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Commentary

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Strengthening the beating heart of the European economy

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In an atmosphere of crisis, distrust and fragmentation, policy-makers in Brussels are mostly focused on fighting fire without having an ambitious vision for the future – in effect, muddling through, as has been the characteristic response in recent years. However, by remaining in crisis response mode, the European Union (EU) is failing to provide the basis for the compromise politics that can get the European system out of the current impasse: the EU needs to be engaged in a positive sum game to ensure that countries see an incentive for making deals.

Despite this heavy agenda of challenges, EU policy makers must not remove their focus from the health of European economic integration, at its heart driven by the Single Market. It continues to provide the basis for economic exchange within the EU and is the underlying source of strength when dealing with the EU's external partners in, for example, trade negotiations. However, it remains far from complete in a number of key sectors, most notably that of services. Many barriers to market integration continue to exist and there is a perennial problem of unacceptably inconsistent implementation, which hinders the creation of a level playing field for enterprises, consumers and workers.

The new European Commission now has a stronger Single Market-focused organisation that integrates goods, services and flanking measures such as public procurement and the mutual recognition of qualifications. It is committed to developing new single market proposals during the autumn term; these must be bold, ambitious and realistic. However, another worthy strategy paper is not required, nor is any fundamental new legislation. There is, however, a need for practical measures to make the existing rules work to the advantage of the European economy and to discourage member state authorities from actively undermining their effect by arguing for special treatment. Advancing the Single Market agenda should not be misunderstood as being about deregulation and weakening protection; rather, it concerns active and effective regulation, replacing 28 differing regimes with a single, fully functional one.

Which way forward?

While there are many incremental (and useful) steps that can be taken, making decisive progress regarding the Single Market will not be easy. Policy-making in this area suffers from a common malaise: trying to find a single harmonised regime that fits all member states is not only conceptually difficult, but also clashes with the principle of subsidiarity. Yet, the method often chosen – directives, aiming at common minimum standards and high levels of mutual recognition – has led to a high degree of variation in implementation, with additional guidance by the European Commission and/or decisions of the European Court of Justice often being necessary to clarify the legal situation, leading to prolonged legal uncertainty that hinders market integration and deters private investment.

To make decisive progress on the Single Market, it will therefore not be enough to address some of the gaps and improve implementation. There is a need for a new approach to market integration, that is, open markets by default, based on radical mutual recognition. The underlying principle should be that cross-border markets are open by default, with standards in the country of origin being recognised automatically, unless a national authority can evidence a potentially detrimental effect, which could justify protective measures – in effect, putting the burden of proof on the public authority. The existing jurisprudence, well-established in European Court of Justice (ECJ) case law, is that only public policy, public health and public safety can be considered sufficient grounds for resiling from Single Market rules. In existing legislation regarding goods and services, public authorities are required to state their case for closing markets to providers already operating in other EU member states. However, the widespread flouting of these rules means that only the most determined market actors, generally those with deep pockets, are prepared to force their way into markets through uncertain, lengthy and costly court challenges.

This pervasive legal uncertainty needs to be addressed. In a world where speed is important, for example, to attract foreign direct investment, uncertainty imposes real costs on economies. There should be strict time limits for Commission decisions to be taken or guidance to be issued, most crucially in the field of competition policy. There should be a fast track extra judicial arbitration procedure for dealing quickly with mutual recognition cases, according to a 'trial of the facts'. The existing and much under-used SOLVIT network was established to help resolve these disputes. The network could serve as a 'gateway' toward an arbitration mechanism. Unless such decisions are taken within these time limits, the default should be that market actors can go ahead without suffering economic penalties at a later date. As a further reinforcement mechanism, there should be a formal system of mutual evaluation by all member states of proposals issued by any member state regarding the introduction of national exceptions. This is not a radical idea and is already part of the Services Directive.

A broad view of the Single Market

Single Market policy should also be viewed within a much broader context. An ambitious Single Market agenda and the aims of better regulation are strongly related, with a more effective and evidence-based legislative and decision-making process contributing to market integration and reducing uncertainty. However, care needs to be taken that this is not simply focused on 'red tape' and deregulation. Societal acceptance of further market integration needs to be ensured and the Single Market needs a common and as much as possible harmonised, legal framework at EU level in order to function effectively.

Many EU economic policies eventually contribute to Single Market integration. The speedy and consistent transposition of recent reforms pertaining to public procurement and mutual recognition of qualifications will serve as a significant stimulus for the Single Market. Competition policy should be fully enforced to stop market partitioning and attack artificial measures such as the arbitrary requirement for testing or certification by national bodies to verify already proven compliance. Capital markets and access to capital are crucial and a consistent legal framework facilitates private investment. Making progress on the Single Market will ultimately help the Commission to deliver on all aspects of its competiveness agenda. The Digital Single Market initiative will be fully integrated into this programme, as will progress concerning energy and transport markets.

Delivering wide benefits

Making progress on the Single Market will increase overall economic benefits, which can, particularly for Northern Europe, shift the perception of the EU away from a zero sum game, providing a rational reason for supporting weaker economies, as demonstrated in the past when structural funds were created to accompany the 1992 programme. Doing so will enhance a positive perception of the European Union by showing that, in an area of core competence, it can still deliver concrete benefits. It will certainly also have a positive impact on the referendum debate in the UK, with the Single Market still being perceived as a key benefit of EU membership.

Does this mean we will see a decisive step forward? Single Market reforms have continued to be adopted even during difficult times, driven by the momentum of the Single Market Act programmes. However, in the current environment, with crises continuing to dominate and little time on the political agenda for the long term development of the EU, future ambitions are likely to be more limited. Nevertheless, the new integrated single market team can sow the seeds for a different, more radical approach to the Single Market, which can help the EU to focus on the delivery of higher future economic prosperity by bringing the EU's economic flagship to robust health.

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