mid-2006. Barely two years later, an entirely new and wider body of EU regulation was announced and has meanwhile been pursued with vigour. The follow-up of the Review eventually faded away as a result of the uncertainties surrounding the ratification of the Lisbon Treaty and the delay in the formal appointment of the new Commission. For the internal market, 2009 was basically a lost year.

Suddenly, however, the single market seems to have climbed back up the EU political agenda again. Its rediscovery by the political leadership in Europe may well be due to the perceived role of the single market in the financial crisis. Reliable access for goods, services, capital, even migrants and technology to some degree, combined with credible EU governance by means of rules and institutions, seems to have comforted national governments and European business, amidst financial turbulence, risks of protectionism in the world and the loss of trust almost everywhere. The revival of the single market might also have been prompted indirectly by the blatant failure of the FSAP to deliver crisis-preventing or crisis-proof regulation and supervision. For all the technical improvements on the second generation of EU financial regulation, which the FSAP undoubtedly brought, the quality of the minimum requirements related to financial stability and prudence was far below standard (one begins to wonder about the impact assessment of all FSAP directives/ regulations after mid-2003 when the Commission initiated such assessments on all new regulatory proposals). The damage of not having a properly regulated and supervised EU internal market in finance has proven to be enormous. Contagion – national, EU-wide and beyond – and negative cross-border externalities of national interventions (or the lack of

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[2] See COM (2007) 724 of 20 November 2007, A single market for 21st century Europe ; accompanied by several other COM SEC Staff papers on e.g. instruments for a modernised single market policy, a new methodology for product market and sector monitoring / screening, initiatives on retail financial services, the external dimension, a progress paper on services of general interest and an interesting FAQ Staff paper on the application of public procurement rules to social services of general interest. COM (2007) 725 on Services of general interest, including social services, was also an element of the package. A Commission initiative on better implementation of EU law slightly pre-dates the November package and is, by definition, wider than the internal market; nevertheless, it can be regarded as a complement to the November review [COM(2007) 502 of 5 September, A Europe of results – applying Community law].

[3] SEC (2008) 3064 of 16 December 2008, Staff Working Document, *The Single Market Review: one year on*.

[4] It is worth mentioning the considerable attention paid to consumer rights and confidence, retail financial services, the realisation of the EU private company (for SMEs), some activities with respect to the 'fifth freedom' (free movement of knowledge and related issues) and the evidence-based single market policy first applied to the food supply chain given indications of malfunctoning. A much neglected result, which has taken a decade to prepare, is the 2008 Goods package (on accreditation & certification and on a reversal of the burden of proof [now on Member States, mainly] in cases of mutual recognition of goods). The package has rightly been applauded by all (!) stakeholders, a rare event in 'Brussels'.

them) underlined the profound interdependence among EU countries, yet, apparently with porous and poor supervision, an impaired regulatory regime and newly revealed holes in the system. It might have dawned on policy-makers that deepening and widening of the internal market also outside finance, if subjected to solid impact assessment and a subsidiarity test, should not be so easily dismissed as yet another regulatory drive of those Brussels Eurocrats that is to be resisted or softened.

Business is back with its insistence on seriously improving the internal market. Perhaps more surprising is the renewed attention to the single market at the very top of EU leadership. President Barroso asked former (Internal Market) Commissioner Mario Monti to come up with suggestions in a report in April 2010. Monti did not have to wait for the appointment of the Commission as a whole and has been actively exploring a number of options whilst e.g. Mr. Barnier was forced to wait in the wings for several months. The EU2020 strategy, in process since the autumn, pays explicit attention to the internal market in several ways.[5] After pleading for three overriding priorities (smart, sustainable and inclusive growth) and setting out seven ‘flagship initiatives’, it recalls ‘the single market for the 21st century’ (the label of the Review of November 2007). Somewhat unfortunately, this is placed under the rubric ‘missing links’.[6] The Commission calls for "… a new momentum – a genuine political commitment - […] to relaunch the single market". (p. 18). The approach consists of filling 'gaps' in the single market and resolving 'bottlenecks'. Although entirely in the long internal market tradition of programming lists of problems to be tackled one by one, the selection of single market items made in the EU2020 strategy may not be perceived as adding up to a 'strategy' at all. ‘Relaunching’ the single market requires first of all a vision, perhaps in a wider framework (strategy?) for the EU economy and society by 2020. Though the EU2020 strategy has been presented in a widely-agreed medium-term perspective for political leaders, the crucial role and place of the single market therein is anything but clear. Yes, new services over the internet have huge potential and the EU ought to overcome the fragmentation that currently blocks the flow of on-line content and access for consumers and companies. Yes, the horizontal services directive forms a good, first step (especially with respect to services establishment) to stimulate deeper intra-EU economic intercourse in this vast group of markets. Yes, there are 'bottlenecks' for digital Europe in liability, warranties, delivery and resolution, and the EU (here, EU countries) should move faster in realising EU model contracts for consumers and/or an optional European Contract law. So far, the single market section in EU2020 does not link up with the November 2007 initiatives (despite the identical heading employed) such as 'evidence-based' and targeted resolution of 'malfunctioning' of the internal market, as was accomplished for the food chain.[7]

The difficulty of identifying the place and role of the single market in EU2020 is exacerbated by the fact that there is a lot of single market outside the narrow and short single market section. It confirms that a single market vision is lacking. Comprehension of the place and role of the internal market requires a screening of EU2020 through a more traditional lens, that is, what should be identified as deeper and wider negative and positive EU integration for the EU internal market to function properly and, in so doing, contribute permanently to the prosperity and change that the EU desires? When proposals are at the heart of the internal market or clearly linked to it, the traditional lens points to strong EU powers: it *can* be done in most cases. Thus, one has to search in the seven flagship initiatives for single market aspects and they are found in four of them.[8] In the first one (Innovation Union), the still not accomplished EU Patent and specialised Patent Court form a sad testimony to the preparedness of some national leaders to sacrifice, now for 48 years since an EEC patent was first proposed (and shot down), major static and dynamic incentives for EU-wide innovation which such a common patent would bring. Supporting EU funding programmes for 'innovation' and, at the same time, doggedly pre-empting this patent time and again, is hypocritical and amounts to frustratingly bad and damaging policy. In the third

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5 COM (2010) 2020 of 3 March 2010, Europe 2020 – a strategy for smart, sustainable and inclusive growth.

6 The reader may recall the influential 1984 ERT report on 'Missing links', a plea to overcome (especially EU-wide and cross-border) gaps in European infrastructure, but the label in the EU2020 document does not refer to such missing links at all (although elsewhere in the document, infrastructural links are discussed).

7 COM(2009) 591 of 28 October 2009, A better functioning supply chain in Europe, and a series of COM SEC Staff working papers.

8 In flagship no. 2 (Youth on the move), no. 5 (EU industrial policy) and no. 7 (EU Platform against poverty), the approach will have to be cooperative, based on more intergovernmental instruments and persuasion, perhaps helped by EU funding.

one (Digital Agenda for Europe), the Commission speaks about a 'digital single market'. Whatever this 'concept', proposals include a stable legal framework for high-speed internet infrastructure and services, efficient spectrum policy (although Member States would not have any of it in the telecoms package enacted in November 2009) and a 'true single market for online contents and services' with e.g. clear rights regimes. In the fourth flagship initiative (Resource Efficient Europe), one observes a framework for the use of market-based instruments, the modernisation and decarbonisation of the transport sector and the focus on typical EU interests in addressing infrastructural bottlenecks (that is, cross-border sections and inter-modal nodes), besides the removal of environmentally harmful subsidies (even though that is listed under 'Member States'). Finally, in the sixth flagship (An agenda for new skills and jobs) and despite the inevitability of intergovernmental cooperation in most areas, one finds a modernisation of EU labour regulation and a 'forward-looking and comprehensive labour migration policy'. But that is not all. A short, separate section emphasizes the priority "… to restore a solid, stable and healthy financial sector". Why this is not called by its name – a properly functioning internal market for financial services and capital – is anybody's guess.

Mario Monti's proposals may well stimulate greater awareness of today's relevance of further deepening and widening the internal market. It is likely to push the single market still higher up the political agenda of the Commission, the European Council and the European Parliament. The EP's IMCO chairman Malcolm Harbour has already announced a very pro-active stance in this respect. One might venture some hope that professor Monti will dare to go beyond the EU2020 list of single market suggestions. Three issues are good candidates for widening the scope of the single market revival: cleaning up (from too many derogations) and drastically simplifying the services directive once the 2012 'rendez-vous clause' provides the opportunity; sharply reducing the transaction costs of the EU public procurement regime and finally harmonising the EU corporate tax base (thereby ending numerous distortions and the recurrent temptation to create new ones). Above all, however, Monti should set out a vision on the role and place of a better functioning internal market for the EU's social market economy[9] in the near future.

[9] In the Executive Summary of the Europe 2020 strategy (cf. note 5), the Commission says: "Europe 2020 sets out a vision of Europe's social market economy for the 21st century".

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