

# THE INTERNAL MARKET: GENERAL PRINCIPLES

The idea of a single market was preceded by that of a common market enshrined in the Treaty of Rome. It already aimed at liberalising trade among the Member States. The Single European Act reinforced the concept of the internal market. In 2010, the debate on the internal market was revitalised with the ‘Europe 2020 report’, the Monti report ‘A new strategy for the single market — At the service of Europe’s economy and society’, and with the Single Market Act presented by the Commission in October. The European Parliament has responded to these initiatives with many resolutions.

## 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 1985 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 whole bulk of the internal market legal framework now in place, debate is concentrating on the effectiveness and impact of EU regulation on sectors covered by this legislation and involves almost the majority of policies mentioned by the TFEU. It calls for an approach focused on **complete transposition, implementation and enforcement of internal market rules**, going beyond the debate on the normative procedures and the infringement procedures, and moving towards what could be called **the ‘management’ of the internal market and the ‘partnership’ between EU Institutions and national authorities** (every day cooperation on strategies and decisions, to share these ‘common responsibilities’ vis-à-vis the European citizens).

## ACHIEVEMENTS

### A. The common market of 1958

#### 1. Aim of the common market

The common market, the Treaty of Rome’s main objective, was intended to amalgamate the economies of the Member States as far as possible through:

- a customs union with a common external tariff;
- the free movement of goods, persons (especially employed persons), services and, to a certain extent, capital;

- the elimination of quantitative restrictions (quotas) and measures having an equivalent effect.

This objective was supported by the exclusive competence of the Community on competition.

## 2. Implementation

The customs union (achieved on 1 July 1968; see also \*3.2.1.)), the abolition of quotas, the freedom of any EU national to look for and take up a job in another Member State under the same conditions as the nationals (\*3.2.2) and some tax harmonisation with the general introduction of VAT (1970) (\*3.4.5) were achieved before the end of the transition period (1 January 1970). However, the freedom of trade in goods and services and the freedom of establishment remained restricted due to: continuing anti-competitive practices imposed by public authorities (e.g. exclusive production or service rights, state aids, tax-related barriers or merely administrative ones); a reduction in measures having an effect equivalent to quantitative restrictions and in national technical rules for products (\*3.2.1). The free movement of services or the freedom of establishment (except certain professions such as doctors) had still not completely been attained by the mid-1980s.

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

### 1. The internal market

The lack of progress in the achievement of the common market was largely attributed to the choice of too detailed a legislative harmonisation method and the unanimity rule required for Council decisions to be taken. According to the Cecchini report 'The cost of non-Europe', presented in March 1988, this had a considerable economic cost estimated at 4.25 % to 6.5 % of GDP. The political debate led the EEC in the mid-1980s to consider a more thorough approach to the objective of removing trade barriers: the **internal market**. The green light was given in Brussels in March 1985, when the European Council set the end of 1992 as the date for completing the internal market and asked the Commission to prepare a programme with a list of acts to be adopted and a timetable for implementation. Approved by the European Council in Milan, the Commission in 1985 adopted a White Paper, where most of the legislative measures to be taken (approximately 300) were listed and grouped into three main objectives:

- eliminate physical frontiers, by abolishing checks on goods and persons at internal frontiers;
- eliminate technical frontiers, by breaking down national barriers on products and services, and through harmonisation or mutual recognition;
- eliminate tax frontiers, by overcoming the obstacles created by differences in indirect taxes, and through harmonisation or approximation of VAT rates and excise duty.

The Single European Act entered into force on 1 July 1987, incorporating the specific concept of the internal market in the EEC Treaty and setting a precise deadline of 31 December 1992 for its completion (Article 18 EC). It also strengthened the internal market decision-making machinery by introducing qualified majority voting for

subjects including: common customs tariffs, free provision of services, free movement of capital and approximation of national legislation (Articles 26, 49, 60, and 94 and 95 EC, respectively).

## 2. The situation in 1993

By the deadline, over 90 % of the legislative projects listed in the 1985 White Paper had been adopted, largely by using the majority rule. They included:

- liberalisation of capital movements (\*3.2.4);
- almost total abolition of checks on goods at internal frontiers (\*3.2.1);
- abolition of routine checks on national citizens at internal frontiers (\*2.3);
- major progress in introducing rights regarding freedom of establishment and freedom to provide services, through harmonisation and mutual recognition (banking and insurance, diplomas for access to the regulated professions) and by opening up public markets.

There remained some serious failures:

- the 10 % of scheduled legislation not yet adopted included some very important topics, such as the total abolition of controls on persons, the statute for the European company, the full liberalisation of transport services, and tax harmonisation; in addition, some proposals not contained in the 1985 programme but added later (e.g. liberalisation of public service sectors, telecommunications, electricity, gas, postal services and the establishment of trans-European networks, were not adopted);
- a significant part of the adopted directives were not transposed correctly;
- finally, acts properly transposed were often badly implemented by national administrations (Sutherland report of October 1992).

## 3. New efforts

Since 1993, the Commission regularly submitted reports reviewing the results obtained and launched actions and programmes to complete those projects still pending. Apart from the annual reports on the state of the progress and operation of the single market, it is worth mentioning the following.

- The communication of 2 June 1993 on improving the effectiveness of the single market, and the strategic programme of 22 December 1993.
- The communication of 30 October 1996 'The impact and effectiveness of the single market', and the 'Action plan for the single market' of 4 June 1997. The progress chart continues to be published twice a year.
- 'The strategy for Europe's internal market', launched on 24 November 1999, an action plan which combined medium- and short-term perspectives, laying down strategic objectives to be achieved up to 2004 by means of 'targeted measures' reviewed annually.
- The Commission document of 7 January 2003 'The internal market — 10 years without frontiers'.

— The Commission communication 'Internal market strategy priorities 2003–06'.

While providing this impetus, the Commission also took repressive actions under Article 226 EC for prosecuting infringements by the Member States for: delayed transposition of directives, incorrect transposition and bad implementation.

### C. Towards a shared responsibility to achieve the internal market

The internal market, the world's largest common space of almost 500 million consumers, strongly contributed to the prosperity and integration of the European economy. It has increased intra-Community trade (by about 15 % per year over 10 years), 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), generated extra growth of 1.8 % in the last 10 years and 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 movements of goods, integrate the services markets, reduce the impact of tax obstacles, simplify the regulatory environment and meet the demographic challenge. In particular, substantial progress was made in completing the legislative programme: opening up transport and telecommunications services; causing a significant opening-up of other 'public service' sectors (electricity, gas and postal services) and strengthening supervision of mergers. Transposition rate (measured by the 'transposition deficit', which is the percentage of directives not transposed in all the Member States) fell to 1.6 % in 2005 and to 0.9 % in 2010 (Internal Market Scoreboard, Commission, May 2010). This is in line with the interim target of 1 % set by the Heads of State or Government in 2007. However, the number of current infringement proceedings, nevertheless, rose from approximately 700 cases in 1992 to over 1 600 in May 2005, but slightly decreased again to 1 229 in May 2010 (Internal Market Scoreboard, Commission, May 2010). These proceedings are at various stages, starting with a default notice which may be followed by a reasoned opinion and then referral to the Court of Justice. Nevertheless, some serious gaps remain as many essential legislative projects are still pending; e.g. the full freedom of movement for persons, tax harmonisation and certain directives not yet transposed in all Member States. Also, the full impact of important directives still remains to be seen; such as the services directive adopted in 2006, which should already have been implemented by 28 December 2009 (see more in \*3.2.3).

### D. The relaunch of the internal market in 2010 — preparing for the 20 years' anniversary

As the full potential of the internal market remains unexploited and as Europe has been changed by reunification, enlargement and closer involvement since the introduction of the single market, the EP, Council and Commission have recently put a lot of effort into relaunching the internal market, in order to secure a new boost for the single European market and to 'put back at the heart of the internal market those who live in it and use it daily', i.e. to put the citizens, consumers and SMEs at the centre of the single market policy. With its communication 'Europe 2020 — A strategy for smart, sustainable and inclusive growth' (COM(2010) 2020), the Commission presented seven flagship initiatives that will commit both the EU and Member States to help Europe out of the crisis and 'turn Europe into a smart, sustainable and inclusive economy delivering high levels of employment, productivity

and social cohesion'. In the report, the Commission furthermore highlights the importance of taking action against bottlenecks in Europe and towards strengthening the single market for the 21st century. The Commission proposes action to tackle bottlenecks in the single market by:

- reinforcing structures to implement single market measures on time and correctly (including network regulation, the services directive and the financial markets legislative and supervision package), enforce them effectively and, when problems arise, resolve them speedily;
- pressing ahead with the smart regulation agenda (including considering the wider use of regulations rather than directives), launching ex post evaluation of existing legislation, pursuing market monitoring, reducing administrative burdens, removing tax obstacles, improving the business environment (particularly for SMEs), and supporting entrepreneurship;
- adapting EU and national legislation to the digital era, so as to promote the circulation of trustworthy digital content for consumers and companies — this requires updating the rules on liability, warranties, delivery and dispute resolution;
- making it easier and less costly for businesses and consumers to conclude contracts with partners in other EU countries: notably by offering harmonised solutions for consumer contracts, EU model contract clauses and by making progress towards an optional European contract law;
- making it easier and less costly for businesses and consumers to enforce contracts, and to recognise court judgments and documents in other EU countries.

In addition to the Europe 2020 report, Professor Mario Monti was assigned by the Commission to present a report on 'A new strategy for the single market at the service of Europe's economy and society', which was presented on 9 May 2010. The report tries to develop a comprehensive strategy for the single market, deploying all policies (competition, consumer, industrial, energy, transport, digital, social, environment, climate change, trade, tax and regional policies) and presents several initiatives to build a stronger single market, aimed at removing the remaining bottlenecks and plugging the gaps and missing links that hamper innovation and dampen growth potential in the single market. The initiatives are grouped in clusters of recommendations:

- ensure that from the citizens', consumers' and SMEs' perspective, the single market functions better;
- create a digital single market;
- exploit the potential of the single market to support green growth and Europe's transition to a low-carbon, resource-efficient economy;
- reap the full benefits of the single market for goods;
- fully exploit the potential of the single market for services;
- ensure geographical labour mobility in the single market;
- establish the 'physical' infrastructure for the single market.

These recent reports from the Commission and the EP's report 'Delivering a single market for consumers and citizens' (see below) have all prepared the ground for the newest initiative from the Commission 'Towards a Single Market Act' (COM(2010)608). In 'Towards a Single Market Act', the Commission presented a series of measures designed to boost the European economy and create jobs, and has therefore adopted a more ambitious single market policy. The proposed initiatives are grouped within the following clusters:

- **sustainable and equitable growth** (e.g. EU patent, internal market for services, electronic commerce, energy taxation, accounting rules, public procurement, e-identification/authentication);
- **restoring confidence by putting Europeans at the heart of the single market** (e.g. transport and energy infrastructures, posting of workers to other Member States, recognition of professional qualifications, student mobility, corporate governance, product safety, access to basic banking services, and avoiding tax obstacles for citizens);
- **dialogue, partnership and evaluation** (evaluating implementation rules in Member States, information exchange between authorities, one-stop shop for information and assistance)

The Commission held public debates and is currently debating these initiatives with the EP and Council. Based on the results of this debate, the Commission will propose to the other EU institutions that they reach an agreement on the final set of priority actions to be implemented before the end of 2012, which will be in time for the 20 years anniversary of the single market.

## **ROLE OF THE EUROPEAN PARLIAMENT**

EP was a driving force in the process that led to the launching of the internal market. Particular mention should be made of its resolution of 9 April 1984. It vigorously supported the White Paper in 1985 and regularly supported the Commission's efforts. In particular, it backed the idea of transforming the internal market into a fully integrated home market by 2002 (resolution of 20 November 1997). In several 2006 resolutions (e.g. 12 February, 14 February, 16 May and 6 July), the EP supported the idea that the internal market was a common framework and point of reference for many EC and EU 'policies' and asked for a debate which went beyond the common rules on the four freedoms, fundamental rights and competition. Notably, the EP underlined the need: to improve the effectiveness of the control by Commission of the correct transposition and implementation of EC and EU law; for Member States to ensure that they are not causing new implementation problems by imposing additional requirements ('gold-plating'); to strongly increase the involvement of national parliaments; to ensure better regulation, and to have more transparent and effective stakeholder consultation, with a view to the importance of participative democracy. The EP also played an active role in the recent **relaunch** of the internal market. Among others, the EP adopted a resolution on 'Delivering a single market for consumers and citizens' on 3 May 2010, underlining that:

- integration should be deepened and the remaining gaps closed;

- the credibility and confidence of the internal market must be strengthened by strong leadership from the EU institutions, together with stronger political ownership of the internal market in the Member States;
- measures must be taken in order to inform and empower consumers and SMEs more effectively in the single market, e.g. by developing targeted communication strategies focusing on day-to-day problems that citizens encounter, by prioritising consumer-friendly legislation followed by adequate information campaigns, by improving problem-solving mechanisms such as Solvit (an online problem-solving network in which EU Member States work together to solve problems caused by the misapplication of internal market law by public authorities ([http://ec.europa.eu/solvit/site/index\\_en.htm](http://ec.europa.eu/solvit/site/index_en.htm)), and finally by increasing citizens' confidence in the CE mark through information campaigns and tougher checks on quality standards;
- a correct and timely implementation of EU legislation is important in order to ensure a coherent and strong internal market throughout Europe.

Furthermore, the EP responded to the Single Market Act with three resolutions: 'Governance and partnership in the single market', 'A single market for Europeans' and 'A single market for enterprises and growth'. These resolutions (adopted in April 2011) stress that the five key priorities of the three issues should be the following.

Key priorities — Governance and partnership in the single market:

- a spring session of the European Council focusing on the single market issues;
- a Green Paper on guidelines for the EU institutions' consultations with representative associations and civil society;
- the Member States' obligation to provide correlation tables and make them publicly available;
- Reduction of the transposition deficit of single market directives;
- legislative proposal on the use of alternative dispute resolution in the EU.

Key priorities — A single market for Europeans:

- recognition of professional qualifications and evaluation of the need to establish a European skills passport and set up 'a mobility scoreboard';
- better coordination of the activities of national market surveillance and customs authorities to improve the effectiveness of border controls on imported goods from third countries;
- an extension of the existing roaming regulation both in time (up to June 2015) and in scope (to introduce caps on retail prices for data roaming in order to reduce roaming costs);
- better access to banking services and improved transparency and comparability of banking charges;
- full portability of pension rights.

Key priorities — A Single Market Act for enterprises and growth:

- creation of an EU patent and a unified litigation system;

- financing of innovation (inter alia through the creation of EU project bonds and through a legislative framework to encourage venture capital);
- stimulation of e-commerce (including an EU action plan against counterfeiting and piracy, and a framework directive on the management of copyrights);
- improvement of SME participation in the single market (i.e. by removing administrative and fiscal barriers);
- rationalisation of public procurement procedures.

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