THE INTERNAL MARKET: GENERAL PRINCIPLES

The internal market is an area of prosperity and freedom, giving 500 million Europeans access to goods, services, jobs, business opportunities and the cultural richness of 28 Member States. A study by Parliament’s Committee on Internal Market and Consumer Protection (IMCO) entitled ‘Contribution of the Internal Market and Consumer Protection to Growth’ points to the significant potential of policies promoting free movement of goods, services, people and capital to boost the GDP (gross domestic product) of the EU-28[1]. While the construction of an internal market requires continuous efforts, the further deepening of the single market could yield significant gains for EU consumers and businesses, increasing the GDP of the EU-28 by EUR 235 billion per year, if the remaining barriers were eliminated. The debate on the internal market was relaunched by the European institutions with a communication on the Europe 2020 strategy, a report by the Commission entitled ‘A new strategy for the single market — At the service of Europe’s economy and society’, a communication entitled ‘Single Market Act — Twelve levers to boost growth and strengthen confidence’, a communication entitled ‘Single Market Act II — Together for new growth’, a communication on the Digital Single Market (DSM) Strategy[2] and a number of European Parliament resolutions (including ‘Completing the Digital Single Market’[3], ‘Competitive digital single market — eGovernment as a spearhead’[4] and ‘Towards a Digital Single Market Act’[5]). One of the most promising and challenging areas for progress is the Digital Single Market. It opens up new opportunities to boost the economy (e.g. through e-commerce), at the same time cutting red tape (through e-government and digitisation of public services). It highlights areas in which current regulations and business practices are failing to keep up with the opportunities created by information and communication technologies.

LEGAL BASIS

Articles 4(2)(a), 26, 27, 114 and 115 of the Treaty on the Functioning of the European Union (TFEU).

OBJECTIVES

The common market created by the Treaty of Rome in 1958 was intended to eliminate trade barriers between Member States with the aim of increasing economic prosperity and contributing to ‘an ever closer union among the peoples of Europe’. The Single European Act of 1986 included the objective of the internal market in the EEC Treaty, defining it as ‘an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured’. With the legal framework for the internal market now in place, the debate is centred on the effectiveness and impact of EU regulation. It calls for an approach that focuses on complete transposition, implementation and enforcement of internal market rules, moving towards what could be called the ‘management’ of the internal market and the ‘partnership’ between EU institutions and national authorities.

ACHIEVEMENTS

A. The common market of 1958

The common market, the Treaty of Rome’s main objective, was achieved through the 1968 customs union, the abolition of quotas, the free movement of citizens and workers, and a degree of tax harmonisation with the general introduction of VAT in 1970. However, the freedom of trade in goods and services and the freedom of establishment were still limited owing to continuing anti-competitive practices imposed by public authorities.

B. The launch of the internal market in the 1980s and the Single European Act

The lack of progress in the achievement of the common market was largely attributed to the choice of an overly detailed method of legislative harmonisation and to the rule that required unanimity for decisions to be taken in the Council. According to the Cecchini report (‘The cost of non-Europe’), presented in March 1988, this was extremely expensive for the economy, costing between 4.25% and 6.5% of GDP. In the mid-1980s political debate on this issue led the EEC to consider a more thorough approach to the objective of removing trade barriers: the internal market.

The Single European Act entered into force on 1 July 1987, setting a precise deadline of 31 December 1992 for completion of the internal market. It also strengthened the decision-making mechanisms for the internal market by introducing qualified majority voting for common customs tariffs, free provision of services, free movement of capital and approximation of national legislation. By the time the deadline passed, over 90% of the legislative acts listed in the 1985 White Paper had been adopted, largely under the qualified majority rule.
C. Towards a shared responsibility to complete the internal market

The internal market has made a significant contribution to the prosperity and integration of the European economy. It has increased trade within the EU by about 15% per year over 10 years; it has boosted productivity and reduced costs through the abolition of customs formalities, harmonisation or mutual recognition of technical rules and lower prices as a result of competition; it has generated additional growth of 1.8% over the last 10 years; and it has created around 2.5 million more jobs, while reducing the differences in income levels between Member States.

A new internal market strategy running from 2003 to 2010 focused on the need to facilitate the free movement of goods, integrate the services markets, reduce the impact of tax obstacles and simplify the regulatory environment. Substantial progress was made in opening up transport, telecommunications, electricity, gas and postal services. The transposition rate (measured by the ‘transposition deficit’, which is the percentage of directives not transposed in all the Member States) fell to 0.9% in 2010, but increased to 1.2% in September 2011[6] — the interim target was 1%. The Commission’s 2012 Internal Market Scoreboard observed that although the average percentage of single market legislation not yet transposed at national level remained below the agreed target of 1%, some Member States would not be able to overcome the high backlog ‘without drastic action’.

In its communication entitled ‘Better governance for the Single Market’[7], the Commission called for infringement procedures to be shortened and for compliance with judgments of the Court of Justice to be ensured through penalty payment procedures. The Commission proposed horizontal measures such as an emphasis on clear, easily implementable new regulations, better use of existing IT tools to facilitate the exercise of single market rights, and setting up national centres to oversee the operation of the single market. Monitoring is an integral part of the annual reports on single market integration in the context of the European Semester process.

D. The relaunch of the internal market in 2010

Given that the full potential of the internal market remains unexploited and that Europe has been changed by reunification, enlargement and closer integration since the introduction of the single market, Parliament, the Council and the Commission have recently made fresh efforts to relaunch the internal market, in order to boost the European single market once again and to put the public, consumers and SMEs at the centre of the single market policy.

In May 2010 the Commission published a report entitled ‘A new strategy for the single market at the service of Europe’s economy and society’ covering all of the policies concerned (competition, consumer, digital, tax and other policies). It also set out several initiatives aimed at shoring up the single market by removing the remaining barriers. This prepared the ground for a Commission communication entitled “Towards a Single Market Act”[8], in which the Commission presented a series of measures designed to boost the European economy and create jobs, thereby adopting a more ambitious

---

single market policy. Following on from the communication of 11 January 2012 entitled ‘A Coherent framework for building trust in the Digital Single Market for e-commerce and online services’[9], in June 2012 the Commission published a communication entitled ‘Better Governance for the Single Market’[10]. It proposed that the focus should be placed on those sectors with the highest growth potential in 2012 and 2013, meaning network industries (e.g. energy and telecommunications) and key services sectors (trade, business services, financial intermediation and transport).

In October 2012 the Commission came forward with a second set of proposals — the Single Market Act II — to further develop the single market and exploit its untapped potential as an engine for growth. The Single Market Act II sets out 12 key actions for rapid adoption by the EU institutions. These actions are concentrated on four main drivers for growth, employment and confidence: integrated networks, cross-border mobility of citizens and businesses, the digital economy, and actions that reinforce cohesion and consumer benefits. The Single Market Act II follows in the footsteps of an initial set of measures presented by the Commission — the Single Market Act I — and includes the following actions aiming at a more thoroughgoing, better integrated single market:

— business mobility (e.g. introducing provisions to mobilise long-term investment, modernising insolvency proceedings, and helping to create an environment that offers second chances to failing entrepreneurs);

— the digital economy (as a move towards the completion of the Digital Single Market by 2015, the Commission is proposing that e-commerce should be promoted in the EU by making payment services easier to use, more trustworthy and more competitive; there is also a need to address the key causes of the lack of investment in high-speed broadband connections and to make electronic invoicing standard in public procurement procedures);

— consumer confidence (e.g. introducing measures to ensure widespread access to bank accounts, as well as transparent and comparable account fees and easier bank account switching).

The Commission was due to come forward with all of the key legislative proposals connected with the Single Market Act II by spring 2013, and with the non-legislative proposals by the end of 2013. Parliament and the Council were called upon to adopt legislative proposals as a matter of priority[11].

On 28 October 2015, the Commission published a communication entitled ‘Upgrading the Single Market: more opportunities for people and business’[12] in which a number of actions are listed focused on three main areas: creating additional opportunities for consumers, professionals and businesses; encouraging the modernisation and innovation that Europe needs; and ensuring practical benefits for people in their daily lives. This strategy focuses on services and product markets. It complements the Commission’s efforts to boost investment, improve competitiveness and access to

finance, ensure a well-functioning internal market for energy, reap the opportunities of the Digital Single Market, and promote and facilitate labour mobility while preventing abuse of the rules. The actions envisaged in this strategy will be launched in 2016 and 2017. By the end of 2017, the Commission will review progress on its implementation. Currently, one of the most challenging issues in developing the internal market is the implementation of its digital component. In May 2015, the Commission adopted a Digital Single Market Strategy, which set the programme for legislative work for building a European digital economy (see fact sheet on the ubiquitous Digital Single Market).

ROLE OF THE EUROPEAN PARLIAMENT

Parliament is the driving force behind the process that led to the creation of the internal market. Specifically, it backed the idea of changing the internal market into a fully integrated home market by 2002 (resolution of 20 November 1997). In several resolutions adopted in 2006 (e.g. those of 12 February, 14 February, 16 May and 6 July) Parliament supported the idea that the internal market was a common framework and point of reference for many EU policies and asked for a debate which went beyond the common rules on the four freedoms, fundamental rights and competition.

Parliament also played an active role in the recent relaunch of the internal market. In its resolution of 20 May 2010 on delivering a single market to consumers and citizens\[13\], Parliament emphasised that measures must be taken in order to inform and empower consumers and SMEs more effectively, as well as to increase citizens’ confidence. Parliament issued three further responses to the Single Market Act with three resolutions adopted on 6 April 2011: ‘Governance and partnership in the single market’\[14\], ‘A single market for Europeans’\[15\] and ‘A single market for enterprises and growth’\[16\]. In all its 2010 and 2011 resolutions relating to the internal market, Parliament called for the governance of the single market to be strengthened and for the transposition and enforcement of single market legislation to be improved. Parliament’s resolution of 20 April 2012 on ‘a competitive digital single market — e Government as a spearhead’\[17\] pointed to the need for a clear and coherent legal framework for the mutual recognition of electronic authentication, identification and signatures that is necessary to guarantee that cross-border administrative services can operate throughout the EU. This was followed by the resolution of 22 May 2012 on the ‘Internal Market Scoreboard’\[18\].

On 11 December 2012, Parliament also adopted two non-legislative resolutions relating to the internal market, one on completing the Digital Single Market\[19\] and one on a Digital Freedom Strategy in EU Foreign Policy\[20\], in which it stressed that it strongly

\[14\]Texts adopted, P7_TA(2011)0144.
\[15\]Texts adopted, P7_TA(2011)0145.
supports the principle of net neutrality, i.e. that internet service providers do not block, discriminate against, impair or degrade, including through price, the ability of any person to use a service to access, use, send, post, receive or offer any content, application or service of their choice, irrespective of source or target. In the same resolution it also called on the Commission and the Council to promote and preserve high standards of digital freedom in the EU. The aim of the resolutions was to develop policy and practice with a view to the establishment of a real digital single market in the EU to cope with different sets of national rules in key areas including VAT, postal services and intellectual property rights. The principles of net neutrality and the open internet, as well as the abolition of roaming charges, have been introduced as part of a legislative package laying down measures concerning the European single market for electronic communications and to achieve a Connected Continent[21].

On 7 February 2013, Parliament adopted a resolution with recommendations to the Commission on the governance of the Single Market[22], establishing a Single Market governance cycle as a specific pillar of the European Semester. Furthermore, on 25 February 2014, Parliament adopted a resolution on Single Market governance within the European Semester 2014[23], followed by its resolution of 27 February 2014 on SOLVIT[24]. Finally, Parliament adopted a resolution[25] on 12 April 2016 entitled ‘Towards improved single market regulation’ underlining the need to remove unnecessary regulation, bureaucracy and negative impacts while achieving policy objectives and delivering a competitive regulatory environment that supports employment and enterprise within Europe.

On 9 April 2015 Parliament adopted a motion for a resolution calling on the Commission to boost e-commerce[26]. Parliament is currently conducting extensive legislative work on proposals presented as a follow-up to the DSM Strategy and the resolution on ‘Towards a Digital Single Market Act’[27].

Research prepared for Parliament indicates the significant potential of the Digital Single Market in reducing costs and barriers in Europe for citizens and businesses[28] and making the European economy greener[29] and more social[30]. A significant part of

this potential can be realised through the development of e-government and related services such as e-health[31].

Mariusz Maciejewski
10/2018