EMPOWERING THE SINGLE MARKET

A 10-point plan to revive and deepen it

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SUMMARY

Last year's celebration of 30 years of the single market never gave equal attention to the failures of the 'not-so-single market'. Empowering the single market is badly needed due to its many shortcomings, its many barriers (more than often assumed), various taboos and lingering distortions. If empowered with a medium-term programme, led by the European Council and actively implemented by the Commission and the European Parliament, it could boost the EU economy by some 9 % of EU GDP, and possibly more if greater dynamism is generated via a stimulus of startups, higher R&D investment and a greater use of the new Unitary Patent.

This CEPS In-Depth Analysis report comprises both institutional and substantive proposals. Regarding the former, the Council troika should play an active role as was the case during the early Delors period (late 1985 to 1988), the Commission should firm up enforcement and the EP's Internal Market and Consumer Protection (IMCO) Committee should hold annual enforcement sessions that give citizens and business a voice.

On substance, the programme has to be ambitious. Two parallel action programmes are proposed for services under the 2006 Services Directive, and services under dedicated sector regulation (such as rail freight, banking and larger, competitive capital markets, and stepping up investment in cross-border interconnectors). Cases of 'hard fragmentation' ought to be abolished, with the consolidation of the telecoms market, addressing ill-coordinated spectrum frequencies, finally implementing the SES 2+ air traffic control system, and the fully-fledged shift from national to EU copyright regulation.

Other recommendations include the immediate abandonment of the Commission's revised approach to harmonised European standards (an approach that serves no useful purpose), the need to avoid values-driven EU regulation on typical 'diplomacy' issues that has severe costs to companies heavily reliant on global value chains, and improvements in the conditions for EU startups, thus boosting dynamism in the single market.

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Recommendations for EU leaders

When celebrating 30 years of the EU single market in 2023, with satisfaction about what had been accomplished, the 'other' report was neither written nor even asked for. This is amazing but also disappointing. The core of the 'other' report is that the EU single market is far weaker and not as single as is often assumed, if not faltering in important respects. It turns out to be full of shortcomings, many hundreds of barriers, distortions, and taboos on seriously opening up or investing in some areas (or both). **What the EU needs right now is for the single market to be truly empowered.**

The present report is an urgent call for immediate and sustained action at the highest political level, which recognises that the single market is the very foundation of the EU and that concrete action will need to be taken to deepen and strengthen the single market. Indeed, as argued at the end of our report, the EU's competitiveness hinges critically on the deepening and proper functioning of the single market. That is why it is truly strategic. The term 'strategic' is overused in today's EU. But for the health and dynamism of the EU economy, hence our prosperity over the longer run, **one cannot think of any EU action as being more strategic than empowering the single market. Without delay.**

Backed by analysis and considerable detail in the body of the report, including a survey of 10 recent, detailed studies and reports showing that the single market suffers from far more barriers than is usually recognised, here we focus on 10 recommendations for EU political leaders. The first and principal one is that the *EU political leadership should* agree on and adopt a comprehensive strategy in 2024 for the single market. It should comprise two elements: medium-term priorities, which should be achieved during the mandate of the next Commission; and longer-term priorities, where tangible progress needs to be made under the next Commission mandate, but which realistically require a longer time horizon to address. The European Parliament elections in June 2024 and a new European Commission soon thereafter provide a golden opportunity to ensure the EU focuses on its core strategic asset, the single market.

For the single market to be truly empowered, decisive and sustained action is required in three areas: **strategic and political leadership, governance and enforcement, and targeted actions in specific areas**. The recommendations contained in the 10-point plan are grouped accordingly.

Strategic and political leadership

Medium-term priorities to be tackled by 2028

1. **Adopt a detailed programme of medium-term priorities to be completed by 2028.**
   EU leaders should adopt in the summer of 2024 a **new medium-term single market programme**, as the core element of the work for the new European Commission and European Parliament. The programme should bind the Commission, the Council and the European Parliament in a joint undertaking for 3–4 years, with regular interim reports and milestones.

   - The new programme should reflect the urgency and importance of this empowerment of the single market. It must therefore be ambitious. This will be painful or sensitive in some respects but the single market can no longer live with carve-outs, exceptions, derogations and all-too-soft obligations, or for that matter, with 'hastening slowly' and too selectively in enforcing single market rules. If implemented properly, the programme would convincingly strengthen the EU's competitiveness and could add another 9 % to EU GDP.
   - But it is also about the dynamism of the EU economy, ensured by its openness to trade and non-EU foreign direct investment, the new unitary patent, the impetus for startups and better access to finance. It concerns further progress towards deeper capital markets and a host of other aspects specified in the report, including significant investment in cross-border interconnectors to move renewable energy from supply to demand areas. Equally, it is about maintaining an active EU competition policy, whether for companies or state aid.

2. **Set out a specific action plan on implementation of the Services Directive focused on professional services, retail and construction.**
   EU institutions should come up with *two parallel action plans* to deepen market integration for services. The first should be *an action plan for further implementation of the Services Directive 2006/123*.

   - This first action plan for services needs to concentrate on professional services (where too little progress has been made over the last decade), retail (all the way to the local level as well) and construction services.

3. **Develop a specific action plan for rail freight, capital markets, banking services and energy.** The second EU action plan for deepening the single market for specific regulated services should cover (but not exclusively) these *four services.*

- For rail freight, combine better cooperation (based on firm obligations between infrastructure managers, so that, e.g. freight shippers find the solutions commercially attractive) with sizeable investment in European Rail Traffic Management System signalling, which was promised but is enormously behind. (Such investment will effectively raise the safe speed of rail freight throughout Europe.) This also implies greater incentives and better facilitation of combined transport, as one of the several ways to shift trucks from road to rail.
- Make effective progress in achieving competitive and larger-scale capital markets in the EU, which are so key for access to risk capital for EU companies, including startups. Clearly, the ringfencing of national financial actors can no longer be tolerated.
- Fully integrate the EU market for banking services, with the last leg of the banking union (public risk sharing) and (probably more tedious) the greater facilitation of cross-border consumer and other finance.
- Make a major adaptation to the 10-year cross-border transmission investment plans (coordinated by ACER/ENTSO), such that investment occurs faster (e.g. by swifter permits) and interconnectors –carrying green energy – can increase in number and reach. With more interconnectors, of course, each Member State is held to ensure a resilient energy system, facilitating stability.

Longer-term priorities

4. **We need to overcome economically damaging Member State resistance to deepening the single market for telecoms, spectrum frequencies, air traffic control and copyright.**

   '*Hard fragmentation*' is a phenomenon – alien to the single market – of flatly refusing to support building the single market. The associated taboos have been able to live on for decades and undermine the credibility of the *single* market. They result in inefficiencies and should now finally be addressed. It is understood that these four sectors are complex. It cannot therefore be expected that they can be resolved all at once. Nonetheless, EU political leaders should commit to finally tackling these four sectors, making clear that the status quo is over and that a firm path towards solid and efficient EU solutions is the direction of travel.

- The consolidation of the EU telecoms market has long been a pious wish, if only because scale efficiencies as well as a capacity to invest (e.g. in costly fibre networks, let alone in 6G) would improve the competitiveness of EU telecoms. However, the result is that the EU has a hugely excessive number of telecoms operators that cannot invest and are protected by markets kept 'national' due to networks and regulators. EU merger policy has also been rather artificial because the obvious option – cross-border mergers – has remained unattractive so far and intra-national mergers quickly run into objections by competition authorities. The inferior status quo is disadvantageous to the EU, now and in the future.
- In successive assignments and coordination of spectrum frequencies from 3G to 5G, coordination has been weak and Member States have often acted on their own, while formally sticking to soft agreements. Also, some finance ministers have stimulated price increases beyond rational pricing – a kind of tax. The upshot has been that companies suffer from uncertainties and costly planning problems, to mention just one drawback. For 6G these problems ought to be prevented for good.
- The failure to complete the Single European Sky (SES) 2+ air traffic control system for the last 15 years is expensive in terms of climate and airline costs. Leaders should no longer accept or tolerate objections from vested interests. In the extreme, it might be better if several air controllers were bought out than to continue with this costly set-up.
- The system of copyright protection should be transformed from a national to an EU-wide system, with a derogation (of say, 10 years, renewable) for selected services catering for diversified cultural productions. Diversity of cultures in Europe is a valid reason if the case can be made. Of course, this reform should solely apply to economic rights under copyright.

Governance and enforcement

5. **Step up peer pressure and visibility to combat inertia and vested interests through articulated efforts by the European Parliament's Committee on the Internal Market and Consumer Protection (IMCO) Committee. Additionally, appoint a dedicated Commissioner for the single market and make the single market a recurring priority on the Council troika agenda.**

   EU leaders do have to assume ownership. The strategy will need to be agreed in the European Council in broad terms and the European Commission should subsequently make a more detailed proposal, together with a schedule and interim milestones.

This should come alongside a dedicated Commissioner responsible for the single market programme in the next mandate.

- By October 2024, a proposal should be sent to the Council and the European Parliament. It ought to be operational at the latest on 1 January 2025. By late 2028, a thorough reshaping of the single market should be accomplished in terms of legislation and most of its implementation.
- In the Council, either the (ever shifting) troika or another tight cooperative mechanism between successive presidencies is needed to guarantee the practical operation of the strategy, not necessarily that different from how the early days of the Delors programme worked in 1985–1987.
- The IMCO Committee should have special annual sessions on enforcement in the single market. These should include hearings or other possibilities where consumers, the public and business can air their frustrations about how they are disadvantaged owing to a lack of enforcement. These sessions would hold the Commission and Council to account and serve to progress work and pre-empt exceptions or too much differentiation.

6. Expedite and toughen enforcement through a fast-track procedure to the Court of Justice of the European Union (CJEU) for special cases related to the single market. Make it possible to suspend national laws that are contrary to the single market from the inception of an infringement proceeding.

- There are serious concerns in EU markets that enforcement is uneven and weak. Rules and prohibitions are pointless without effective and timely enforcement. Besides, it is agonising for market players, and indeed consumers as well, to observe other market players benefiting from a lack of enforcement.
- A level playing field matters not only because the removal of distortions helps efficiency, but also because credible enforcement prevents the loss of trust in the single market (a dangerous loss). Recently, the ‘preventive approach’ to enforcement (that is, the Commission together with the Member States and for the last 3 years supported by the Single Market Enforcement Taskforce) has been prominent but should be toughened considerably.
- The ‘legal approach’ based on infringements is thorough but much too slow; in special cases, a fast-track procedure to the CJEU is a necessity. Therefore, suspension of the national law in question should come into play from the onset of the infringement proceedings.

Targeted actions in specific areas

7. **Keep European standards market-driven and resist top-down legislation of standards. Standards are a European success story and unless the system is broken we should not attempt to fix it.**

   Leaders should urge the Commission to immediately abandon its recently revised approach to European harmonised standards. These are voluntary standards and turning them, against the will of those who write them (and pay for their creation), into EU law is counterproductive in every possible way.

   - European harmonised standards are very successful in world bodies for standards (ISO and IEC). Indeed, they are so much so that the famous 'Brussels effect' finds its strongest manifestation precisely in their global acceptance for many thousands of standards, which is advantageous for EU firms in global value chains. The sudden revision is bound to create mistrust within the EU and worldwide, with the EU losing leadership. There is no useful purpose served by this revision; it must be rolled back.

8. **Avoid using values-driven regulation to tackle issues that should be dealt with through trade/external relations policy. Establish a methodology for measuring, and a target to reduce, the cumulative burden of regulation.**

   EU leaders have allowed or turned a blind eye to a steep and unmatched increase in the 'regulatory burden' for business over the last 4 years. This has happened despite repeated warnings, the absence of regulatory impact assessments in a few cases (precisely where they were needed most) and the objections of the Regulatory Scrutiny Board. Just how baffled business in Europe is can be seen in their position papers or open letters to EU decision-makers, which have begun using highly unusual terms such as 'regulatory tsunami', 'waterfall', 'avalanche' and 'flood'. They are asking for a 'regulatory breathing space' or a 'regulatory pause'.

   - Whether the promise of a 25 % reduction in this burden can be fulfilled is not yet clear. If not, a reconsideration of some of these administrative (red tape) requirements is the way forward.
   - Moreover, an important consideration for leaders might be that quite a lot of recent, over-heavy EU regulation (and the very detailed implementation rules) is *not* about risk regulation in the single market but about aspects that normally are dealt with via diplomacy and EU trade policy. By imposing tight regulation for such value-driven purposes, inevitably very burdensome controls are introduced, the costs of which fall on business. One might also

ask the question of whether all this burden will indeed attain the value-driven goals in other countries.

- Finally, an 'avalanche' suggests that the *cumulative* regulatory burden should be measured by setting out a methodology to apply to all EU regulation, with a target to cut this burden substantially.

9. Improve the conditions for startups and the growth of new businesses by increasing the ease of doing business and access to finance.

    - The entrepreneurial and innovative spirit in the EU/EEA is often found in small to medium-sized enterprises, mid-caps and, almost by definition, in startups. Member States and the EU should do far more to help these companies develop their dynamism. The key is not so much in heavy-handed funds (which may occasionally help) but rather in other actions:
        - drastically improve doing-business indicators in all Member States, as this is bound to facilitate scaling-up;
        - enable much better access to private risk finance via venture capital and capital markets with enough scale, whether national or EU-wide (or both).
    - These steps, in combination with the arrival of the unitary patent in 25 Member States, are likely to make a genuine difference.

10. A single market mindset will aid the green and digital transitions but requires Member States to ingrain that mindset at all levels of government, down to the local level where necessary.

    - The green and digital transitions have many dimensions. Political leaders understand that these transformations, too, are part and parcel of the single market. There are numerous good examples of this approach.
    - Still, at the Member State level or even provincial or local level, well-intended initiatives often create rigidities or even vested interests, which hinder common EU solutions. This ought to be avoided by early coordination and a single market mindset at all levels of government. Even an aspect as simple as labelling consumer goods should not fragment the single market.

1. Introduction and purpose

The EU has created and developed a unique and very comprehensive asset: its internal market. We say, all the time, that we want this asset to be a '**single market**' but achieving that has proven to be a tall order. Still, it is surely worth it. What is more, it is full of opportunities, likely generating dynamism and healthy transformation without necessarily incurring social friction. This single market can also be green as well as competitive.

Too good to be true? No, but EU leaders and institutions must give it **unquestioned priority**. Instead, recently they have been occupied by Covid, warfare on the borders of the EU and geostrategic risks in the world economy. But leaders have also failed to act firmly and consistently due to the lack of an articulated single market strategy within the EU. Altogether, this has had the effect of *neglecting the beneficial hard core of the EU – its single market* – thereby risking considerable economic damage through inaction and a loss of purpose.

When other preoccupations dominate, moreover, the considerable economic benefits of a deeper and stronger single market tend to be ignored or forgotten as well. This has immediate negative effects for European business, if not society as a whole. A better and deeper single market is economically attractive and entirely feasible. And, for the medium and longer run, this attractiveness is a highly significant determinant of long-term investment in the EU or indeed of *not* investing here, or possibly *less*.

However, supporting a vibrant single market cannot be sufficiently done with just a few feelgood speeches and some lines in European Council conclusions. It does require *a profound change of attitude in EU policymaking and a well thought-out and widely supported plan of action* to get there. The manifold benefits of deeper market integration do not fall as manna from heaven but demand an EU strategy and years of painstaking and decisive action by the EU legislator and the Member States.

This report proposes a medium-term single market strategy. It should be embraced by the Commission, the Council and the European Parliament and include a schedule, milestones and interim assessments.

This single market report is presented in that spirit.

Following this introduction, Section 2 sets out the current economic significance and potential of the EU single market in the near future[1]. The former must be *actively*

[1] That is, for 27 EU countries or 30 when including the 3 EEA countries. Switzerland is *de facto* a quasi-member of the EU single market (with a few exceptions). Switzerland is the EU's 4th trading partner, after

maintained, as we shall discuss. The latter first must be appreciated much better than is often done today. It also forms the *basis for an ambitious strategy to generate economic growth and improve competitiveness in Europe.*

Section 3 then zooms in on the many hundreds of shortcomings and 'deficits' of the single market, which are so frustrating for businesses (and others) with an EU-wide perspective. The message in Section 3 is straightforward, with the many details in the appendix.

Section 4 briefly discusses the lingering question of easy access to solid information about how to do business in one, two or even all 27 Member States, what regulations and other obligations apply there and which authorities are relevant in which cases. The question nowadays is whether the ambitious single digital gateway actually works as promised. If it does, this would be truly great news for business and society.

Sections 5 and 6 provide a condensed survey of the EU's not-so-single and limping single market for *services*. Such a survey is challenging because of the large variety of services and the four modes of services delivery, which further complicate the survey. Services are discussed in two broad groups: those falling under the 2006 Services Directive in Section 5, then all other services usually regulated by specific sectoral directives (like banking, rail freight or telecoms) in Section 6. The purpose is to show that there is still considerable potential to generate economic gains.

Section 7 addresses '*hard fragmentation*', caused by a flat refusal to contribute to the build-up of the single market. Many of the players and even authorities, at times, either show no interest whatsoever in the single market (for a variety of reasons) or find striving for the single market at best a secondary issue, given other (in their view) more pressing problems or possibly vested interests. Four such instances are discussed:

(i) the consolidation of the EU telecoms market, a natural economic consequence of a genuinely single market;
(ii) the effective coordination and common scheduling of spectrum frequencies in telecoms;
(iii) full adoption and practical operation of the Single European Sky (SES) 2+ air traffic control system throughout the EU-27, EEA and Switzerland;
(iv) the development of copyright from a national into a truly EU property right.

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the US, China and the UK. In trade in services, it is a very important player, enjoying a major surplus vis-à-vis the EU. In stocks of foreign direct investment, the two partners are top destinations for one another. It is in the mutual interest of Switzerland and the EU that the frictions about the formalisation of better governance (including enforcement) be resolved quickly.

Section 8 offers a short analysis and conclusion of the European Commission's ill-conceived change of approach to European harmonised standards, which risks becoming very costly for European business in the EU/EEA as well as worldwide, for no valid public reason whatsoever.

Section 9 shows why enforcement must be stepped up. It is encouraging to observe some positive signs but it is still too soft and slow. The role of the Single Market Enforcement Taskforce (SMET) is discussed as well as notification under the Transparency Directive (2015/1535). All the same, proposals to tighten enforcement are still necessary.

Section 10 addresses important areas where EU or national regulation hinders EU business strategies. This can occur because such regulation has purposes other than market failures – the accepted rationale for EU regulation. Yet, once EU regulation is used for other purposes, there should be an extra mechanism to ensure that the single market and competitiveness are not damaged or undermined, or if unavoidable, to the least extent possible. Failing this, the EU regulation is likely to become a burden, perhaps a heavy burden, because those carrying that burden (market players) have no say and the goals may well be about 'values' or other typical external relations or diplomatic objectives. As shown in the last few years, the distance between those deciding on value-driven EU regulation – which is understandable, as who is against pursuing core EU values? – and those having to cough up high extra costs in a single market has negatively affected European business. Then there are the negative repercussions in global value chains or faraway markets.

Section 11 makes a strong plea to stimulate the entrepreneurial spirit of EU business. It is a general plea for all business but with some special attention on small to medium-sized enterprises (SMEs), startups and mid-caps. The single market is critical for them in various ways, in particular for scaling up.

Section 12 discusses the consistency of the green and digital transformation with the single market, also at the national and local levels. Finally, Section 13 deals with the links between the single market and competitiveness. In the final analysis, it is all about our prosperity in the longer run.

2. Economic significance and potential of the EU single market

Much has been written about the economic importance of the single market, in both qualitative and quantitative terms. The 1983 Albert & Ball report[2], initiated the turnaround towards a genuine EU single market, comparing the beauty of forests in the autumn with the coming decay without leaves only a few weeks later. The 1988 Cecchini report[3] comprised a first-ever very detailed economic analysis of the internal market and its potential at the time. Since then, there have been numerous follow-up reports.

There is little doubt that EU enlargement from 10 Member States in 1983 to 28 (now 27), plus the EEA-3, has been predominantly motivated by the attractiveness of the single market. Or that the further EU enlargement discussed today – though probably also rationalised by geopolitics on the continent – is no different, at least for the candidate countries. The relatively comfortable EU position in world trade and the global spread of EU risk regulation (and underlying technical standards)[4] largely hinges on the economic success of the EU single market. Indeed, with all the problems of the EU single market that preoccupy us in the present report, and which might well weaken the EU's position and European business in the near future, there is no denying that the single market is still the EU's strongest asset. Yet, the question nowadays is whether once again we are walking in the forest admiring its colourful beauty, *failing to grasp that it signals decay if the EU does not act decisively and immediately.*

Such a decay could manifest itself in low(er) medium-term economic growth[5] and in lacklustre business investment over similar periods – given insufficient opportunities, a

[2] Entitled *Towards European recovery in the 1980s*, Albert & Ball (1983).

[3] There are two versions of the Cecchini report: the popular book by Cecchini et al. (1988), and the analytical one by Emerson et al. (1988).

[4] This has become known as the 'Brussels effect'. The most widespread and important effect is due to (many) European *standards* having become globalised, but it is less visible than some recent more eye-catching EU laws.

[5] In European business circles, a misunderstanding lingers about recent economic growth in the EU. It is said that the EU has fallen behind significantly. This is incorrect. It stems from how one looks at productivity and the resulting ultimate effect on GDP in, e.g. the US, compared with the EU. For many years, the OECD and sometimes the Commission have noted that if one wants to compare US and EU productivity, one must compare like with like. Because Europeans work fewer hours per week than Americans and on average enjoy longer holidays, and since there are exchange rate issues over longer periods (not to mention current prices), the best measuring rod is comparison based on purchasing power parity. On that basis, the EU has only fallen behind the US slightly. In terms of per capita income, the EU has narrowed the gap, which has happened even faster in terms of output per hour worked. Seven EU countries have turned out to be as productive as the US or more productive in 2022, according to Darvas (2023). See also Berg (2023). However, some other indicators (like how many EU companies are in the Fortune 500 or the number of leading high-tech firms or major platforms) have indeed deteriorated significantly or have been low from the start.

cautious outlook and too many hurdles for dynamic companies. It could also appear in a less favourable environment for intra-EU trade in goods and services and a relatively low stimulus for R&D and innovation more broadly.

Analytically, one must be careful not to attribute every problem to weaknesses in the EU single market. Yet the converse is undoubtedly correct: *the decisiveness of EU leaders on significant improvements of the single market will greatly stimulate business for both short-run and longer-run strategies*, which is likely to set in motion a dynamism that the EU badly needs given the twin transitions. Such dynamism could be observed in the 'euro-phoria' between 1986 and 1989, with frantic mergers and acquisitions (at times across intra-EU borders, which had been rare until 1986) higher investment and economic growth, as well as a boost in intra-EU trade, driving positive adjustments.

First, a reminder of results from economic studies about the GDP impact of the single market. Modern empirical economic studies on the gains generated from the single market show that it is likely to have added some 9–12 % of EU GDP[6], if not some 15 % or 16 %. The present report is of course not the place to delve deeply into technical model discussions, but it is critical to appreciate how important the EU single market is for economic growth.

Brexit has shown that stepping out of the single market is costly in terms of investment confidence, bilateral trade with the EU-27, short-run economic growth and the exchange rate of the pound. It has also implied some relocation of economic activity and a limited outflow of high skills towards the EU-27. And yet, the form of Brexit has been much less 'hard' than is sometimes depicted: practically all technical regulations have been

[6] See In 't Veld (2019) and also Kierzenkowski et al. (2016) model for the OECD about the costs of Brexit (exit from the single market, essentially), and similarly, the UK Treasury model (2016) about Brexit. All these empirical studies hover around 8–9 %. The In 't Veld study (op. cit.) incorporates tariff removal and far-reaching non-tariff barrier removal, but that surely does not exhaustively reflect all that the single market comprises. The two other Brexit studies are extremely rich, but Brexit does not imply a total and full withdrawal, as if EU-UK economic relations went back to the early 1950s. Nor does it imply tariffs.

However, 'synthetic models' (a leading study is by Campos et al., 2014) produce higher results, as high as 12 %. But this would include the EU as such and not 'just' the single market. Whereas the technically sophisticated models (with 9 %) struggle with what (from the single market) is and is not included in the model, this is not an issue in synthetic models because they build a control group to rigorously verify the difference between EU membership (of country A) and not being part of the EU.

Still, the significant drawback of the synthetic model of Campos et al. (2014) is that their empirics begin in 1973 when the UK joined the EEC. This means that the 'golden' first 15 years of the EEC – when real annual economic growth amounted to more than 4 % for over a decade – have been left out of the analysis. Yet, economic gains from early EEC market integration (such as tariff and quota removal, opening up to FDI from 1962 onwards, some common EEC regulation removing high barriers and EEC competition policy) of this first EEC period were significant in explaining part of the realised economic growth. In other words, almost certainly not 12 % but easily 15 % or 16 % of net income gain from the single market should be the conclusion.

maintained, the BSI has remained a full member of CEN and CENELEC (the standards bodies), there are no tariffs between the UK and the EU, etc. The overall implication is clear: *the single market is the crucial hard core of the EU,* and it deserves energetic maintenance and further deepening where economic gains are likely. It needs to become more dynamic by furthering a style of economic governance that stimulates startups and others to invest and innovate.

What matters today is the further economic ***potential*** of the single market and what it takes to realise that potential in the near future.

Ever since the 1983 Albert & Ball report, the question has been dubbed the 'costs of non-Europe' by the European Parliament. Ten years ago, the European Parliament Research Service began investing more systematically in this issue, with the help of many scholars. The idea is as simple as it is crucial: if the EU does not act where it could and should, within the current Treaty powers, in pursuing the socioeconomic goals specified for the internal market in Article 3 of the Treaty on European Union[7], there is a *cost of non-Europe* – a loss from not seizing the opportunities for which the EU has powers.

Traditionally, this has been linked with the single market, as indeed Article 3 implies, although the European Parliament has gradually widened it somewhat. In the 2019 version of that project[8], the quantified *potential* of the single market amounted to EUR 1 280 billion: EUR 625 billion for the traditional single market, another EUR 415 billion for the digital single market and also EUR 250 billion for truly integrated energy markets[9]. Altogether, this equates to almost 9 % of the 2018 EU GDP. That is huge. It is tantamount to the addition to EU GDP of the GDP of Belgium, Czechia and Ireland together.

A new and still richer mapping of the costs of non-Europe was published in February 2023[10], yielding a potential gain from the 'traditional' single market (here including EU transport, especially infrastructure for rail[11]) of EUR 517 billion (a low estimate, which is used below) up to EUR 839 billion (a high estimate, nearly 5 % of EU GDP) by 2032. Note

[7] Essentially 'sustainable development … based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress … the quality of the environment and (the promotion of) scientific and technological advance'.

[8] See EPRS (2019).

[9] Note that the European Parliament also included non-single market aspects such as fighting tax fraud, security and defence, external relations, justice and home affairs, and the economic and monetary union, altogether another EUR 371 billion.

[10] See EPRS (2023).

[11] The transport section hinges (too) strongly on rail infrastructure alone, which is important, but with next to no attention on the 11 rail freight corridors. More generally, it leaves undiscussed the critical issue of shifting trucks to rail, a green modal shift that – by 2023 – had not moved at all.

that, this time, the European Parliament has introduced a broad definition of the single market, which is not followed here[12]. The digital single market (now called digital transformation) adds another EUR 384 billion. Interestingly, the green transformation is also included, estimated at EUR 439 billion. Three other aspects belong to the single market, but are scattered over the large report: completing the banking union (another term for the single market of banking services) put at EUR 40 billion; financial (or capital) market integration at EUR 90 billion; and the free movement of workers at EUR 104 billion. The overall potential for the single market is EUR 1 574 billion, or (in 2022 EUR) nearly 9 % of EU GDP, approximately the same as in the 2019 report.

The central point of these calculations and simulations is that pursuit of the *present potential* for EU and Member State action to deepen and improve the resilience of the single market can be expected to pay off: a *very significant increment of EU GDP* without much or any EU budget spending.

The *Annual Single Market Report* for 2023[13] underscores the success of the single market, even when the latter suffers from considerable shortcomings. It sums up several key indicators reflecting the performance of the EU single market, on its 30th anniversary[14].

- EU-27 trade integration in goods expressed as intra-EU trade over GDP doubled from 11 % in 1993 to 23 % in 2021.
- Intra-EU 'trade costs' have decreased significantly[15].
- The EU value added (hence, employment) in intra-EU trade amounts nowadays to 25 %; in other words, the strong growth of intra-EU trade in three decades has also been a jobs machine. Incidentally, this has likewise been true for the EU's external trade in those 30 years. Indeed, for companies and for EU Member States, economic openness has grown enormously and has now become a basic feature of the EU economy, worth being cherished.
- Intra-EU mode 1 services also doubled but at a much lower level, from 3 % in 1993 to 6 % in 2021. However, the tradability of services is much lower than for goods,

[12] Not included here is EU consumer protection policy, geographical indication of non-agricultural products, efforts to address the corporate income gap or combat VAT fraud (together some EUR 147 billion).

[13] See European Commission (2023a).

[14] The notion of the 30th anniversary refers to the end of the European Community programme in late 1992 – specifically the 1985 programme – called the 'completion' of the internal market, but of course that was an illusion. What happened before 1985, for example, the customs union, the old approach to risk regulation, mutual recognition in the food sector and EEC competition policy, cannot be seen as trivial at all. Even so, what had been accomplished by late 1992 was impressive, though once again not anywhere near to a genuine single market, which is extremely ambitious.

[15] See Head & Mayer (2021) for a sophisticated gravity analysis showing this.

as local presence may be critical in services for permanent client-supplier relationships as well as for trust. What matters, therefore, is mode 3 (intra-EU foreign direct investment (FDI) or establishment)[16]. Intra-EU foreign affiliates also matter: no less than 12 % of total value added in the EU originates from them (i.e. goods and services)[17].

- Finally, it is important to recognise that today services and goods are closely intertwined. Overall, some 38 % of the value added embedded in the demand for manufacturing industries in the EU is generated by services, ranging from 22 % in mining and quarrying to 43 % in food products. The highest share of services value added in manufacturing is found in wholesale and retail. In other words, addressing (i.e. reducing) the barriers in the single services market have a positive knock-on effect for goods markets and these multipliers can be as high as two or three, occasionally even four.

The proper functioning of the EU single market is fostered by several 'enablers' as the Commission calls them: competition policy, cohesion policy and trade policy. (And with the latter is the Brussels effect of trading partners adopting EU rules or numerous technical standards, or a conscious EU strategy in cooperation with the world bodies ISO, IEC and sometimes ITU of writing world technical standards jointly[18], greatly facilitating market access worldwide.) In addition are public procurement, EU-wide (and with the unfortunate exception of copyright) intellectual property rights (IPRs) and transport policy.

Still, some of these enablers entail problems or omissions that may endanger or damage the single market, e.g. in public procurement, copyright, and transport policy. Moreover, the recent Commission approach to harmonised European standards risks undermining the carefully built achievements and EU reputation in world standards, as well as within the EU. It is based on a misconceived and over-legalistic conception of what technical standards are and how well they have long functioned with positive externalities.

[16] Unfortunately, the analysis in the Commission report is not based on FATS/OECD statistics, which show the services supplied by foreign-owned enterprises, the proper mode 3 data.

[17] In the data, EU FDI in financial services is said to be unavailable, but precisely in this sector, FDI is the dominant mode. An older study by Mustilli & Pelkmans (2012) found that in 2008, no less than 61 % of mode 3 intra-EU services FDI was in financial services!

[18] For the EU's technical standardisation strategy in world fora and the identity of European standards with thousands of ISO and IEC standards, see Pelkmans (2023).

3. The single market of 2024: Shortcomings and deficits

Following the 30th anniversary of the single market in 2023, the EU is advised to be balanced in its assessment of its prime asset. There are solid reasons to regard it as a success story, as shown above, and yet at the same time there are solid grounds to fear the socioeconomic drawbacks of a limping or half-baked single market. The EU must do much better, overcoming complacency and *launching an ambitious and top-level strategy to improve and deepen the single market to serve EU growth and competitiveness.* This can be done with the powers that the EU currently has.

For those who suspect – wrongly – that this idea is yet another lobby strategy solely in the interest of European business, it is important to note that a range of analytical reports between 2020 and mid-2023 by a variety of sources have brought up so many deficits in the not-so-single market that the present report cannot possibly deal with all of them in any detail(!) although the appendix shows many of them. In other words, the EU has a limping not-so-single market that urgently needs to be taken care of in earnest. And such a strategy is in the *EU public interest*. Many typical single market deficits do not make headlines, but that does not mean they are not numerous or that there are no costs to the EU economy.

That European business is so keen on prompting action to improve the single market is not primarily explained by selfish motives of more profits and turnover. On the contrary, by far the overriding concern for European business (and non-EU business invested here) is that it is *usually on the frontline* in European markets. Doing business in Europe requires permanent attention to compliance in countless ways.

Most single market legislation *de facto counts on business* for introducing changes in goods and services, with bigger or smaller adjustment costs. In EU law, other than for products and services, business must investigate its opportunities and obligations (e.g. IPRs, capital markets, attracting intra-EU workers and consumer policies). In more horizontal initiatives (like the green and digital transformations), consumers might play a role but predominantly it is once again business that is the *de facto* agent of change. EU laws are enacted by the EU legislator (the European Parliament and Council) but – especially in risk regulation[19] – usually it is not the public or consumer but European

[19] That is, legislation with the objectives of health, safety, consumer protection, environmental protection, and climate-related objectives. All such risks arise from market failures. Most EU regulation is risk regulation.

businesses, including at times their workers, which subsequently must act or act first in the markets.

That is by far the most important reason why business is permanently interested in even the tiniest piece of legislation, its implementation, enforcement, and technical standards. Of course, individual business preferences may also enter the game but these will only become dominant once proposals are considered profoundly mistaken or outright damaging – which happens but is rare. And we must not forget that it is often European business that reports barriers and deficits based on the conduct of national, regional or local authorities. That is not because it is eager to police the authorities but because it sees opportunities (like access to intra-EU markets) blocked and promises or even EU law undermined.

The following list and especially the appendix represent a selection of barriers signalled in reports and position papers from 10 sources: the Commission's *Business journey* report of March 2020 on the barriers for business through all the steps when doing intra-EU cross-border business[20]; the Dahlberg/Pelkmans et al. (2020) report for the European Parliament's Committee on the Internal Market and Consumer Protection (IMCO) on the barriers in the single market; BusinessEurope (and its many sectoral organisations)[21]; the ERT (European Round Table of Industrialists)[22]; SMEunited[23]; Eurocommerce[24]; EuroChambres[25]; ETUI[26]; DigitalEurope[27]; and the BEUC[28]. Moreover, the Commission publishes an *Annual Report on the Single Market*[29]. The 2023 version is extremely rich but focuses almost entirely on the achievements and economic impact of 30 years of the single market, and hardly or not at all on fragmentation or barriers. Note that in Sections 5 and 6 of the present report, extra attention is paid to the not-so-single market for *services*.

[20] See European Commission (2020a).

[21] BusinessEurope publishes some 60 position papers a year, most of which are directly linked with the single market. In 2023 there were two overview reports: *Examples of Single Market barriers for business* (BusinessEurope, 2023b) and *Priorities for the single market beyond 2024* (BusinessEurope, 2023a).

[22] ERT (2021).

[23] See SMEunited.

[24] Eurocommerce (2023).

[25] Eurochambres (2023b).

[26] See Akguec et al. (2022); an accompanying ETUI piece is by Andhov et al. (2022).

[27] DigitalEurope (2023).

[28] BEUC (2023).

[29] European Commission (2023a).

The appendix brings together a selection of what all these sources have recently published, without claiming full coverage, simply because the report would become too lengthy. There is overlap in the reporting, but not all that much. This must mean that the total number of barriers or shortcomings keeps on growing, as more reports are added. That is most worrying, because there is no such thing as an all-encompassing report. Fragmentation is rampant and widespread. It is a signal that *the deficits are a major problem* and urgently need to be addressed in earnest.

A glance at the appendix clarifies that the first two reports cited (for the Commission and for the European Parliament's IMCO Committee) are to some extent complementary. The reports by BusinessEurope and the ERT provide truly broad overviews, but again, with some degree of complementarity. Those by SMEunited, ETUI, DigitalEurope and BEUC each assume a more particular perspective in their own way, and with considerable complementarity, and in turn they are also to some extent complementary to the reports of BusinessEurope and the ERT. The study by Eurochambres (quite broad) and that by EuroCommerce (more narrowly on retail and wholesale but at the same time a huge sector) further add detail for almost all Member States one by one, again with some complementarity.

The appendix is a testimony that it is both impossible and profoundly mistaken to speak about 'the single market' in generalities. The single market must be revived and the appendix clearly shows why but this is bound to be a major undertaking. Thus, *it is a 'must' to have a detailed and well-thought-out plan, a firm structure actively supported by the European Council.* From the start, the commitment must be kept up by *regular reviews over the years that must have consequences*, with a determined Commission, reporting regularly, and the European Parliament, holding plenary sessions.

4. How to do business in other Member States: Towards lower costs for quickly obtaining reliable information?

The most elementary barrier for business or consumers is to acquire reliable information about markets and when necessary, institutions in other Member States. For decades European business, notably SMEs and recently startups, have complained about the problematic access and reliability of the required information and procedures to do business in other Member States. And about whether what was collected was actually complete. A search for compliance could be long and full of uncertainties and/or costly as local advisers or law firms had to be contracted. Usually, there were language problems too as well as elementary issues of recognition. These efforts had to be made for *a range of EU countries*, meaning a cumulation of information searches. At the limit this could add up to 28 (now 27) countries.

The EU has responded to these complaints with Points of Single Contact (PSCs) (run by Member States) and subsequently the recent single digital gateway (SDG). The SDG promises to be quite revolutionary in this respect, if indeed the promises are fulfilled. The potential of the SDG, which is so important for business, will be set out in some detail.

Since roughly 2000, the EU and Member States have been realising that it is in the mutual interest of the EU, the receiving Member State and the company interested in exports or local establishment that the splintered and unorganised supply of information to non-local business be brought together. This first stage eventually became more structured by the EU with PSCs run by Member States, which became compulsory with the Services Directive 2006/123. Yet, it quickly turned out that the complaints intensified rather than abated for a host of reasons, such as:

(a) the multitudes of (specialised) PSCs like Product Contact Points for construction products, national assistance centres for professional qualifications, national contact points for cross-border healthcare and the European network of employment services;
(b) the diversity in set-up and structures between the Member States;
(c) the use of local language (often with only minimal information in another language);
(d) the lack of broader context of the country's regulatory traditions (which may differ across the EU);
(e) differences in the division of labour between local/national regulatory institutions.

All this assumed the information was 'complete' in the first place – but often it was not. The PSCs under the Services Directive were initially not a great success, for the simple

reason that Member States underinvested in them. But in fairness, the initial task was also daunting, to some extent reflecting the despair of business in the single market. PSCs are linked to thousands of websites in the 30 countries involved[30], showing the potential complexity of PSCs.

By 2014, a reassessment was conducted by the Commission and the Member States, resulting in a charter[31] with detailed criteria on the quality and availability of information, transnationality of e-procedures, accessibility for cross-border users and usability. It is not easy to check, with accuracy, their performance. The Commission's website on PSCs[32] asserts that the performance of the PSCs is 'measured annually' in the Single Market Scoreboard, but when checking the rich Single Market Scoreboard website at the time of writing, no performance check could be traced.

In the 2023 Almega report[33], the PSCs are once again put under scrutiny. After so many years, one could reasonably expect high quality but there still appears to be a lot of low quality. The report finds that there are vast differences in (i) the kind of information and (ii) how easy the sites are to navigate. Beyond one or two mouse clicks, (iii) webpages may no longer be in English. There may also be (iv) different rules within Member States.

The report tests how (un)even the quality of the PSCs is on the Commission's portal (Almega, 2023, pp. 23-29), by selecting the intricate case of professional qualifications for the 22 % of EU service workers who are regulated. For a start, not all information is available in English. Also, each website of a PSC has a different structure and logic. Furthermore, even though the information is supposed to be on professional qualifications, some also provide information on social security and selected government services. Finally, federal countries add further complexity: the user must first select a region and then even a municipality. Examples are given as an illustration[34]. This mixed result is 14 years after the PSCs came into being.

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[30] The exact number is not known, but the first Commission implementation report on the SDG (see further) notes that in January 2023, 40 776 websites were notified for the SDG (which also includes information and procedures for the public). More have since been connected. Even if only 10 000 websites were relevant for the PSCs and European business, the initial complexity would be overwhelming.

[31] See the Charter of the electronic Points of Single Contact under the Services Directive, 23 November 2018.

[32] Accessed on 24 November 2023.

[33] Almega (2023).

[34] A selection of examples: Belgium employs four EU languages but information on restricted professions is only available in French (the biggest group of Belgians speaks Dutch; nor is there English in this case!). Bulgaria is a relatively small country, yet it is divided into 28 regions, with some regulatory heterogeneity – sometimes even at the municipal level. For posted work in construction, all information is solely in Bulgarian. France has a partially malfunctioning website. Germany has four Laender websites that are not

No wonder that European business and indeed the public too have put all hope on the SDG[35], a far more radical initiative emphasising a very wide scope of information at all levels and many interlinkages[36]. Although it incorporates national and regional information of the Member States, it remains a Commission website (hence, with very little fragmentation) and numerous services are (inter)linked in a sophisticated fashion. Therefore, it is already user-friendly and expected to become more so in the near future.

In the first implementation report on the SDG[37], the ambitions are clear: 'it massively helps reduce administrative burdens for business, citizens and authorities'. It also 'improves the European business environment'. Businesses 'especially those operating cross-border, save a lot of time and money' and the SDG 'helps to unlock the full potential of the Single Market'. Also, 'by the end of 2023, Member States will have to ensure that administrative procedures in 21 key areas are fully accessible online' (7 of these 21 areas are for business)[38]. The SDG 'would become a true one-stop-shop of EU level help [in] services' (p. 10) across all single market-related topics. Business should also benefit from the application of the 'once only' principle, and authorities even more so.

The SDG has been capable of operating since 2020, with gradual steps in the qualities and utility of the system. A deadline of 12 December 2023 was set for 21 areas to become operational enabling business to:

(i) notify business activity, subsequent changes and termination;
(ii) request permission for business activity;
(iii) register as an employer for pension and social security;
(iv) register employees for pension and social security;
(v) notify the end-of-contract of employees for social security;
(vi) pay social contributions for employees;
(vii) declare corporate tax.

By way of illustration, if an Italian SME wants to apply for a permit to operate in Germany, the Once-Only Technical System (OOTS) will smooth the completion of the procedures via direct access to the relevant German procedural portal through the EU's Your Europe

functioning. Hungary, in contrast, has an informative website, all in English, as does Italy. But Lithuania does not even have a list of regulated professions, let alone the rules. The Netherlands displays a good website but it lacks specifics, and is less easy to find. The same goes for Poland and the list of regulated professions is solely in Polish. Both the Slovenian and Slovakian websites are rudimentary. For Spain, the links lead to error messages. The Swedish website is good.

[35] Established by Regulation (EU) 2018/1724; it is accessed via the Your Europe portal.

[36] There were 40 776 webpages under the SDG in January 2023.

[37] European Commission (2023c).

[38] All these quotes are on p. 2.

portal. Thus, the necessary evidence (e.g. certificates) will be requested automatically through OOTS and this will enable the automated exchange of documents between authorities (after an explicit request). For European business it is very simple and very fast. The Commission expects that the SDG can contribute – by easing access to Member State procedures – to the 25 % reduction of red tape (burden) promised in the spring of 2023.

The essence of the 12 December 2023 deadline for Member States was to show compliance with obligations regarding digitalisation and cross-border access to national procedures, as well as with obligations regarding the connection with the OOTS. Member States must provide online access to national and cross-border users to the 21 procedures, to which 2 more (linked to the Data Governance Act) were added at the last moment. Member States must ensure that, when national procedures can be accessed and completed online by national users, they can also be by cross-border users. Such obligations specifically imply that users can identify, authenticate, fill in an application and sign it online, receive notification of the completion of the procedure and the relevant output in a digital format.

The following data pre-date 12 December 2023[39] but give an impression of the progress already made: of the SDG-related services, 87 % can be completed online by nationals and 52 % by cross-border users. The gap between the two is caused by language, as well as by requirements for e-Identity (25 %), a lack of acceptance (in fact, not yet) of e-documents as evidence (48 %) and the requirement of physical presence (30 %). Note that since 12 December 2023, Member States have been obliged to start onboarding the (meanwhile) 80 000 competent authorities that need to connect to the OOTS.

These accomplishments, if tested as operational, would be a great relief for the public and European business alike.

[39] Taken from the eGovernment benchmark report 2023 (which partly overlaps with the SDG).

5. Healing the limping EU services market under the 2006 Services Directive

Nearly 75 % of EU GDP is generated by services. A lot of these are local services, like hairdressers, bakeries, transport or repair services, hardly or not at all connected with other services markets (but probably in various ways with goods markets)[40]. Nonetheless, what remains is still an enormous bundle of non-local or potentially mobile service activities. The EU regime for services consists of two components: services falling *under the Services Directive 2006/123* and all other services, usually *under dedicated sector directives*[41]. Figure 1 helps to clarify the overall regime and its two components. This section discusses the services under the Services Directive and Section 6 those services under dedicated, sector-specific EU regulation.

The complexity and subtleties of the Services Directive cannot possibly be dealt with in this report, but a few key points can be made. A huge liberalisation drive was accomplished at the very beginning, when Member States first set up a mechanism domestically – screening domestic and regional laws for incompatibility and removing or rewriting the relevant sections. Literally, many thousands of clauses, segments of laws or entire laws were removed or altered. By 2010, Member States (with the Commission) had set up a joint verification mechanism called 'mutual evaluation' in groups of five Member States for almost a year[42]. No wonder that a first rigorous economic analysis by Monteagudo et al. (2012) found a welfare gain of 0.8 % of EU GDP.

The problem is what happened, or crucially what did not happen, next, because a 2015 rigorous econometric exercise found only a poor 0.1 % of EU GDP in additional gains, as very little genuine improvement of intra-EU market access in the relevant services market had occurred. After 2015, again little happened and although the Commission remained quite active, it was to little avail. Member States were simply no longer interested. A detailed legal mapping of the barriers under the Services Directive was published in April 2021[43], showing some relaxation here and there but overall liberalisation was at best slow.

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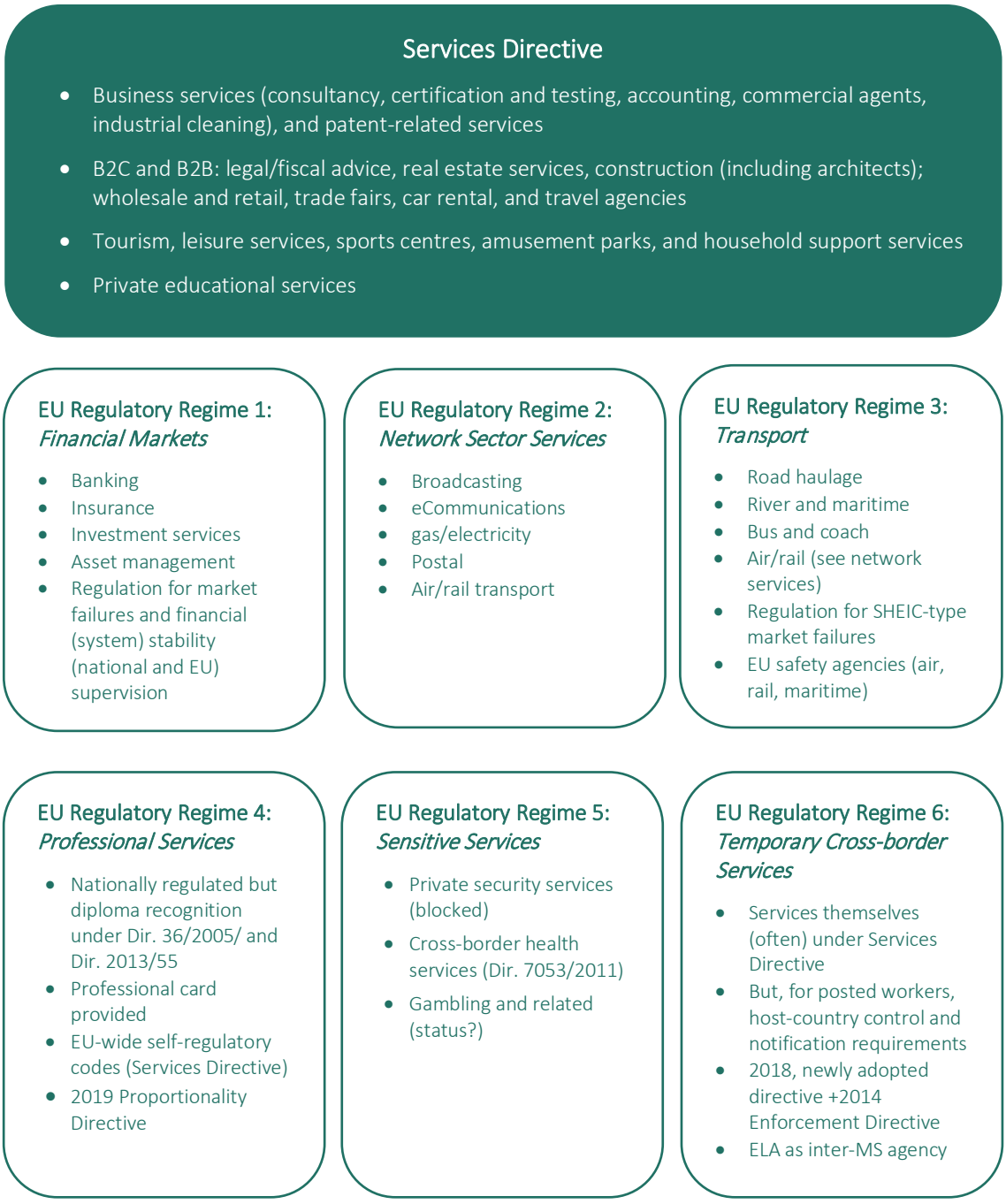
[40] Some services are of course semi-public services under strict statutes, such as lower education and major segments of the health sector. They are not included here and are not relevant for the EU services debate, except where their workers might wish to work in other Member States.

[41] Franchising will not be treated in detail. Its importance is not fully clear, but the issue here is whether there are significant barriers or distortions. In the Dahlberg/Pelkmans et al. (2020) study for the European Parliament, we included a short section on franchising (pp. 113–114) showing that franchising is much more important in the US and Australia than in the EU (a mere 2 % of GDP, a figure than must have decreased with Brexit as the UK used it far more than other Member States). We found little on barriers. There seems to be a scarcity of empirical studies but there might be cross-border initiatives that are slightly discouraged under franchising.

[42] See Commission (2011); an overview of the barriers that remained after this exercise is attempted in Pelkmans & Mustilli (2013, Annex 2).

[43] See the European Commission (2021a) study (led by Aleksei Trofimov).

Figure 1. The Services Directive and specific regulated services



Source: Author.

Even so, there is considerable potential, as studies have shown. One is by Pelkmans (2019)[44], extending the Monteagudo et al. (2012) exercise, which finds some EUR 389 billion of potential gains. A recent modelling study by Barbero et al. (2022)[45], relying on the relaxation of the product market regulations (PMRs) in services by 50 % or 80 %, finds a range of gains from EUR 279 billion up to EUR 457 billion. Realising that EUR 389 billion amounts to 2.28 % of EU GDP (in 2019), the gains are surely enticing.

The Commission's 2021 survey of all barriers comprises 24 restrictions, not including sector-specific ones (which may or may not fall under the Services Directive). Of these 24 restrictions, at least 14 are included in the PRO-SERV Commission indicator about the restrictiveness of professional services[46], and possibly another couple which are unclear. Others include measures that are outright forbidden, e.g. discrimination based on nationality, a prohibition on (also) establishing in more than one Member State, economic test requirements and the (worst) 'involvement of competitors in granting authorisations', along with 2 restrictions on temporary provision of services. The survey comprises 13 sectors (p. 7), apparently if another six do not or only lightly suffer from restrictions[47] (which may well be correct). The authors have assessed the degree of restrictiveness of eight types of restrictions in the 13 sectors, which should offer a concrete way of *addressing* such restrictions (see Table 1).

Table 1. Restrictiveness of 13 services requirements, 2006–2017

Restriction type	Progress 2006–2017	How many services restricted?
Authorisation	Constant or slight decrease	All 13 subsectors
Tariff requirements	Progress	7 subsectors
Legal form	Slight decrease	5 subsectors, 'legal' heavy
Shareholding requirements	Constant	5 subsectors; 'legal' heavy
Multidisciplinary restrictions	Constant	8 subsectors;
Advertising restrictions	Slight decrease	6 sectors
Electronic procedure to complete formalities	Progress in all service sectors	All 13
Authorisation requirement for temporary provision of services	Some progress	In 2017, 11 subsectors; all 'low'

Source: European Commission (2021a) study (led by Aleksei Trofimov).

[44] Pelkmans (2019).

[45] Barbero et al. (2022).

[46] See Pelkmans (2017).

[47] These are trade fairs, car rentals, leisure services, sports centres, amusement parks and household support services.

However, what is striking is that the restrictions indicated here for retail do not reflect the overall restrictiveness of the sector (possibly due to sector-specific aspects). The detailed retail restrictiveness index is now available for 2017 and 2021. It covers restrictions for both establishment and the operation of retail services. On operations, the EU-27 tends not to be very restrictive; in fact many EU countries score below 1 (very low)[48]. But the situation is very different for establishment: the scores are often above 2 and for four countries even above 3.

The European Commission has attempted several ways to get the Member States to take the removal of barriers under the Services Directive much more seriously and pay active attention to the (dis)proportionality of domestic regulatory restrictiveness. Apart from some mini-reforms in some Member States, this has foundered on the rocks of unwillingness, raising a strong suspicion of entrenched vested interests, helped in many cases by extreme asymmetries of information (given the technical nature of some of these professions or practices), which renders governments hesitant. This suspicion is magnified by large and at times enormous differences in the restrictiveness of specific national regulations, which cannot be defended when the same market failure(s) are at stake.

Finally, a note on Court of Justice of the European Union (CJEU) case-law. According to Lewandowski (2022)[49], the CJEU has done rather little with the cases (including preliminary rulings) to liberalise these services, unlike in some other areas. He suspects this is due to 'legislative shortcomings' of the Services Directive. If there is insufficient backing by the CJEU, enforcement is likely to become even more difficult.

For EU leaders: ask the European Commission to come up with a medium-term action plan for the Services Directive, with priority on professional services, retail, and construction services.

[48] The scores for this indicator are based on the OECD PMR system going from 0 to 6 (closed/extremely strict).

[49] See Lewandowski (2022) pp. 57–75.

6. Healing the limping EU services market under sectoral services regulation

Certain types of markets are under dedicated EU regimes. First is financial markets (including capital markets). Second is network industries, usually including infrastructure, which introduces very high costs and all that it implies along with complications about missing links (from an EU perspective) and the distribution of funds for infrastructure. Third are six modes of transport (with two overlapping with network industries). Fourth are professional services. There are also EU regimes for temporary services and a few sensitive special cases (e.g. gambling), and a (lacking) single market in security services and goods[50]. The first four are very important indeed and only the fourth one overlaps to some degree with Section 5. For all these four, EU market integration leaves something to be desired.

In financial markets, there is still national ringfencing of some banks and the EU-wide deposit insurance regime has not yet been agreed which prevents public risk sharing (with its proven stability benefits). Yet, these two big themes in the banking union are not the only reasons for a lack of financial market integration.

Consider the following example about consumer options to act across intra-EU borders to benefit from over-large differences in interest rates. Late in 2023 interest paid on deposits held in the Netherlands (with weak interbank competition as three large banks dominate) was far lower than in Belgium. So, a shift of consumers to Belgian deposits would be beneficial to them, but also have arbitrage effects, presumably leading to smaller interest-rate differentials in Benelux. That would be a prime example of financial market integration. However, upon closer scrutiny, this turns out to be throttled by stubborn practical habits or the prudential conduct of banks[51].

Intra-EU cross-border competition in mortgages is even more difficult, because banks in, e.g. Belgium, will not easily agree to finance a house in the Netherlands as the bank falls under Belgian law but the house does not. On top of that, mortgages are supplied with more private restrictions (or prudence) in, e.g. Germany than in the Netherlands – that is, mortgages differ in characteristics.

The pursuit of an EU-wide capital market must still travel quite a distance, at a cost to market integration but above all for entrepreneurs seeking risk finance, and especially startups. Also, the European Securities Market Authority (ESMA) could be endowed with more powers (see Box 1).

[50] A rare insight into the not-so-single security market is provided by Alessandro Profumo, CEO of Leonardo, in his 'single market story' in ERT (2021), pp. 142–145.

[51] For example, opening a bank account in Belgium is not possible if one is not registered there.

Box 1. The EU capital market(s) conundrum

There are at least four economic arguments for the EU to go for a single EU capital market, possibly co-existing with (some?) national ones. Macroeconomically, having equity capital with potentially ample funding besides banks is bound to add to investable capital for enterprises, thereby boosting economic growth. In addition, in the aftermath of a crisis, a reliance on equity capital – when banks might well be loaded with bad loans – offers a separate and rapid way out of a crisis, as the US showed in 2010. Microeconomically, equity investors tend to be slightly less risk averse compared with banks and they tend to be keenly interested in product and service development as well as scaling up in the meantime. For the EU, it is crucial to realise that, even when EU capital markets grow, the US alternative is often more attractive if only for the size of funds. The sooner this large discrepancy is resolved, the higher the probability that promising innovations will stay in Europe.

So far, the capital markets union has not made much progress, despite a set of harmonisations. Also, ESMA has only benefited from marginal improvements. Furthermore, what developments one can observe are mainly found in northern and western Europe. Still, what signal can one read from the recent large initial public offering for Porsche, with a EUR 75 billion listing, which remained almost entirely in Germany with no attempt to Europeanise?

As to retail investors, mutual funds (UCITS) are a clear success as they can be sold all over the EU with a single authorisation. But their analogues such as ELTIFs (real estate), PEPPs (pensions) and AIFMDs (alternative funds) are no big hit. Nevertheless, even UCITS are less 'European' than one might expect: in fact, this so-called single type of fund is sold in 27 varieties. The question is whether this is really catering to the taste of national consumers (given the considerable asymmetry of information, e.g. a lack of transparency and no standardised information) or whether intermediaries have created shielded product markets, thereby retaining income?

Intermediaries also cause amplified price shocks, leading Thomadakis et al. (2022) to propose a 10 % cashflow-based asset purchase as a stabiliser. These authors also advocate a prudent seven-step development of national and regional markets, followed by subsequent gradual integration. It should further be noted that banks sometimes control the entire distribution architecture for financial products, with high fees. This is tantamount to a major barrier if one wants to develop funding outside the banking system (one wonders as well whether there is no competition issue here).

From this condensed overview, harmonisation is not going to yield a single EU capital market, even though it helps. Digitalisation might encourage investors to come up with innovative EU-wide solutions, at least for overcoming the asymmetry of information. Also, private market players might discern opportunities. Of the 27 stock exchanges, 12 belong to 'exchange groups': six to Euronext and six to Nasdaq. Apart from Germany, these comprise even more vibrant ones.

In network industries, a combination of Member States (or their regulators!) and the old Meroni doctrine prevent truly independent EU regulators for these sectors[52]. The worst is in telecoms, where the Body of European Regulators for Electronic Communications (BEREC) is not even formally an agency[53]. Yet in telecoms, energy (ACER) and rail (ERA), deeper market integration could be accomplished if EU agencies oversaw detailed implementation, based on an EU framework law. One huge obstacle is that network agencies are also infrastructure agencies. This requires huge funds and engineering qualities, and of course EU-wide annual investment plans, embedded in multiannual planning, with the finance ensured so that network advantages are more fully played out.

For energy, in particular electricity from non-fossil sources, there is a great need for additional cross-border intra-EU interconnectors for transmission from supply regions or countries to regions with a net demand, often dependent on the availability of wind or (plenty of) sun. At the same time, this requires system stability, implying that all Member States ought to ensure that their energy supply contributes to resilient and reliable energy systems, and that they do not irregularly lean on others in the single market due to an unfortunate energy mix or insufficient investment.

In transport, there are many issues[54] but the overriding one *already settled in 2001* – shifting trucks to rail in a massive way – is a failure so far because the approach is still too fragmented and somewhat non-committal. The investment needed to accomplish this modal shift is enormous, over a period of many years. So far, the modal split is more or less constant, whereas for shifting trucks to rail, it ought to *increase* substantially in favour of rail freight. Of course, combined transport also ought to be given a major boost, more than at present.

In professional services, the PRO-SERV indicator has provided hard evidence that barriers in some professions and in some Member States are far too high and indefensible. Should there be a ceiling in restrictiveness? Will the CJEU support such an approach? Or at least could such a ceiling serve as a trigger for the Commission and the relevant Member State to try to bring down the restrictiveness jointly?

For EU leaders: ask the European Commission for a second action plan on services, in particular for four types of services regulated under dedicated EU regulation: rail freight

[52] Clinging to the old Meroni doctrine is no longer justified. With the right precautions (e.g. also based on the Lisbon Treaty), EU agencies could have more authorisation to act. See Simoncini & Pelkmans (2022).

[53] See Section 7.1 for a discussion of the not-so-single EU telecoms market.

[54] Table A1 (item 1) in the appendix notes no fewer than 15 transport barriers. These include several problematic gaps in indispensable market information in rail, territorial supply constraints for railway rolling stock, cabotage restrictions in road transport (not only within the EU-27 but also vis-à-vis Turkey, despite the EU-Turkey customs union!) and a fragmented EU airspace given 28 air traffic control systems (for the latter, see Section 7.3).

(also with a view to shifting trucks from road to rail), competitive and larger-scale capital markets, banking services and intra-EU cross-border transmission interconnectors for fossil-free electricity.

7. Addressing hard fragmentation: Four instances

There has been relatively little systematic attention on *hard fragmentation*. This refers to a flat refusal to contribute to the single market in one's sector. In four instances, a lengthy and detailed analysis might be helpful to gain a better understanding of the market and regulatory situation, but this report is not the place for that. Still, there is no denying that in these four cases, the flat refusal has applied and presumably still does. This conduct goes against the spirit of the EU Treaty and against its economic logic. There are direct costs for the EU as well as opportunity costs. These four instances are the (i) consolidation of the not-so-single telecoms market; (ii) effective coordination and operation of the relevant spectrum frequencies for telecoms between Member States; (iii) the full adoption of the SES 2+ air traffic control system throughout the EU/EEA/Switzerland air space; and finally, (iv) the turning of copyright from a national into an EU intellectual property right.

All four areas are quite technical and complicated. It is therefore necessary to firmly place them on a single market reform agenda yet recognise that solid and justified reform is likely to take time. That said, technicality is not the principal reason for hard fragmentation. Clearly, after so many years, it is the plain unwillingness to cooperate for the purpose of a badly needed EU solution, by a small group of vested (if not entrenched) interests. It represents a clear case where high political leadership and not narrow vested interests should determine what the EU ought to do, how it will gradually improve the single market in these domains and why.

7.1 Consolidation of the EU telecoms market

The tale of the EU telecoms market after 1995 is one of two contrasting faces. On the one hand are the incredible price falls and introduction of new services as well as new hardware. On the other hand is the enormous fragmentation of that so-called internal telecoms market with huge price differentials that could never have survived in a truly integrated market[55]. Now that the erstwhile benefits of telecoms liberalisation have petered out, the EU is stuck with a hopelessly fragmented market causing inefficiencies

[55] Called attention to, first, by Pelkmans & Renda (2011). Already at that time, the authors called for consolidation of the splintered telecoms market in the EU.

and numerous sub-size telecoms companies without the funds to invest in high-speed networks.

National regulators continue to avoid genuine consolidation and a sadly mistaken EU competition policy defends this – because telecoms markets are 'national', mergers are likely to be anti-competitive. The telecoms markets are kept artificially national by diverging regulations; by national regulators seeking continued control in 'their' market and unwillingness to consider a single telecoms market as a priority (with a formal EU agency, too); and by reference to (especially) fixed telecoms networks with their specific legacy cost problems (e.g. copper). With fibre networks swiftly increasing all over the EU, the old arguments about discrepancies in network costs are melting away.

However, this conscious disregard of the single market is subsequently used to argue that 'consolidation' ought to take place within these national markets. National regulators have systematically blocked a true EU telecoms regulator from arising (ever since 1995), with the later and painful birth of BEREC (formally not even an EU agency!) merely used as the organised collection of knowledge and cooperative policy direction. The bigger market players in EU telecoms now state publicly that there is no business case to 'go European'. And this is after 25 years of telecoms liberalisation in a so-called single market.

The consolidation of the EU single telecoms market is a *conditio sine qua non* for the EU to regain some prominence in global telecoms, and to allow mergers and alliances in the single market to restore a measure of efficiency, through scale, combined with a capacity to invest in R&D and new technology, while still preserving effective competition. The irrational debate about consolidation (just within national markets!) and EU competition policy should be terminated today.

It is all too obvious that small national markets will always face a trade-off between the risk of a triopoly with less competition and more scale, against the continuation of the extremely splintered telecoms markets in Europe (with some 10 or more times as many players as in, e.g. the US). Both are thoroughly undesirable. Many existing market players in the EU simply do not want to merge into EU-wide companies, wishing to hide behind the protection of the current splintered set-up, to the detriment of the EU as a whole, now and also in the near future. Telecoms earn hardly any profits nowadays and have difficulty investing, let alone resuming the leadership in R&D which Europe held so successfully in the 1980s and 1990s (see Pelkmans, 2001 on GSM's success).

The very economic rationale of a single market is precisely to overcome such all-too-convenient protectionism. In a normal market the very low earning capacity (here, of telecoms) – a direct consequence of the fragmentation – would lead to takeovers and/or rationalisation strategies on an EU scale. Not in telecoms. The flat refusal to allow genuine

EU governance in telecoms, in turn enabling and overseeing market consolidation, has become very costly and this fragmentation must end.

Recently, Commissioners Margrethe Vestager and Thierry Breton have been arguing that a single market approach is the better option. But big telecoms often still plea for within-Member State mergers (which are bound to lead to higher prices and profits). Small players fear that, but equally fear an EU-wide solution. However, in the autumn of 2023, a remarkable levelling-up of the debate unexpectedly took place, as explained in Box 2.

Box 2. Consolidation via a digital networks act?

The future of telecoms (or electronic communications) is largely about innovation and technological leadership in online platforms, AI, data, cloud, quantum and virtual worlds. All this requires networks up to the task in terms of (extremely high) transmission speed, storage capacity, computing power and interoperability.

On 10 October 2023, the results of a Commission consultation became available[56], with three central ones. First, is the need for innovation and efficient investment in networks that are very different from the past (copper is over, even with vDSL): new software-based, highly programmable cloud-native networks. The investment needs are enormous, some EUR 300 billion a year for five years, with an anticipated 50 % of telecom revenues allocated for this purpose.

Second, the single market is back! Respondents point to scale benefits (some EUR 300 million over five years, which is not that much), the benefits of harmonised spectrum management and the advantages of having access to 450 million customers. The removal of burdensome sectoral regulation can facilitate cross-border consolidation (but that is in turn feared by ECTA, organising new entrants, usually smaller ones; they portray it as deregulation).

Third, the security of 5G networks is desired by all. Here too, a more coordinated European approach is favoured.

Right after the publication of the results, Commissioner Breton announced that preparations for a digital networks act are underway, 'which will redefine the DNA of telecoms regulation', calling it 'a paradigm shift in digital regulation'. There seem to be no indications about the substance yet, which means it will be up to the new Commission in the summer of 2024. Thus, perhaps, the massive new technologies require so much investment that at long last the single market has become an inevitable game-changer. It is surely the only long-run profitable route and, like all market integration in other areas, some consolidation pain will be inflicted along the way.

[56] See 'Results of the exploratory consultation on the future of the electronic communications sector and its infrastructure' in European Commission (2023g).

7.2 Coordination, timing and operation of spectrum frequencies

In the EU, the Member States retain full 'sovereignty' over frequencies, even if a degree of cooperation (given the single market) is recognised as inevitable. Changing that would imply treaty revision, which is very difficult and slow, if indeed it would work out at all. Frequencies do matter for the military and the police, but unless there is a war going on, there is no reason whatsoever that the EU and the Member States could not closely cooperate and be aligned on crucial aspects for ordinary commercial wireless telecoms.

Unfortunately, what happened with 3G and 4G has also happened when introducing 5G in the EU. In 2018, the European Electronic Communications Code, i.e. the EU's revised telecoms regulation, was enacted. It contains legal provisions on coordination and even single market consistency provisions that are relevant for 5G. Examples include harmonised principles on predictability and criteria for authorisation and sharing conditions. Plus, there is a reference framework for the conditions and fees for rights of use, and a (voluntary and optional!) peer review to achieve 'internal market consistency'. On paper this is progress compared with 4G and 3G. But in practice a host of problems have popped up, once again causing extra costs and uncertainty and in turn leading to hesitant investors and hence delays. As Pekka Lundmark, CEO of Nokia, wrote in the ERT report (2021, pp. 146–149), a lack of timely and harmonised 5G spectrum assignments is undermining the single market.

Nokia is one of two EU companies (with Ericsson) with considerable strength in 5G, especially infrastructure, and is disadvantaged. This has a knock-on effect on introducing the highly sophisticated services that 5G enables. As discussed in Box 2 in Section 7.1, it has already been noticed that firmer coordination of spectrum regulations and execution will be required. But there is more: in countries like Germany and Italy the licensing of spectrum has been made very costly, which does not help given the very slim margins in telecoms due to the fragmentation discussed in Section 7.1. This is almost certainly caused by national finance ministers rather than telecoms ministers being in charge, seeking to maximise auction revenue for the government. Indeed, the highly divergent telecoms prices are now matched by highly divergent licensing costs.

While the EU is slowly catching up with 5G, 6G is already underway. The EU must pre-empt yet another too-little-too-late 'coordination' and should have more powers to generate coordinated and smooth action prior to 6G. This is not about sovereignty but about the EU's competitiveness in various ways.

7.3 Fully-fledged operation of air traffic control, SES 2+

Since 1999, the EU has been struggling to attain the full adoption and operationalisation of the Single European Sky[57] air traffic control system. So far, this has failed but not totally. Rather than relying on national (state-run) systems which somehow interact to get the airplane to fly and safely arrive at its destiny, SES assumes that a single European approach would eventually be organised by recognised air navigation service providers (overseen by a European regulator). These providers can be private or public but no longer state-owned monopolies. In addition, cooperation with the military would ensure that flight paths would be much less inefficient.

By this freer, more flexible and truly European air traffic control system, airspace would be much better used, at lower costs and with less CO_2 and fewer trails (non-CO_2). The advantages are convincing: airspace efficiency, greater safety (via lower congestion) and much greater air space capacity (some say up to three times). In addition, would be a 10 % cut in flight times, fewer delays, a reduction of some 50 million tonnes of CO_2 and fuel costs of around EUR 5.5 billion for all airlines involved per year. Lower traffic management costs would cut personnel costs by half and the number of control centres from over 60 to 20. It is an example par excellence of single market benefits.

Nevertheless, that Council has dragged its feet and blocked progress several times, on different variations of this idea. This is due to the air traffic controllers, many of whom would lose well-paid jobs. Some EU countries hold – as a kind of last defence – that there are security and sovereignty concerns. This foot-dragging has been going on since around 2005 or so. Just imagine if many air traffic controllers at the time had been offered a slow, fully paid exit procedure over a period of (say) 10 years. Had this been done, today the EU would have benefitted from SES 2+ for almost a decade! Accommodation of the adjustment costs of air traffic controllers in such an extreme case would presumably be rational, even if it looks like buying them off.

Although on the core issues progress is still awaited, on the technical front much has happened in the meantime, including harmonisation of the recognition and work of the air navigation service providers and establishment of national supervisory authorities. The EU has been granted powers over the certification of these services, competence of the European Union Aviation Safety Agency for air traffic management and air navigation services. The EU, through a more political move based on the SES 2+ package, has been given the power to challenge the state-owned monopolies providing air navigation services (which, in turn, provoked a strike by air traffic controllers).

[57] It is also open to neighbouring countries of the EU-27.

In December 2020, Eurocontrol found that between 8.6 % and 11.2 % more fuel was burnt in Europe than the most efficient flight path would have done. But lack of unity (in the single air transport market) may well have more than one cost, also in the SES 2+. In sharp contrast to the US, the EU has 62 area control centres, each charging their own rate(!). Predictably, airplanes are tempted to file flight plans minimising air traffic control costs rather than carbon costs when suitable. According to Marylin Bastin of Eurocontrol[58], if all the 260 projects to upgrade Europe's air traffic management (ATM) system were finished and used, there could be an 8 % fall in carbon emissions, despite the failure of the strict SES 2+. Lower CO_2 emissions matter, but several other beneficial effects of SES 2+ would not be realised and would leave the EU saddled with a hopelessly antiquated state-owned system that ought to be left behind, now.

The Commission and all European airlines grouped in the A4E association are extremely critical of the Member States[59]. So is the IATA. That is not least because the widespread use of sustainable aviation fuel is still far away, so the window of opportunity remains valid for at least another decade or more. But it is also because of the more radical Europeanisation of air traffic control, with other advantages. SES 2+ should be performance-based, and an independent and strong European regulator ought to be in charge. Some EU countries agree but, for instance, in Germany and France the vested interests of air traffic controllers prevail and political leaders has failed to act in the common EU interest. Yet, this time they should.

7.4 Turning copyright from a national into an EU property right

Property rights like trademarks, design protection and patents[60] have gradually turned from national into EU property rights. This is not the case for copyright, despite quite some amount of legal activity to 'approximate' it[61]. And it is not only that copyright is national, but also details of copyright law, implementation and case-law differ as well, leading to incredible complications and a sense of uncertainty for business and consumers[62].

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[58] See Fight Global, 'Are plans to decarbonise air traffic management on the right path?', 26 June 2023.

[59] A4E & IATA (2023).

[60] The new unitary patent is technically not an EU patent but is a result of enhanced cooperation; it will be 'almost' like that once all 25 EU Member States have ratified it. The Unified Patent Court, however, will have jurisdiction for cases under the old European patents, too, yet the European Patent Office (as a separate intergovernmental convention of 39 countries and since January 2024, 45 countries) will continue to do the centralised and highly specialised searches as the basis for these patents. The two EU countries remaining outside the unitary patent convention might well join soon. Design protection and trademarks fall under the EUIPO, an EU agency.

[61] See the European Commission website (last accessed on 15 October 2023) with 13 directives and 2 regulations.

[62] Only in 2017 did the EUIPO publish a summary report of FAQs on copyright in January for the (then) 28 Member States, with the help of 28 experts!

All this has significant drawbacks because scaling up is very cumbersome and less cost effective, which in turn discourages innovation. Furthermore, the prices of services may well (and do) differ between Member States while cross-Member State blockages occur frequently. Copyright holders were in the comfortable position of exploiting the single market yet imposing distinct prices in national markets without fear of being undercut by cross-border parallel trading (which would force price convergence upon them). After all, IPRs were national, not EU-wide, even when some aspects were harmonised. This practice is called 'third-degree price discrimination', which maximises profits for the company (exploiting different price elasticities) but leaves consumers and users in different (EU) countries frustrated. At times, even the availability of certain goods or services in certain Member States – supplied by the same firm – could differ, for essentially similar motives. This makes a mockery of the single market in this respect. But it also severely hinders scaling up as tiny differences in application or use of copyright can create problems or nullify the right in another Member State.

Moreover, such profit motives also feed tough lobbying practices, opposing efforts to overcome the vetoing and go for a truly unified EU market. In other words, 'regulatory heterogeneity' is considerable, leading to information and adaptation costs and (often still) uncertainty. Clearly, most well-established market players using copyright are strongly against turning copyright into an EU property right. But consumers, startups and European business at large typically find this set-up antiquated and going against the much-desired single market approach.

The one exception is the restriction of geoblocking in Regulation (EU) 2018/302[63]. Geoblocking occurs when traders operating in one Member State block or limit the ability of customers from other Member States to order their goods or online services[64]. It limits cross-border access to goods and services and serves to facilitate direct and indirect discrimination by traders that segment the market based on the customer's nationality, place of residence or place of establishment (*idem*, p. 15).

The ban does *not* apply to content and services protected under copyright, such as e-books, music or audio-visual content. But these exceptions cover the largest part of what consumers demand and businesses might wish to sell (dependent on their strategy and portfolios)[65]. It forms yet another demonstration of the tremendous lobby power of providers. The European Parliament managed to get a review clause in, applicable 2 years after the regulation came into force (i.e. in December 2020, the clause could be

[63] *Official Journal,* L 601 of 2 March 2018, pp. 1–15.

[64] This is description employed in a study for the European Parliament. See Marcus &. Petropoulis (2017).

[65] For a detailed analysis of the futility of the Geoblocking Regulation, as formulated, see Section 5.3 of the Dahlberg, Pelkmans et al. study (2021, op. cit.), drafted by Scott Marcus.

activated), which would re-examine the situation. With the rapid transformation of shopping and online orders becoming routine, the remaining geoblocking flies in the face of the not-so-single market in these products and services. The first Commission review was published late 2020[66]. It found some initial positive results and expected further improvements once enforcement is further enhanced and several other single market measures apply as well[67].

The discussion on extending the ban to copyright-protected content online is quite differentiated. Whereas this extension could have negative welfare effects for music (some national prices might well increase), potential benefits are identified for audio-visual content.

However, there are strong objections to an EU-wide copyright model for different reasons and these are worth considering. Territorial application at the Member State rather than the EU level underlies today's finance model of sports, films, high-end drama and other entertainment. Rights holders can now negotiate and sell distribution rights ahead of production or at least ahead of actually launching the product or service, but on a territory-by-territory basis. Why not on an EU-level basis? Because this requires such large financial funds that it would attract big (often world) players and most of the current market players – usually with their own national images and/or cultural slants – would be acquired or squeezed out of the market. There is also a risk of lesser competition in the single market as well, because oligopolists – perhaps after a while – will settle for stability.

So, yes, the territory-by-territory approach will inevitably invite (third-degree) price discrimination. But going for a complete ban might well amount *de facto* to a pan-European licensing model, with presumably higher prices in the longer run and less diversified offerings. AAPA (2023) holds that the end of geoblocking would generate (i) a large reduction of content output, (ii) a revenue loss for producers, and (iii) a loss in consumer welfare[68]. In addition, truly EU-wide and effective enforcement of piracy would be required because a genuine EU copyright for audio-visual content requires a truly EU-wide enforcement as well. Hence, one attractive solution would be to go for genuine EU copyright, in tune with a genuine single market, but with a derogation for cases of cultural diversity. This derogation could be (say) for 10 years, renewable, upon a careful well-argued demonstration of the case.

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[66] See the report from the Commission on the first short-term review of the Geoblocking Regulation (European Commission, 2020b).

[67] These include new rules on parcel-delivery across borders, revised consumer protection rules and new VAT rules for online sales.

[68] See AAPA (2023); note that this position paper does not provide exact or full quotes of the studies used (so, there is no verifiability).

For EU leaders: these four instances of hard fragmentation are not a natural phenomenon with an unassailable logic. They have been created and become entrenched. All four must be placed high on the EU agenda for single market reform, even if fully-fledged solutions are unlikely to be reached in the medium run in all cases.

8. European harmonised standards: Pulling the rug out from under a success story?

A somewhat hidden success factor of the single market are European standards, in particular European harmonised standards. To the dismay of European standards bodies, all European business and standards experts, this well-functioning system is under threat from within. Some speak of killing the 'golden goose'. This ought to be prevented.

Both European standards and European harmonised standards (EHS) are written and promulgated by CEN, CENELEC and ETSI. Such standards support the homogeneity of the single market (especially for goods) and lower transaction and intra-EU trade costs, while often furthering regulatory risk objectives such as health, safety, environmental (including the climate) and consumer protection. These risk objectives are tantamount to what the CJEU calls 'essential requirements'. All these standards are voluntary. The crucial difference is that a European harmonised standard has been written based on a Commission mandate with risk objectives specified, to be adhered to in the final text. After (satisfactory) inspection by the Commission, the European harmonised standard is published in the C series of the EU's *Official Journal*. Once published, this European harmonised standard creates a 'presumption of conformity' for sales or intermediate goods in the single market.

Since business in Europe much prefers to produce on the basis of technical standards – without having to bother about the often-complex EU legal context, the interpretation of 'essential requirements' or a range of related laws or guides – these have become the practical backbone of EU risk regulation. Typically, these standards are performance standards (i.e. not prescriptive or design-oriented), leaving some freedom to enterprises in fulfilling the essential requirements. This property also makes them suitable to be used in international or world standardisation: safety or health (etc.), yes; a detailed prescription, no.

Once these properties were well understood, the system became popular within the EU and (far) beyond. It has had its difficulties. Before the European Harmonised Standards were accepted as a new way to address risk objectives in the single market, the EU got stuck in a rigid form of total harmonisation that was very costly, excessively slow, over-detailed and hardly capable of handling technical progress. This old approach was

abandoned – except for some categories of high-risk goods, such as cars and chemicals. A new approach was embraced around 1985, consisting of EU directives based on 'essential requirements' that could subsequently be operationalised through European harmonised standards where needed.

The system has become a great success with many thousands of European harmonised standards. Whereas CEN had hardly written any standards by 1985, nowadays the score is 16 436[69] and much to the good of intra-EU goods trade. Moreover, around 1990, CEN and CENELEC initiated an active strategy of promoting world standards, based on European harmonised standards, via the Vienna (CEN) and Frankfurt (CENELEC) processes. These approaches *delegate* the process of writing a standard to ISO, respectively the IEC once the basics (e.g. risk objective where appropriate) have been agreed beforehand.

The result is that, for CENELEC, no less than 81 % of its standards are identical to world standards (some 5 300), which is most convenient and cost effective for global value chains with European companies involved. For CEN, in October 2021, some 5 500 CEN standards were identical to ISO standards. For ETSI, standards are – as a rule – already global given the set-up of ETSI. Only some 7 % of ETSI standards are also European harmonised standards[70]. It is little realised that the Brussels effect is found not so much in some EU laws that are often discussed but in the way the EU (and EEA-3) has set up and globalised, in a very open fashion, its technical standards. And society pays very little for all this as the bulk of the annual EUR 1 billion or more is paid by business in Europe.

This highly beneficial system, with significant positive externalities even worldwide, is now under threat. Although the great benefits within the single market are applauded everywhere, CJEU case-law has swung (ever since the *Elliott* case of 2016) into the direction of juridification of EU standardisation and a tendency for the Commission to exercise greater 'control'. A new provision (in a revision of Regulation 1025/2012) gives the Commission the possibility to propose (or impose?) technical specifications if standardisers do not come to an agreement. An informal interview with the Commission suggests that this is a last resort to get standardisers to agree on a common text, but it has sowed mistrust.

Business is extremely keen that even when 'governance' might be subjected to change only to a limited degree, the process of standards writing remains firmly market driven. The first and overriding purpose of writing European standards is to serve the needs of

[69] Plus, there are 705 technical specifications and several other categories can be specified. CENELEC had 7 733 active standards.

[70] For elaboration, see Pelkmans (2023).

the single market, also with a view to the links (like global value chains) with world markets at all times. It is not – or at best exceptionally – about the needs of politically set priority areas (say, because of geopolitics).

Without going into the subtleties of recent EU law on standards, the following three 'threats' are imminent.

First, by declaring European harmonised standards 'EU law', procedural and other obligations come into play (including accountability and inclusivity – and indeed a shift of publication from the C to the L series of the EU's *Official Journal*). The consequences of all this are unclear for speed, reliability and international cooperation. Of course, standards bodies are private associations and do not seek a public role like this one at all. For example, what about the (sound) practice of CEN and CENELEC to review standards every 5 years, checking whether an update is required? Can this good practice by standardisation bodies still be allowed to continue for harmonised standards?

Another painful example clarifies the negative implications of the shift of European harmonised standards to EU law. For lifts, the European harmonised standard EN-81-20 has gained *de facto* world recognition in all continents. However, this standard also accommodates some practical features of lifts that may or may not be regarded as strictly part of addressing the risk objective, although this was not a problem until 2016. Once the Commission narrowed its interpretation (essentially only the lift design, not its operation), immediately re-fragmentation occurred in the single market[71]: Denmark with illumination, Czechia with a specific type of wiring and France with a specific fire rating. Thus, only due to a pointless narrowing of the application, the single market for lifts has become fragmented. Note that *only the EU* incurs a problem this way: many non-EU countries can continue to apply the standard without any issue. In other words, by pushing through a contested interpretation, the Commission helped to inflict damage on the single market. It is the world turned on its head.

Second, subsequent cases of the CJEU challenge the copyright of European standards – in part, their finance model – because if European standards are EU law, the text(s) must be public. This will imply that selling such standards will no longer be possible, meaning a loss of some one fifth to one third of revenues[72]. This shows the distortion: lawmaking is 'free' in that the state pays by definition, whereas standards development is paid for privately. CEN-CENELEC will become like ETSI, for which standards are already published (but the finance model of ETSI is far more robust).

[71] See ERT (2021), pp. 66–69.

[72] At the time of drafting this text (January 2024), the CJEU had not yet ruled – on appeal – on this 'right-to-know' case. The General Court had rejected the claim from several NGOs.

Third, what about the successful cooperation with ISO and IEC, given that CEN and CENELEC would *de facto* write EU law, yet a flexible accommodation with world standardisers would be required if the mandate is not undermined? One could also consider whether the incentives for European business would remain unaffected by all these developments. The often-praised European leadership and initiative in standardisation cannot automatically be expected to remain the same.

Beyond these three issues, there is the old question of inclusiveness and the money and deep technical expertise required for effective participation in standard setting by 'societal' stakeholders. The four 'Annex III' associations – for consumers (ANEC), workers (ETUC), the environment (ECOS) and small business (SBS) – insist on more effective participation; the issue here is mainly how to accommodate this.

For EU leaders: insist that the European Commission immediately abandons its recently revised approach to European harmonised standards. No useful purpose is served by this revision but the possible damage is bound to be serious.

9. Enforcement: More, faster, cooperative and sometimes judicial

The enforcement of EU (single market) law is a joint responsibility of the EU institutions and the Member States. Yet, such a general statement has proven to be far too simple. The Commission, acting alone but mostly together with the Member States, has developed various procedures, reports and tools, including various forms of guidance, in order to properly fulfil the task.

This report will not survey the entire field, some parts of which are also quite technical in legal terms (mainly due to infringement procedures and the final CJEU ruling(s)). Relying principally on infringement procedures, as customary until (say) a decade ago, is both very costly and slow. These are two important reasons why today's enforcement strategy is far more based on intense cooperation between the Commission and the Member States.

Three aspects will be dealt with: (i) the present enforcement strategy and the role of the Single Market Enforcement Taskforce; as well as a possible role for the EP's IMCO committee (ii) notification under the Transparency Directive, and how to 'read' this; and (iii) the idea of subjecting every non-trivial Member State law or decree to an EU test in that Member State, which is published and can be commented on.

9.1 Recent enforcement strategy and the role of the SMET

The widespread calls to strengthen EU enforcement in the single market have been answered by the Commission[73] and, subsequently by the Commission and the Member States together. This was firstly about 'more' and 'stricter' enforcement, but there was also a clear recognition of 'how' to better enforce (and implement). Already in 2012, Correia de Brito & Pelkmans[74] advocated an approach that would emphasise speed and lower costs, both aspects being impeded by a (formal) distance between Member States and the European Commission, prompting copious, costly and slow infringement cases.

A first sign of a more cooperative approach were the pilot projects, which today, 10 years later, have become routine. These are 'pre-infringement projects' if the Commission and the Member State are of the view that direct cooperation and dialogue can help solve the problem relatively swiftly (and of course at very low costs). Thus, in 2021 out of 302 infringement cases, 33 were preceded by a pilot project, and 80 % of these were satisfactorily resolved[75].

What has become even more important, however, is the strand of 'prevention'. More and more guidance has been produced by the Commission, much of which is specialised in well-defined domains of EU law. For instance, in Annex 1 of the *2023 Annual Single Market Report*[76], 16 new guidance documents are specified, ranging from public procurement or mutual recognition to market surveillance, copyright and related rights. The total of written guidelines from the Commission now adds up to 40[77].

The Commission also deploys 'meetings-based tools' such as committees, networks, expert groups and workshops. National administrations can use (and do so, ever more frequently) the clever Internal Market Information (IMI) system, for direct contact with the relevant counterpart in another administration, each speaking or writing in their own language simultaneously. This pre-empts many misunderstandings while gaining a lot of time. There are two notification systems, one on goods (Transparency Directive 2015/1535) and one on services under the Services Directive[78]. And of course, for the last five decades there have been the good old 'package meetings' with Member States,

[73] See European Commission (2020c); see also, e.g. National Board of Trade Sweden (2019).

[74] See Correia de Brito & Pelkmans (2012), p. 141.

[75] European Commission (2022a).

[76] European Commission (2023a), Annex 1, pp. 73–84.

[77] European Commission (2023b).

[78] Although the proposed 2017 revision of the services notification unfortunately stalled in 2021. A good, compact survey of the basic proposal for revision and the objections spelled out already in 2017 is found in Szczepanski (2017).

where many real or would-be barriers are discussed and, at times, resolved, preventing costly preparation of CJEU cases.

In 2020, it was decided that a dedicated cooperative mechanism between the Member States and the Commission would be helpful – the SMET. Despite all the earlier efforts, the emergence of the SMET is not surprising. One only needs to carefully read the Commission's (2020a) *Business journey* report and the Dahlberg/Pelkmans et al. (2020) report to the European Parliament (items 1 and 2 in Table A1, in the appendix), with numerous barriers specified. Or read the very detailed (mostly complementary) regular report from EuroCommerce on retail and wholesale and the dozens of position papers from BusinessEurope. The newest annual report of the SMET will not be published until late January 2024. Still, how the SMET works and what it can do, or not, begins to be clear.

European business has high hopes that the SMET will cooperate with business (or stakeholders more broadly) to push the practical details and highlight the loss of time and money. Meanwhile, a few firms have been invited to SMET meetings to explain in detail the legal or fragmentation issues confronting them (e.g. on 13 September 2022, organised by the Netherlands and Poland) alongside the Industrial Forum and its Task Force (on 28 September 2022)[79].

Here is one example of what the SMET achieves. Item 2.3 in the SMET report is concerned with 'cross-border restrictions for professionals for temporary and occasional service provision: prior checks on qualifications'. The prior checks can be burdensome and the provider has to wait, which can be problematic. The EU database has close to 1 300 professions where prior checks were imposed. Member States in SMET checked only 658 professions, but for 410, Member States considered that the justification seemed to meet the conditions for a prior check. (That seems a little too easy as the professions have a strong hand in such a system; there is no independent check in any event.) Member States committed to remove 160 instances in 2021 and another 89 prior checks in 2022. In other words, the SMET is useful but within limits.

In another example for professions, excessive and outdated documentary requirements as a condition for recognition are seen as very burdensome. What happened was that 20 (not 27) Member States screened the recognition procedures and 10 of them removed 'several requirements' (the other Member States seem not to have responded). Hence, it appears to be at the discretion of the Member State in an area where the organisations of professions have undue influence, exploiting the strong asymmetry of information.

[79] See *Second SMET report*, 2021–2022 in European Commission (2022b), p. 6.

Such is the nature of the SMET. As the second SMET annual report says at the outset (p. 2): the SMET 'aims to strengthen implementation and enforcement of single market rules on the ground' and 'the Commission and the Member States work together'. It claims 'strong political guidance and support from the Competitiveness Council …. and support from the European Parliament'. But it also says that 'changing the strongly rooted national practices that underlie single market barriers is a difficult task; political support for action can be critical'. The SMET is useful and helps but it is not a liberalisation force – not for what it does now and not for how it chooses the topics or barriers (by consensus).

Bringing in the Member States via the SMET can be usefully complemented by an extra effort from the European Parliament as well. Parliament's IMCO Committee should have specific annual sessions on enforcement in the single market where it can organise special reports, invite the Commission for in-depth debates and include hearings or other formats where the public, consumers and business can present their experiences about a lack of enforcement that disadvantages them. In this way the lack of enforcement would become much more visible and the EP gives others a voice. The IMCO Committee would then be in a better position to assess the state of enforcement and insist on further action by the Commission. In fact, also the Commission may well be helped by these EP IMCO activities.

On 14 July 2023, the annual report on monitoring the application of EU law was published[80]. This is a massive and informative report (published since 1984). Some data are telling. In 2022, 96 % of the frictions or cases the Commission had with the Member States were resolved. But it opened 551 new infringement cases, although 489 such cases were also closed. The cooperation with Member States had led (over time) to over 100 committees, expert groups or workshops, while 279 new EU pilot cases were opened (246 in 2021) and 74 % of such cases led to a solution. There are, no doubt, many complaints about insufficient enforcement but it is clear that the Commission has not been idle recently. This ought to be intensified.

In December 2021, the National Board of Trade in Sweden proposed a special new role for the national enforcement coordinators (members of SMET) in their own countries with respect to retail restrictions, especially local zoning plans, in the light of the CJEU's *Visser* ruling in 2018[81]. Such a decentralisation under the Services Directive – preventing a massive notification wave to the Commission – would help to discipline local zoning plans, which all too often comprise restrictive provisions. While this idea would mean an

[80] See European Commission (2023b).

[81] Kommerskollegium (2012).

extra task at home, it would solve a problem in Brussels too. And, if done as suggested, it would pre-empt many barriers in retail.

All in all, there is little doubt that the Commission has stepped up enforcement in the single market though by and large in a cooperative way. With 551 infringement cases, it is also clear that there is a natural limit to this voluntary cooperation – EU law must be respected. The SMET would seem to be a prudent and potentially helpful addition, but again, within limits. The SMET does not necessarily listen to complaints from business or others when there is no consensus or when certain subjects are considered more important and others too sensitive. This can be disappointing because in a carefully built cooperative atmosphere, hard EU law cannot be expected to set the agenda. Even though it should.

It follows that, with all the respect for increased enforcement efforts, neither the SMET nor the useful dedicated guidance formulated by the Commission are sufficient to resolve the serious concerns about enforcement by stakeholders in the single market. Thus, in cases of serious concern about specific violations of EU (single market) law, tougher enforcement tools are required.

One possibility is that, upon swift inspection after monitoring and a first exchange with the relevant Member States, the case is found sufficiently serious and urgent for a temporary suspension of that national law by the Commission (with certain safeguards, under new Commission powers for a suspension injunction). The relevant Member State could then choose to go to Luxembourg or settle the question with the Commission, without damaging the single market and the interests of competitors or others. Another option, if suspension is not applied or not possible, is that a fast-track procedure to the CJEU is opened for reasons of urgency. In both instances, not only might the case at stake be expected to be short-lived, but also the demonstration effect should help the proper functioning of the single market.

9.2 Notifications under the Transparency Directive and how to 'read' them

Ever since 1983, the Transparency Directive (now 2015/1535) has dealt with notifications to the Commission and the Member States of national *draft* laws/regulations or decrees comprising technical specifications or tests of goods, later complemented by rules on information society services[82]. It is a preventive device: both Member States and the European Commission have a (short) period to provide either comments (for clarifications or advice) or 'detailed opinions', in cases of suspected future technical

[82] Note that the national legislative process is temporarily frozen after the notification.

barriers in the single market. In earlier work, Correia de Brito & Pelkmans (2012, pp. 108–121) showed that thousands of technical barriers to trade in the EU had been prevented in the period 1988–2000, and again between 2001 and 2010. Without the mechanism, the single market for goods would quickly have become a mockery.

This is not the place to set out the conditionalities for comprehending a possible barrier effect of draft laws or time periods (up to 18 months, if the Commission reserves the right to come forward with harmonisation proposals, which has happened but is rare), CJEU case-law (e.g. non-notification renders the later law null and void) or other details. The Transparency Directive is at the core of the EU single market for goods. Yet, one practical improvement introduced with the (slight) revision of the directive in 2015 is the opening up of the comment function on the TRIS website[83] to any person, a move that has generated 1 618 contributions in the last 5 years. By contrast, the notification for services under the Services Directive is far weaker and allows exceptions. As noted, a reform attempt proposed by the Commission (at the request of the Council and European Parliament!) in early 2017 stalled in debates of the legislator.

A report by the Commission is prepared every 3 or 4 years. In 2022, the latest report covers 2016–2020[84]. In these 5 years, 3 553 notifications were received, around 700 a year. As before, Member States show very different notification behaviour, some with very few and some with 50 a year. The Commission notes that this discrepancy 'raises doubts as to whether there has been full compliance' (p. 6), confirmed by detailed analysis detecting gaps in notification (usually fewer than 10 a year). The leading sectors were the construction sector, followed by agricultural products, fishery, aquaculture and other foodstuffs. Quite a few other sectors also mattered, such as the environmental and chemical sectors as well as transport.

It is striking that the number of notifications is not very different from those in the period 1999–2010 inclusive, with an average of roughly 700 a year as well (but with fewer Member States). This is not necessarily worrying but it is worth considering the following. First, Member States can only notify draft laws where they still have regulatory freedom in goods[85]. From the period up to 2010 and onwards, the non-harmonised goods area has been shrinking little by little from some 25 % of all traded goods in the EU in the mid-1990s[86] to around 18 % nowadays, because of new harmonisation. So, gradually one

[83] See the Commission's Technical Regulation Information System.

[84] See the *Report on the operation of the Single Market Transparency Directive from 2016-2020* (European Commission, 2022c) and the Staff Working Document (2022) 297 with statistical detail.

[85] In harmonised areas, Member States cannot legislate and the Commission will react to notifications accordingly.

[86] See the 1997 Atkins report for the Monti-led internal market report of the Commission (Atkins, 1997).

should expect somewhat fewer notifications, all else being equal but this has not happened yet. Second, for this (say) 18 %, Member States act like 'regulatory machines' – it seems that the relatively modest area of non-harmonised goods (which generally are low-risk goods) still needs a permanent and undiminished flow of new or revised national regulation, which is not so easy to explain. The sectoral breakdown is also not very different: in 2010–2011 the leading sectors were agriculture and foodstuffs, construction, telecoms equipment and transport.

The following four shortcomings or barriers are those most frequently encountered:

(i) the lack of a 'single market clause' (i.e. a technical requirement cannot pre-empt a proven solution already found in the single market);
(ii) misleading or unclear provisions;
(iii) the issue of (what the Commission calls) 'mandatory standards'[87];
(iv) additional test methods (a clear barrier).

These examples demonstrate the importance of the Transparency Directive and its scrutiny. The cooperation induced by the notifications also generates a 'formal and structural exchange of information between the Member States and the Commission and among the Member States'. The 'detailed opinions' are the more important ones as barriers might emerge. The Commission issued 212 such opinions (5.9 % of notifications) and the Member States another 243, presumably often on the same cases. The averages are respectively some 43 and 48 per year, whereas in the period 2004–2010 these were higher, i.e. some 52 instances per year for the Member States and 57 for the Commission. A prudent conclusion might be that the single market regime is slowly becoming better understood. Between 2016 and 2020, Member States withdrew 217 draft technical regulations.

Transparency is a fundamental feature of the notification procedure. Thus, 531 requests for access to documents were received and the Commission disclosed most of them. TRIS seems successful. By 2020, (a) the number of active subscribers had grown by 25 % to 6 467; (b) the number of searches had grown as well, reaching 174 349; and (c) access to notifications had increased rapidly, by more than 500 %, reaching 7 394 991. The Commission perceives more and more joint ownership of the single market. Painfully, this also implies that for services the lack of an effective notification regime must leave a significant gap in the single market, the economic meaning of which is so far unknown.

[87] There is no such thing as a 'mandatory standard', because a standard is voluntary by its very nature. What is probably referred to is that a Member State incorporates or refers to a standard which is then declared compulsory.

9.3 Enforcement at the Member State level

It has repeatedly been emphasised that Member States do not solely have a responsibility for enforcement and proper implementation vis-à-vis the Commission and other Member States, but that enforcement begins at home[88]. This ought to include solid mechanisms *within* the administration, besides transparency.

Still, a useful and presumably also preventive mechanism would consist of submitting national draft laws to a homemade *EU single market test*, in all instances where the four freedoms or other critical EU aspects might be affected somehow. This could be a separate exercise, based on a simple template, or be part of a domestic regulatory impact assessment (RIA). It need not imply much extra bureaucracy because the documents and explanations are likely to be like the notification on TRIS. It would be important – for non-domestic business active in that Member State – for the announcement and the template (or RIA) to be available in English and not solely in the home language.

The crucial difference with the notification to TRIS is that the domestic parliament and all business – local and foreign-owned – as well as other relevant local stakeholders would be alerted on time and have access to an easy mechanism for comments. Without a local single market test at an early stage of lawmaking, particularly foreign business active in that country would solely have an indirect way of commenting, via TRIS (i.e. Brussels) and not a public one at home. Possibly, an indirect effect of such a test would be a higher threshold to discriminate non-national business, an issue of particular importance in the retail sector, mostly at the local level.

For EU leaders: despite the Commission stepping up enforcement and, prudently, the work of the SMET, numerous complaints from business (especially but not only retail) do not seem to be sufficiently reflected in the public reporting. The SMET is useful but its set-up incentivises caution and avoiding friction. In other words, many barriers remain. It is urgent to tighten up the notification on national services regulation, despite the failure in 2021. Tougher enforcement mechanisms should be considered in special, damaging instances: either a suspension of the proposed national law (possibly via suspension and injunction powers of the Commission) or possibly a fast-track procedure to the CJEU.

[88] See e.g. High Level Panel of the European Parliament on the single market, September 2015.

10. EU regulation: Blessing or burden for business in the single market?

The single market is not only about the removal of intra-EU barriers but also about appropriate and proportional regulation, at the EU level and at the Member State level. Regulatory impact assessments (scrutinised at EU level by the EU Regulatory Scrutiny Board) are the tool to verify Commission proposals *ex ante*. Legislation at the Member State (and where applicable, regional) level is subject to the same functional logic – albeit that it also must be compatible with EU law and the RIA has to be done locally. This section will focus on the regulatory 'burden' in the light of the strong perception, recently, that the approach in the case of many recent EU laws has become seriously imbalanced and very costly.

The issue is of recent making, though in truth it is not entirely new. Business has occasionally complained about proposed EU regulation. A famous case is REACH, the biggest EU regulation ever written, prompting three Prime Ministers to insist, in a letter to leading newspapers, that the proposal be scaled down or withdrawn. And there is no doubt that REACH was and is a heavy instance of regulation but there is also no denying that the health and safety issues are possibly very serious indeed[89].

However, a striking difference today is both the *number* of new instances of heavy EU regulation, under the present Commission, and the *extreme red tape*, plus sometimes, compliance costs. BusinessEurope speaks of a 'regulatory breathing space' that it urgently seeks. Other business groups talk about an 'avalanche' (Eurochambres) and a 'waterfall' (EuroCommerce). SMEunited, in its response to the SME relief package[90], speaks about 'excessive, inappropriate and often … not even possible amount of effort' for craft enterprises. It argues that the 'one in, one out' (OIOO) principle for EU regulation should be replaced by 'one in, x out'. Leading French and German politicians are also demanding a 'regulatory pause', which – as far as the present author knows – has never been requested before in the history of the EU.

The problem was impossible for the Commission to ignore and Commission President Ursula Von der Leyen's response was to promise (in March 2023) a 25 % reduction in red tape costs, like the campaign between 2008 and 2012 (when the 25 % was realised). But

[89]See Pelkmans (2005), which discusses the debate at the outset; see also Gubbels et al. (2013), based on a CEPS report to the ITRE Committee of the European Parliament. The main problem was the initial period of extensive testing, over 11 years, of each chemical substance, at a cost of more than three times what the Commission foresaw in its 2004 impact assessment (EUR 4.5 billion instead of EUR 1 billion), and several other issues. The period since 2018 has been different, because the socioeconomic test before the authorisation of substances of very high concern is careful and sophisticated.

[90] SMEunited (2023).

this time it is expected to be accomplished *not* by withdrawing or drastically improving the new proposals but by slimming down the *costs* of existing rules[91].

The Commission's *Annual Burden Survey* for 2022[92] lists 52 initiatives for OIOO in 2022, altogether yielding EUR 4 469 million in administrative costs (largely from green and digital initiatives), 'compensated' by no less than EUR 11 780 million of savings (so, not literally 'out'). The savings were mainly found in digital initiatives (the Interoperable Europe Act for the public sector, EUR 5.7 billion) and in digital ones together with 'an economy that works for the people' (VAT in the digital age, EUR 4.7 billion), with all others contributing far less.

One can reasonably expect new EU regulation to be less costly than in 2022 (on average) but equally that major cost reductions will be few. If that is correct, it would be improbable that a reduction of as much as 25 % of the administration costs could easily be accomplished, because a 25 % relief of today's regulatory burden is a very tall order.

In a study for the European Parliament's ITRE Committee on OIOO (Eager et al., 2024), OIOO is assessed positively in cautious terms. The caution stems from methodological issues and a lack of transparency. 'It is too early … to provide a definitive assessment of its impact on the regulatory burden and thus on the competitiveness of businesses and SMEs' (Executive Summary).

A somewhat different way to regard the regulatory burden issue is Eurochambres's annual list of the 20 most burdensome areas of regulatory intervention, the latest one of 28 June 2023[93]. The core issue is that 'more and more of our businesses are reaching regulatory saturation points'. Most of the regulatory burden issues identified by Eurochambres are of the red tape variety: asking for less red tape, also in the form of pointless overasking, (e.g. the sustainability taxonomy doubled in red tape in a single year, without any added value) and a radical simplification of the Emissions Trading Directive, with its excess of red tape. It also calls for higher thresholds for SMEs, specific exceptions, uncertainties and quasi-permanent changes of requirements as well as a repeal of 10 legal acts (in statistics) leading to additional efforts by companies.

The regulatory 'avalanche' cannot be discussed in detail in this report. But it is useful to comprehend the vigorous nature of the debate with one telling example: the 2022 proposal for a regulation on prohibiting products made with forced labour on the EU market. There is an obvious connection with the Due Diligence Directive. As everybody is

[91] As announced in the European Commission's 2021 Better Regulation communication (COM(2021) 219).

[92] See European Commission (2023d).

[93] See the annex to the letter of Vladimir Dlouhy, president of Eurochambres, to Ursula von der Leyen, 28 June 2023.

against forced labour[94], the many objections are about ***how*** to ensure that, as far as it is even possible (as forced labour is typically a problem of international value chains).

First, the draft regulation has been submitted without an RIA(!)[95], which is always lamentable but, in this case, even more so because the requirements (and the sanctions) are so heavy. But also because – in the absence of an RIA – it is much harder to demonstrate the costly consequences, the very things the RIA should have done. Second, as SMEunited notes: 'the fight against forced labour should not be privatised'. Third, it introduces 'disproportionate sanctions', placing SMEs in a situation in which they would rather stop trade relations. And there are a range of other serious objections[96].

A telling letter by BusinessEurope (of 15 September 2023) to minister Hector Jose Gomez Hernandez, chair of the EU Competitiveness Council, shows by way of example one among several explanations. Inspecting the annual report on how impact assessment is dealt with in the Council (adopted by the Council in June 2023), BusinessEurope is 'deeply concerned about the trends in … handling impact assessments in the Council. ... out of 61 legislative proposals … only 21 … were discussed using the recommended technical checklist'. It also turns out that Member States did not raise concerns or demand scrutiny for almost any of the 37 legislative proposals *without* an impact assessment!

BusinessEurope is also 'deeply concerned that speed prevails over quality' and that the sheer number of acts has become the main measurement of merit for a Council's presidency! It is also worrying, it says, that Council formations *other than* (emphasis added) the Competitiveness Council have significant impacts on European business and their competitiveness (implying that these formations have a duty to verify such impacts, but they clearly show no interest).

The conclusion is that the EU machinery to verify costs and benefits of proposed EU legislation matters a great deal for European business, but indirectly also for the fitness of the EU economy. In some circles (including EU diplomacy) there is a certain pride in having or newly enacting regulation with the highest 'standards' (i.e. level) of health and safety, and for consumer, environmental and climate protection. That is understandably so, because such advanced risk regulation can be regarded as a significant attribute of EU socioeconomic welfare. But it is ***not free***.

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[94] There are two ILO codes about forced labour: no. 29 dating back to 1930, plus a protocol from 2014; and the Abolition of Forced Labour, no. 105 from 1957. In 2020, China also ratified these two (linked to the CAI).

[95] That is because it twice did not pass the Scrutiny Board but the Commission proposed it to the Council and European Parliament, nonetheless.

[96] It expects SMEs to know the due diligence guidelines of the UN, ILO, OECD or other relevant international organisations! The Commission says it used the RIA of the Due Diligence Directive but the scope of the two is completely different: the role of e-commerce is not addressed!

In high EU political circles, there is *a serious risk that costs and benefits are not assessed and evaluated together*. This is particularly true when 'values' are at stake and imposed extensively onto *global* supply chains. Often, the debate in Brussels is greatly biased in favour of these values (which is of course easily supported) and complaints about the costs disappear in the background. Worse still, advocates of the value-based approach often remain disinterested in an informed and sensible debate, with the consequences, on such issues.

Moreover, in global supply chains, these initiatives are not always well-received by business participants from many developing countries, and hence are risky in the medium term. They are also likely to have adverse diplomatic and trade policy implications. Sometimes, the EU should pursue its views and interests, come what may, but this attitude should not become routine, less still be considered a birth right. The EU being seen as deaf or arrogant is likely to hurt both diplomacy and business in the longer run if it is not already doing so today. It is also a dubious practice for EU trade policy.

What has actually been happening is a blurring between conventional EU external relations – promoting 'values' abroad – and classical EU trade policy. By legislating value-based regulations with considerable specificity, EU external relations policy is being partially substituted by EU (but now value-laden) trade policy. Whether that is a good idea for EU trade is questionable[97], but when it also imposes heavy burdens on EU businesses and their business partners in the rest of the world, given that the final market of destination is the EU, the costs inflicted magnify. Finally, one might also question whether the expected benefits of such EU regulation actually materialise, given all the efforts and reporting required of EU companies.

For EU leaders: EU leaders have turned a blind eye to a steep and unmatched increase in the regulatory burden for business over the last 4 years. It has grown apparent how baffled EU business is in its use of terms like 'regulatory tsunami' and request for a regulatory breathing space. Moreover, much of the recent heavy EU regulation is not (usually justified) risk regulation (about health, safety, the climate, etc.) but about aspects normally dealt with by EU diplomacy and EU trade policy. Yet, the costs fall on EU business. There seems to be little interest by the advocates of such rules to assess the costs, let alone watching the *cumulative* burden over time. And there is doubt whether these detailed value-laden rules can actually attain their goals.

[97] See Pelkmans (2021).

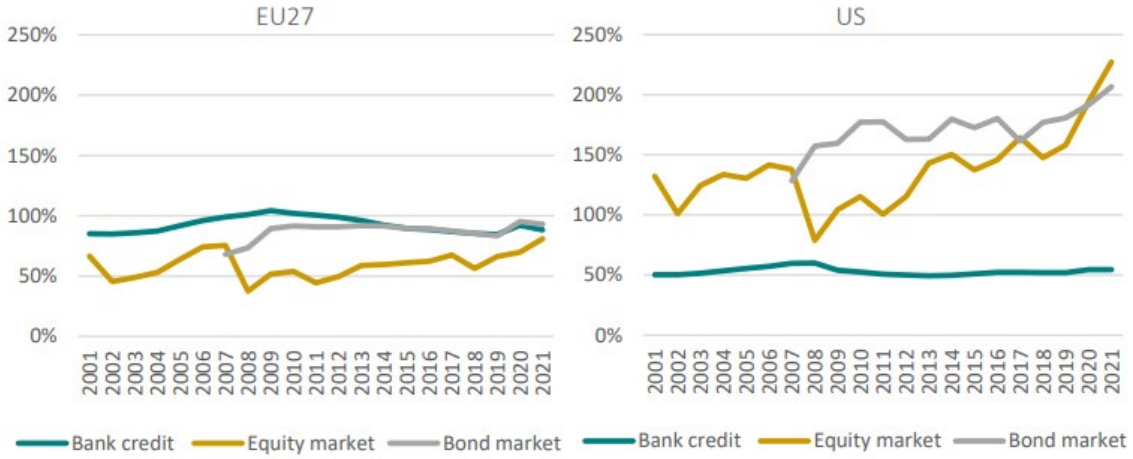
11. Stimulating entrepreneurship and a dynamic single market

There is a lingering concern in business but also at the EU and national policy levels about a lack of dynamism in EU markets. This also has to do with competitiveness, to be discussed in Section 13. And it is coupled with the lack of a truly EU-wide capital market, as Jacob Wallenberg (ERT, 2021, p. 176) writes: 'Underdeveloped European capital markets handicap the financing of European companies … conservative banks mainly benefit existing old companies – and thus protect an economy of fat cats'.

The concern is also linked with perceived difficulties for innovation in Europe – the ability to go from invention to markets in a successful way. This stems not least from a relatively weak appetite for risk, whether in the corporate scene or in finance. Empowering the single market without risk taking or dynamism, however, makes little sense.

For quite a while, the contrast between the EU and the US was great, as depicted in Figure 2 showing a comparison of EU and US financial market structures (bank credit, bonds and equity markets). Between 2001 and 2021, EU bank credit hovered between 80 % and 100 % of GDP, the EU bond market was roughly similar and the EU equity share ranged between 50 % and 80 %. By comparison, the US had a bank credit share of only 50%, the equity market moved between 100 % and 150 % (and lately towards 200 %) and the bond market between 150 % and 200 % (Thomadakis et. al., 2022, p. 8).

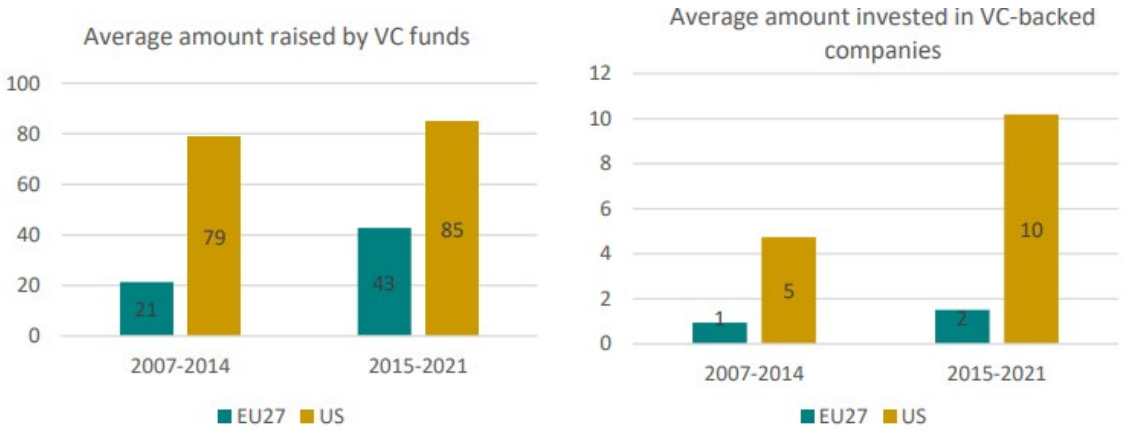
Figure 2. Structure of the financial sector, EU-27 and US, 2001–2021 (% of GDP)



Source: Thomadakis et al. (2022), p. 8.

The contrast was even sharper in venture capital funding for startups as Figure 3 shows. Yet, there is a silver lining because venture capital funding has grown bigger in the EU and there would seem to be a partial catch-up with the US. That said, for an economy as big as the EU, the score is not impressive.

Figure 3. Comparing venture capital, EU and US, 2007–2021 (million EUR)



Source: Thomadakis et al. (2022).

Europe is not lacking capital. It had a colossal EUR 28 trillion in 2022. But only a tiny fraction is allocated to growth capital[98]. The EU has no tech-friendly stock market, although Nasdaq now owns six small capital markets (mainly in northern Europe), which might eventually impact the entire EU. In contrast to the US, pension funds invest (too?) little in risk finance, partly due to regulation or regulators, partly again because the attitude is risk averse.

At the same time, leading US venture capital funds have landed in the EU because opportunities have grown and valuations are more attractive than in the US. Should US investors be more active backers of the EU's technological future than the EU's own fund managers?[99] This would not only be near-sighted, but it would also be disadvantageous for the EU economy, as revenues ultimately go to shareholders.

There is surely incipient dynamism in the EU. In 2020, Europe had some 140 000 startups of which 43 000 had raised at least one recorded round of funding, even if often small sums[100]. In 2023, there were 316 000 startups (more than double compared with 2020, although we do not know their fail rate), 313 unicorns and no fewer than 28 000 investors. But the venture capital raised was around EUR 45 billion, about half of the sum in 2021 due to high interest rates and other reasons.

The EU and Member States seem to have woken up, using public money as an incentive or as seed money. Various initiatives at the EU level (partly about money) have emerged and, for instance, France initiated its Tibi plan in 2022.

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[98] See Thornhill, J. (2023), 'European tech investors need to up their ambitions', *Financial Times,* 6 July 2023. One conclusion is that 'Europe remains mostly a region of risk-averse rentiers'.

[99] Ibid.

[100] See Atomico, The State of European Tech, 'Investment by Geography and Industry'.

The EU and the Member States should assume a *strategic perspective* on startups. Moreover, the European Investment Bank[101] has shown that also the smaller mid-caps are dynamic and innovative, so they ought to be in the picture as well. Since about 4–5 years ago, the EU has cautiously begun to assume a joint EU approach, having scale, growth of capital and attraction of talents in mind. A range of initiatives has sprung up, such as:

- the Joint European Disruptive Initiative;
- the Startup Europe Initiative (since 2013);
- the European Innovation Council (which directly funds startups with, e.g. an Accelerator Fund);
- Startup Europe Nations Standard (on best practices);
- the Digital Innovation and Scaleup Initiative;
- a new fund-of-funds by the European Investment Bank (February 2023) linked to the European Tech Champions Initiative, partly in response to the Pan-European Scale Up Initiative (the Tibi plan) stimulated by France.

Some non-money requirements would have to be addressed as well, such as conditions for attracting international talent, possibly with reduced capital gains taxation and share options, competing with the US (all these matters are for Member States, though best dealt with cooperatively). Efforts are needed to reduce bureaucratic obstacles and go some way towards (what McKinsey calls) 'a level of pan-European harmony'[102], such as by making a clear political commitment, creating role models and setting out a vision. One example is the European Innovation Council (EIC) Scale UP 100 Initiative[103] supporting the growth of 100 promising deep-tech companies with the potential to become unicorns, selected from the EIC Scaling Club. It includes firms with expected annual growth rates of 40 %.

There are several ways in which this links more directly with the single market. One is the gradual deepening of the single market over time, which should be expected to slowly facilitate EU-wide strategies for the scale- (hence sales-) oriented startups in e-commerce or for instance, audio-visual service scaleups. Another more immediate positive factor is the link with IPRs. Trademarks, design protection (both under the EU Intellectual Property Office (EUIPO)) and patents have become Europeanised, despite patents being a complicated story. European Patent Office-based patents have a single search base but

[101] See Maurin et al. (2024).

[102] See McKinsey (2023).

[103] See EIC (2023).

the patent itself has remained national (and since 15 January 2024, with validation for 45 countries).

Meanwhile, the unitary patent that came in force on 1 June 2023 is now valid for 17 countries, eventually extending to 25. This is a truly EU-minus-2 (countries) patent with a single unitary patent court. Clearly, this is much more attractive when scaling up. It should be noted that the costs of registering a unitary patent and maintaining it are low compared with European Patent Office-based national patents (starting from 4 countries, let alone if more countries were to be considered, or much more so if, say, the single market as a whole were patented).

Recent research[104] by the European Patent Office and EUIPO has found that SMEs with a European Trademark are more likely to obtain funding than SMEs without it. Among its other findings are that SMEs with European patents[105] are even more likely to obtain funding. Furthermore, SMEs with both trademarks and patents are still more likely to obtain funding. Apparently, the patent and/or trademark is regarded as a document showing competence, thus improving chances in the marketplace. What is more, since 1 June 2023 the unitary patent has opened up the single market, soon for 25 countries, *at once*. This is exactly what startups and innovative mid-caps want. Early signs are that the unitary patent is attractive to market players, in both the EU and elsewhere in the world economy[106].

Other research by these two bodies has shown that businesses having these IPRs generate more intra-EU trade and tend to grow faster than businesses without them; also their workers earn on average much more than workers in sectors without IPRs. In other words, things being equal, the business outlook for such startups and scaleups would tend to be much better.

For EU leaders: create the conditions in your EU countries for fostering startups and the growth of new businesses, e.g. by increasing the ease of doing business and improving access to finance. Since many startups are innovative, and often disruptively so, the link with IPRs is critical. Private funding is much easier when startups have IPRs, the best being one or more unitary patents bringing (near-)EU scale at once.

[104] See EUIPO and EPO (2023).

[105] What is meant here is a patent issued by the European Patent Office. The actual validation can take place in 39 countries, but under national patent law.

[106] After barely six months, 17 987 unitary parents had been registered. Of the top 25 companies with unitary patents in mid-January 2024, 15 are from European Patent Office countries, but only five of the top 10 are (with 46 % of unitary patents registered in this top 10).

12. Green and digital transformation consistent with the single market

Of the many reports on the single market briefly summarised in Section 3 and the appendix, few pay attention to the possible conflicts generated by or inconsistencies with green initiatives at the national or local level. Similarly, conflicts or inconsistencies with digital initiatives are observed, which can cause a drag on progress or even prevent a new part of the market from coming into being. DigitalEurope recently noted that 'there is no such thing as a single digital market'.

Green sectoral initiatives at levels other than the EU often have strongly motivated initiators. Such strong motivation is undoubtedly great to get something done or become a frontrunner, but – more often than not – it might eventually lead to a conviction that a (or any) contribution to green goals is always 'good' too for the single market. And that is not the case. Such initiatives must be consistent with the single market, and its rules and technical standards today, if not with the expected parameters of new initiatives of tomorrow.

Moreover, substantial state aid has been allowed recently, with a view to the transition to a net-zero industry. Box 3 briefly discusses how welcome or problematic the recent state aid is for the proper functioning of the single market. The requirement of consistency with the single market goes for digital initiatives too.

12.1 Green proposals fitting the single market

The EU public debate is very active on the elements of the Green Deal but (too) little attention is paid to the 'fit' with the single market. There is not much if any attention on this issue in either the European Commission's (2020a) *Business journey* report or in the Dahlberg/Pelkmans et al. (2020) report for the European Parliament (items 1 and 2 in Table A1).

Yet there is in the ERT (2021) single market report (see Table A1, item 4) of 7 December 2021, with 11 stories (by CEOs) on the 'environment & consumption' and another 10 on energy. These may be about barriers, but issues can be found as well in emerging markets, with fragmented or simply inexistent rules or standards. Sometimes, local rules on new aspects are based on existing rules for old issues, thereby preventing a level playing field or pre-empting scaling. To raise public awareness of this problem, a listing of some issues is provided in Table 2, illustrating the variety of questions at stake.

Table 2. An illustration of green issues causing single market frictions

1	Pot of paint	Inside homes, the environmental properties of paint are regulated differently among Member States.
2	Recyclability	(Food) packaging recyclability in Member State A may not be recyclable in Member State B, so a single market in (such) waste is not feasible.
3	Biodegradability	In the Single Use Plastics Directive, biodegradability was omitted, although cellulose alternatives do exist. An EU legal policy framework was meanwhile promised by the Commission, ahead of a later revision of the directive, but identical standards are needed.
4	Electric vehicle (EV) infrastructure	EV (loading) infrastructure needs to be radically upgraded in the EU, but Member States and local authorities throw up obstacles (billing services, no dynamic tariffs, etc.)
5	Food labelling & packaging	A coherent approach to the circular economy, waste, packaging and labelling remains a pious wish.
6	A single waste market	A single market for waste requires upscaling, across intra-EU borders, to render recycling companies competitive. One way to achieve this is to replace the current patchwork of national waste transport rules with an EU legal framework for waste management. Refuse-derived fuel (but with EU rules/standards) could lead to a functioning single market for waste transport.
7	Zero-emission zones	A constructive and effective way must be found to coordinate the many (and increasing) local low/zero-emission zones in the EU, as otherwise the single transport market suffers badly. The Commission and the Committee of the Regions might take the lead.
8	Europeanise sustainable aviation fuel; hydrogen as fuel	Sustainable aviation fuel does not enjoy a harmonised EU framework yet; on 'liquid hydrogen technology combustion', uniform rules and an obligation of sufficient storage space.are urgently required.
9	EU energy market integration	Renewable energy sources and the electricity infrastructure do not match. The biggest windfarm in the world (Dutch, in the North Sea) cannot be used in Germany by industry because of a lack of interconnectors – one example of many insufficiencies.
10	Power purchase agreements (PPAs) for many years	PPAs across intra-EU borders can only be concluded now with transmission system operators for 1 year. A revision of guidelines to multiannual PPAs would be helpful to stabilise prices and serve as a sign to invest in cross-border interconnectors, which is badly needed.
11	Reform energy taxes	VAT needs to be reformed such that everywhere in the EU 'the polluter pays'. As *other* levies in energy pricing render industrial power prices seriously uncompetitive (with a

		negative knock-on effect for goods produced, not least when sold in world markets), they must be dropped or reconsidered in a joint EU move.
12	Hydrogen mobility	Interoperability of H2 stations (e.g. no exclusive, incompatible identification and payment systems; proper information on prices, location of stations) is needed; one H2 station every 150 km on the core Trans-European Transport Network, dual pressure H2 stations.
13	Hydrogen & steel	There is no EU-wide regulatory framework or uniform technical standards for long-distance pipelines or for 'blending' in pipelines.
14	Renewable energy sources and biofuels	Traceability is a problem, as there is no harmonised 'guarantee of origin'. Use the sustainability criteria of the Renewable Energy Directive II.

Source: ERT (2021), 'Personal corporate stories' (by CEOs), pp. 54–177; note that the author has added some minor elaboration in a few cases.

Box 3 shows very clearly that a *proactive approach towards the Green Deal is required* to ensure that the single market under and after the Green Deal is friction-free and gives the right signals for investment or adaptation, with a level playing field. The European Commission should be on permanent alert that this happens or is anticipated.

However, there has also been some concern about the unusually large state aid allowed for the green transition, notably about whether it is not (too) distortive and/or benefits one or two large EU countries at the expense of others. If so, the functioning of the single market for energy would suffer, and in an unfair way. Box 3 shows that the special benefits of large countries are at least partly irrelevant, but it cannot yet answer the degree of distortiveness of the aid as no economic analysis is yet available. In any case, so far, the actually disbursed amounts are far lower than the guaranteed ones.

Box 3. Recent state aid for the green transition

The proper functioning of the single market presupposes a strong EU competition policy protecting undistorted competition. Recently, the trend in control of state aid (say, since early 2020) has raised some concern because of a series of newly allowed forms of state aid:

(i) following the Green Deal, the revised guidelines on state aid for climate, environmental protection and energy;
(ii) the Covid temporary framework;
(iii) the temporary crisis framework, following the Plan REPowerEU;
(iv) the temporary crisis and transition framework (TCTF) plus the Green Deal framework, related to the Green Deal Industrial Plan as well as the reform of the electricity market design.

However, five out of eight such measures under the TCTF have meanwhile expired. Three still apply until the end of 2025: renewables roll-out and storage, industrial decarbonisation and energy efficiency, and strategic investment. Much of the aid has been tightly connected to several EU objectives or plans.

By late October 2023, the Commission had approved 305 of 358 decisions with a total budget of EUR 748 billion. From a survey run by the Commission, of some EUR 672 billion of approved aid, only EUR 93.5 billion had actually been granted. There had been a stir about Germany's (very) disproportionate share of 76 % (at that point in time) of this EUR 93 billion. But no less than 97 % of German state aid was granted to Uniper (heavily dependent at first on gas supply from Russia) and SEFE (formerly Gazprom Germania, now owned by the Federal Republic of Germany). Both companies would have been bankrupt after the beginning of the Ukrainian war, outside their control.

For Important Projects of Common European Interest (IPCEI), some 208 companies participate in two microelectronics ventures with 100+ projects and EUR 10 billion in aid, two about batteries with EUR 6 billion in aid and two on hydrogen with EUR 10 billion in aid and 76 projects (total state aid approved: EUR 26.7 billion with expected private investments of EUR 50 billion). Note that in IPCEIs, between five and 14 Member States participate. Without available in-depth analysis, it is too early to determine to what extent the increased amount of state aid has led to distortion of competition in the single market. Source: Pesaresi (2023)

12.2 A digital transformation empowering the single market

The EU's digital transformation is supposed to be ambitious and yet the EU is falling behind in what are undoubtedly ambitious EU targets[107]. The main inference is that there is a need to accelerate and deepen the collective effort, including through policy measures and investment in digital technologies, skills, and infrastructure. Overall, the strategy is indispensable to boost the long-run competitiveness of the EU economy. In that specific though important sense, it will empower the single market, that is, the *performance* of the single market.

Still, that is quite different from a single market agenda bringing up measures to correct or harmonise digital regulation, standards or restrictions, or new measures to avert emerging barriers. The latter approach has not been prominent since Commissioner Neelie Kroes's Digital Agenda (14 years ago) or the 2015 digital single market programme[108]. Moreover, with the Digital Services Act and the Digital Market Act having been implemented in the meantime, the emphasis is shifting to implementation and

[107] See European Commission (2023e).

[108] If one types in 'digital single market' on the Commission's website, a message reads that this website is no longer maintained! One is referred to aspects of the digital transformation.

achievement of the targets, for the good of the EU. The question is whether that is justified.

To be sure, there are quite a few lingering issues. One is the pretty extreme technicality of recent EU digital legislation, culminating in massive, delegated rulemaking and decision power, so much so that, e.g. BusinessEurope is calling for the European Parliament and the Council to increase their scrutiny over this delegation[109]. Several other suggestions[110] can be made, without further detail.

- Better align the ePrivacy Regulation with the General Data Protection Regulation.
- Ease data sharing by pursuing common data standards, data exchange models and the interoperability of data.
- Agree on a common digital standard for buildings.
- Urgently get EU political leaders to agree on a sound common spectrum policy, without loopholes or a lack of discipline (see also Section 7.2).
- Build an EU cloud computing strategy based on the new ENISA label and an EU cloud rulebook.
- Agree on common standards for the Internet of Things across the EU.
- Construct an EU-wide digital ID system based on common publicly set standards that is independent of the major platforms (which use the data).

For EU leaders: Member States, their leading politicians, parliaments and NGOs should always view green and digital initiatives with a single market mindset. This can go down to the local level as well. An aspect as simple as labelling consumer goods should not fragment the single market! On digitalisation, the transformation is the main issue, but it should not be at the expense of guarding against fragmentation of the single market.

[109] This unusual call is prompted by the fact that 6 EU digital regulations (Cybersecurity Act, Digital Services Act, Data Governance Act, Data Act, Cyber resilience Act and AI Act) have generated more than 30 delegated or implementing acts.

[110] Most of these originate from the ERT (2021) report.

13. The single market propelling EU competitiveness

For the European Commission[111] and presumably for many others, the single market is paramount for EU competitiveness: 'For businesses, the single market is the main engine of growth, productivity and competitiveness' (p. 4). Of course, competitiveness is broader than merely the single market, as the World Economic Forum notes: it is 'the set of institutions, policies and factors that determine the level of productivity of a country'[112]. Focusing solely on firms, the European Investment Bank (2016, p. 11) states: 'Competitiveness is the ability of firms to mobilise and efficiently employ the productive resources required to successfully offer their goods and services in a global environment.'

The present report is not the place to analyse in depth the intricacies of the notion(s) of competitiveness. Nor does it analyse the complexities of combining a well-underpinned EU industrial policy in advanced sectors with an empowered single market. This combination may well be an added critical element for today's EU policy mix, though never at the expense of an empowered single market. Such a carefully specified EU industrial policy has become inevitable in a few instances where China and some trading partners have energetically pursued better positioning in some advanced sectors with interventionist instruments.

What is relevant is that a *country's or the EU's* competitiveness largely determines the prosperity of its people in the longer run. But it is also one of several determinants of *business* competitiveness, besides the quality of the goods or services the company produces, its innovativeness, the quality of management and workforce as well as locational factors critical for costs and mobility.

After the completion of the European Community programme in late 1992, the internal market's deepening, widening and partial reorientation has furthered growth and productivity in the EU in a functional way, though far more in the 'new' Member States than elsewhere. Nowadays, despite a list of accomplishments[113], *there is strong and increasing concern about whether the currently limping single market is capable of generating long-run economic growth and dynamism.* This kind of realism and factual inspection of the many barriers hindering business and consumers today was badly lacking in the celebration of the 30st anniversary of the end of the European Community programme in 1992.

As it turns out, a lot of barriers and numerous shortcomings have been ignored – far more than is often recognised – and explain the urgency of the present report. This lingering

[111] See the European Commission's (2023f) communication on long-term competitiveness.

[112] Quoted from World Economic Forum (2014).

[113] See the beginning of Section 2 and the Commission's *2023 Annual Single Market Report* (2023a).

concern also leads to comparisons of the EU's economic performance (including EU productivity, or even overall economic growth and growth per capita) with other countries. It is hardly a coincidence that the European Council's request that Enrico Letta produce a single market report by March 2024 was swiftly followed by another request to Mario Draghi to write a report on the EU's competitiveness. At a first-ever glance of Draghi's preparations, reported by *Politico*[114], the author seems to have confirmed that the EU lags behind competitors – including the US and China – in both geopolitical and economic terms.

The question to ask is what the *potential* of the single market is and *how far we are* from realising that potential. Sections 3–10 of the present report show in abundant detail that many hundreds of barriers and shortcomings prevail, after decades of policy efforts and report writing. As recalled in Section 2, a first proxy of the economic potential of removing barriers can be had from the European Parliament's *Costs of non-Europe* reports[115]. The conclusion is that removing the barriers as described earlier in this report is surely worth the effort. This will generate economic growth and a more robust, resilient and dynamic EU economy. As noted, this report urgently calls for a credible medium-term EU single market strategy, with the direct involvement and responsibility of EU political leaders, interim reporting to the European Parliament and the Council, and joint stewardship by successive Member State presidencies (or the troika).

However, there is more. The EU and its single market are *not 'just' about removing barriers*. A modern set-up of the single market and the market incentives generated by its institutions, combined with private and public funding, matter a great deal. One can be more specific. *It is critical whether the EU – led by a vibrant single market – is dynamic* owing to:

(i) the opportunities for startups and many mid-caps;
(ii) continued attractiveness for non-EU FDI (a success story in the past, with massive stocks of non-EU FDI in the EU, generating positive spillovers and dynamism);
(iii) improved capability to stimulate R&D (indeed, with a higher percentage of GDP) and innovation, helped by the stimulus of the unitary patent (a significant and so far underrated accomplishment of a modern single market not least for SMEs; see Section 11);
(iv) eventual success in significantly lowering the costs of (green) energy, first of all for industry producing intermediate products and materials;
(v) finally, a market that is still more performant in digital goods and services.

All this is also bound to matter for EU competitiveness.

[114] See *Politico*, 15 January 2024, p. 5.

[115] See for example, EPRS (2023) and its predecessors, and the brief discussion in Section 2.

Take the example of non-EU FDI in the EU. Ever since the sudden awareness of '[t]he American Challenge'[116], US multinationals have been committing to FDI in the EU, thinking and acting in a more European market fashion than EU firms at the time. Economists have been aware of the positive and dynamic impact of non-EU FDI in the single market. Not only are such stocks a robust sign of the attractiveness of the EU and in particular the single market for non-EU business, but also the economic effects of non-EU FDI are broadly agreed to be very positive. A survey by Julia Siedschlag (2023) sums up the benefits. One is fostering productivity and employment growth as well as knowledge spillovers on the productivity and trade performance of domestic (i.e. EU) firms. A further benefit is that a deepening of the single market in services is attractive to these multinationals (strengthening business services, supporting intra-EU and global value chains), as would be deeper capital markets.

Another example is found in infrastructure. Modern and high-quality infrastructure everywhere is partly a matter of EU governance, not just the national and local levels. For a long time, the EU (and its Member States!) have shown a minimalistic attitude with respect to EU infrastructure. Even when there were EU-wide plans (like the Trans-European Transport Networks), the funding was minimal at the EU level, given concerns over being seen to pay for possible benefits for other (national) economies. And the EU budget did not dispose of major funds. The question plays a major role in rail and road transport and in energy networks. A higher share of EU funding in the framework of these EU-wide networks should be considered.

In rail freight, the competitiveness of this service is critically dependent on high-quality networks with European Rail Traffic Management System signalling, which helps to safely increase train speeds significantly. Also, investment should be boosted for combined transport. Together, it might finally be possible *to shift trucks to rail, while improving the competitiveness of this sector* in terms of quality (for shippers) and cost.

In electricity networks, the core demand is for more cross-border intra-EU interconnectors, to benefit from emerging location effects of renewable energy, which of course subsequently must be transported efficiently to locations where there is demand. By going slow in Europe, we are shooting ourselves in the foot.

Finally, how competitive the EU and its single market are also depends on the latter's openness. This matters for the permanent drive to keep up with or be better than world competitors within the EU as well as in global markets; in other words, openness is a driver of growth. Indeed, for every 1 % of greater economic openness in the EU, labour

[116] See *The American Challenge*, by J.J. Servan-Schreiber (1967).

productivity increases by 0.6 %[117]. All these examples demonstrate that numerous single market issues are inextricably linked with productivity and hence competitiveness.

For EU leaders: having competitiveness uppermost in mind is justified by concerns about prosperity in the EU as well as by comparisons with the US, China, and Japan. With a limping single market, the engine of economic progress risks stuttering. Moreover, there is a serious risk (and early signs) that world-class enterprises would be inclined to invest elsewhere much more. Thus, repowering the single market is now essential, nothing less.

[117] See Pelkmans (2019, p. 152).

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Appendix. Recent single market reports by business and other stakeholders

Table A1 below represents a selection of barriers signalled in reports and position papers from 10 sources. Among them are the Commission's *Business journey* report of March 2020 on the barriers for business for all the steps when doing intra-EU cross-border business[118] and the Dahlberg/Pelkmans et al. (2020) report for the European Parliament's IMCO Committee on the barriers in the single market. The remaining sources are BusinessEurope (and its many sectoral organisations)[119], the ERT[120], SMEunited[121], EuroCommerce[122], Eurochambres[123], ETUI[124], DigitalEurope[125] and the BEUC[126].

Moreover, the Commission publishes an *Annual Report on the Single Market*[127]. The 2023 version is extremely rich but focuses mainly on the achievements and economic impact of 30 years of the single market, with just an occasional interest in barriers (and for those, it is relying on the other sources). Note that, in Sections 5 and 6 of the present report, extra attention is paid to the not-so-single market for *services*.

Table A1 brings together a selection of what all these sources have recently published. There is overlap, but not all that much. This must mean that the total number of barriers or shortcomings keeps on growing, as more reports are added. That in turn is a signal that *the deficits are a major problem* and urgently need to be addressed in earnest.

[118] See European Commission (2020a).

[119] BusinessEurope publishes some 60 position papers a year, most of which are directly linked with the single market. In 2023, there were two overview reports: *Examples of Single Market barriers for business* (BusinessEurope, 2023b) and *Priorities for the single market beyond 2024* (BusinessEurope, 2023a).

[120] ERT (2021).

[121] See SMEunited. (2023)

[122] EuroCommerce (2023).

[123] Eurochambres (2023b).

[124] See Akguec et al. (2022); see also an accompanying ETUI piece by Andhov et al. (2022).

[125] DigitalEurope (2023).

[126] BEUC (2023).

[127] European Commission (2023a).

Table A1. Recent single market reports by business and other organisations

Source	Shortcomings or deficits of the single market
1. Commission (2020a), *Business journey*	There are 83 obstacles in total: 31 'general' ones and 52 sectoral ones, of which there are 15 in transport alone. The basic one under general obstacles is 'insufficient information' and the costs/effort/time to acquire it. For selling across intra-EU borders, six categories are distinguished with a total of 21 barriers. These include 'product & services regulation', which is a giant field, with much common regulation. Still, despite two successive versions of an EU regulation there are problems with mutual recognition. There is still a lot of fragmentation today in, e.g. digital services, consumer protection, liability rules, the 'red tape' when posting workers and in cases of price regulation (medicines, alcoholic beverages, tobacco, books, and gas). There are also heavy compliance costs for VAT, possibly reducing with the new rules. There is a series of after-sales issues, such as differences on guarantees, remedies, debt recovery and effective IPR protection (although for patents this should improve with the unitary patent). Labour and social regulations are also seen as very complex and unnecessarily costly; when too rigid they are considered a barrier to investment.
2. Dahlberg/Pelkmans et al. (2020) report to the European Parliament	Quite a few issues in this report are *not* found in the *Business journey* report (above). There is detailed analysis of mutual recognition in specific goods markets (from water taps to 'food contact materials') or where chemicals are in the product (children's clothing, tableware, childcare products, and furniture). It finds that barriers linger to intra-EU cross-border e-commerce. Moreover, the shift to country-of-origin VAT is *not* good for e-commerce (many VAT rates). The Geoblocking Regulation has two exceptions which should be removed. In public procurement, the contracts awarded above the EU threshold have been growing fast and digitalisation is proceeding, but the lack of professionalism may well be biased against non-locals. Germany's system of annual budgeting generates a strong bias against above-threshold public procurement contracts, while Italy and Romania slice up overall contracts into many dozens or even hundreds, so that they remain below the EU threshold.

3. BusinessEurope	BusinessEurope publishes some 60 position papers a year, most of them on the single market. There is overlap with table items 1 and 2 above, but it also goes beyond them. Transport infrastructure and systems must be dealt with much more urgently, for example: • SES for air, deploying the European Rail Traffic Management System (signalling); • 100 000 safe parking places for trucks and more investment; • common solutions are needed for the administration (i.e. red tape) of posting workers and some easing of requirements; • urgent reform of the waste shipment regulation, as cross-border does not work, yet is indispensable for the business case of viable firms; enforcement in waste is weak/uneven; • clear definitions plus criteria on recycling, reusability, etc. are a must; • a top priority for all European business (BusinessEurope leads a huge coalition of business partners here) is the restoration of the EU regime of harmonised European standards, after the CJEU's *Elliot* case of 2016. It is a counterproductive move by the Commission and nobody is in favour of it, and it is also a major threat to EU leadership in world standards; • dissatisfaction about the Points of Single Contact (see table item 4 below and the single digital gateway); • complaints about subtle protectionism in public procurement competition (local certifications, local classification systems and specific labels) and lots that are too sizeable for SMEs to tender; • the evergreen divergences in weights and dimensions in transport; it also insists on better rules for 'combined' transport; • the frictions between Member States about packaging, with incompatible logos – the new Packaging and Packaging Waste Regulation applies six criteria for sustainability, but is still not fully harmonised, which is a threat to the green transition and the single market; • considerable concerns about the new product liability proposal and the Late Payment Directive (note that it is pleased with the new design protection and the re-opening of the negotiations with Switzerland – *de facto* in

	the single market and a major player in trade and FDI both ways).
4. ERT	The ERT published a double report in December 2021, one with analysis and a list of barriers, and another with 30 stories by their CEOs, a good deal of which are insightful for what is encountered in the form of barriers within the single market in actual practice. The ERT seeks to make 'open strategic autonomy' work but in fact the best way is to strengthen and deepen the single market. Also, it is clearly sceptical of interventionism (with rare exceptions), as openness drives competition and innovation. On the Green Deal and digitalisation, the ERT insists on a harmonised framework. Like other business, the ERT wants the (national or regional) permit systems to be accelerated. It advocates more data sharing and a 'smart spectrum policy' (but national authorities are unwilling for security reasons, as if this cannot be dealt with together(?)). It also insists on progress with the EU capital market, without details, as well as with venture capital. The ERT has more detailed solutions and discussions about four broad areas: environment and consumption, energy, digitalisation, finance and capital. Green requirements must absolutely be 'European' (with a simple but telling story about a pot of paint!) and scalable for the circular economy. On energy, it calls for urgent action for radically more interconnectors. On digitalisation, there is 'no such thing as a Digital Single Market'. The fragmented telecoms market in the EU must be consolidated. A common format is needed for data sharing, secure EU-made digital IDs and a single market in cloud computing based on an EU format. The ERT is bitter about the absurd fragmentation in health technology assessment, which ought to be centralised. On finance and capital, a truly EU-wide capital market must avoid Member States ringfencing local banks (and so on) and solvency rules must be at least minimally harmonised. Many additional ideas can be found, again on waste, the permit system, a common EU framework for the interoperability of EV charging points, a European safe asset for stimulating a truly EU-wide bond market, a common consolidated corporate tax base (the Business in Europe: Framework for Taxation (BEFIT) proposal) and the urgency of having a single market test at the Member State level. Among the 30 stories, which are so telling about how easy it is to become fragmented, just note the 'lift' example and the

	frictions over two logo systems (Green Dot and Triman/Tidyman, with an infringement case against the latter in 2022) for the circular systems (with a letter by 62 business organisations to the Commission!). The ERT also promotes *long-term* cross-border power purchase agreements in electricity and removing most of the taxation in wholesale energy prices, as EU suppliers and industry are suffering from a lack of international competitiveness. It laments the lack of uniform standards for blending hydrogen in pipelines. In its view, the absence of a single market in cloud computing is caused by the Member States (distinct certifications, local public procurement, etc.) and it advises that the standards of GAIA-X are followed.
5. SMEunited	SMEunited has not taken separate positions on the single market recently, although occasionally they join broader business positioning. Examples include: (i) a joint reply (September 2023) on the evaluation of Regulation 1025/2012 on European standardisation – in which they take the same position as all business that it functions well and there is no reason to change (hence, it is also against the moves by the Commission); (ii) on the Corporate Sustainability Due Diligence Directive (see also table item 10, below), SMEunited insists on a strong single market clause, i.e. harmonisation of, for instance, what due diligence is exactly, supervision and fines. Furthermore, SMEunited is concerned about packaging and waste (the Packaging and Packaging Waste Regulation) but has, so far, only explained to its members, in great detail, how the European Parliament's ITRE and IMCO Committees have adapted the final proposal. Their views on the SME Relief Package (April 2023) are rather critical, e.g. with a view to the EU regulatory burden.
6. EuroCommerce	For many years, EuroCommerce has published, every half year, its *Single Market Barriers* overview (the latest on 28 November 2023), with detailed attention on retail and wholesale for all relevant Member State legislation or other actions. It is depressing reading. In retail and wholesale, many Member States simply try to get away with infringements and – apparently – knowing that enforcement is either slow or very weak. A recent overall single market position paper was also published on 28 November 2023. Below are some of the major recommendations.

	(a) The 'single market as an economic union' ought to be the motto, if not rule, of the EU legislator and the Member States, bringing the four freedoms back to the top priorities. (Note: the four freedoms as a top priority is fine, but the reference to 'economic' union is not necessarily productive[128]). (b) There is a new call for notification of all relevant draft laws, with impact assessments and explanations for why any restrictions are justified, proportionate and non-discriminatory. (c) The Commission should have suspension injunction powers in clear cases. (d) The Commission should tackle the territorial supply constraints (a significant problem in retail) via EU competition policy. (e) Tighten the mandatory labelling and reporting requirements at the EU level (note that the Commission did act via an infringement procedure against the Triman logo in 2022).
7. Eurochambres	Eurochambres is surely also concerned about the single market but has recently focused much more on the 'regulatory burden', which is not about barriers within the single market but about deterioration in the competitiveness of business – due to the rising burden – in that single market. Eurochambres has built a tradition of publishing the 20 'most-burdensome areas for regulatory intervention', with the latest issued on 28 June 2023.
8. ETUI	The ETUI published a report, *Rethinking the European single market*, commissioned by the Belgian presidency (Akguec et al., 2022). The report blends several strands for 'strategic' reasons. The question posed is whether it would be possible to recalibrate some aspects of the single market's functioning while facilitating the strategic objective of meeting the pressing demands of the green transition, the digital transition, the EU's greater strategic autonomy and its social sustainability dimension. Posing this heavily formulated question marks the report. The ETUI vision of the EU is that market integration, economic progress, and social and environmental sustainability are inextricably linked. ETUI discerns an asymmetry between

[128] The term 'economic union' is not at all rigorously defined in the economic literature (Pelkmans, 1991), nor is it defined anywhere in the Treaty on the Functioning of the European Union. It is mentioned in Article 121(4) but without any explicit meaning.

	successful market integration at the EU level and social protection remaining largely at the national level, generating disenchantment and hostility towards market opening. The single market also suffers from an 'underexplored sustainability conundrum'. The three transitions should be approached in an integrated fashion. One idea suggested is that of fully embracing the idea of an 'integrated social market economy' by correcting the redistributive failures of the single market. The report is not interested in addressing current weaknesses of the single market, but rather in the possible imbalance of the single market (taken as given), and social and green sustainability.
9. DigitalEurope	DigitalEurope has opted for a specialised positioning on the single market. It focuses on, e.g. standardisation (not least for compliance) and above all on the future of Digital Europe. In its *Europe 2030: a Digital Powerhouse* position paper, it offers 20 solutions to boost European tech leadership and resilience. Seven of them are clearly on the single market, while some others are partly: (i) putting the single market back at the heart of the EU project, under the slogan 'one market, one set of digital rules'; (ii) streamlining EU data rules; (iii) creating a green and circular single market (and using the Digital Product Passport); (iv) boosting the role of ENISA, e.g. with a mandatory cyber check for all legislation; (v) ensuring a 5G connectivity framework fit for the 6G roll-out; (vi) setting up fully online public services and digital IDs; vii) launching a European skills passport.
10. BEUC	BEUC explicitly acknowledges the economic benefits of the single market, for consumers as well, but they wish to reassess and change the debate with a vision centred on the interests of consumers. That vision must also support consumers in making the green transition a reality. Interestingly, their first five points of reorientation overlap with those advocated by European business: better implementation, better enforcement, existing gaps addressed, respect of EU standards in external trade agreements and preservation of the single market's integrity. The BEUC is also of the view that the four freedoms have had too much attention while EU regulation about consumer protection, as well as social and environmental standards

	(meaning 'obligations') too little and not enough primacy. The rationale of EU intervention must be expanded to include the realisation of more of the EU's founding goals and values. The single market cannot be an aim; rather, it is an important instrument and it ought to serve EU goals and values. Internally, too often it is business that has prevailed, and externally the values are frequently under pressure. Consumers should also be heard by the SMET about enforcement. BEUC favours a more centralised approach to enforcement: out-of-silo enforcement (e.g. with more sectors) may be needed; a single enforcement contact point could be established for consumers; enforcement is best done in cooperation with Member States; and more resources for enforcement are indispensable. The BEUC also insists on far easier cross-border passenger rail traffic and multi-model transport. It wants to do away with the two exceptions to geoblocking. BEUC agrees with business about the urgent need for drastic increases in cross-border interconnectors. It objects to the strong price differences in telecoms (when not roaming), an old problem[129] that must be addressed, and to territorial supply constraints (like Eurochambres and EuroCommerce).

[129] See Pelkmans and Renda (2011) for the huge telecoms price differences in 2010, which are essentially confirmed as recently as 2019 by Brons et al. (2019) of the Commission.

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