

How social the single market?

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In two weeks time, Professor Mario Monti is expected to present his suggestions for a revival of the single market to Commission President Barroso. In his entrusting letter to Monti, Barroso rightly points to "...the dramatic consequences that would derive from undermining the Single Market. That would erode the basis for economic integration and growth and employment throughout the EU..." [See PRES(2009) D / 2250]. After rehearsing the oft-heard refrain that the Single Market is far from being completely in place and the Commission's intention to "... take a more systematic and integrated approach...", he notes that the financial crisis induced "... some critical reconsideration of the functioning of markets" as well as "... enhanced concerns about the social dimension." Given that the Lisbon Treaty says that "... the Union [...] shall work [...] for a highly competitive social market economy...", the Commission President calls for a fresh look "at how the market and the social dimensions of an integrated European economy can be mutually strengthened". Indeed, in the preparatory discussions to support Monti's reflections, many observers referred to the negative or sceptical perceptions currently held in Europe about 'more market', including 'more internal market'. Some analysts think that the 'neo-liberal paradigm' has been discredited; others note that numerous citizens and workers have lost confidence in the authorities' ability to properly regulate and supervise financial markets and the leading actors in the markets – with profoundly negative repercussions for all – and yet others find that public money is being spent on banks and far less on mitigating the social consequences that have befallen those who had nothing to do with the cause. One inference of these deliberations is to place the '*social dimension upfront*' when reviving the Single Market.

The social dimension of the internal market has been a theme for debate ever since 1987, when Jacques Delors introduced it as a counterbalance to the emerging 'Europhoria' of European business about the EC-1992 single market programme. Although the complaints about the lack of a 'Social Europe' make it into the local and European press much more easily than a sober analysis of the actual meaning of the label and the factual progress made, this CEPS Commentary encourages the reader to step back for a moment and reflect on what 'the' social dimension of the single market does and does not mean and to assess where we stand today. Only then, it seems to me, is it possible to draw some inferences about the potential and scope of 'putting the social dimension upfront' in a new internal market initiative.

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Social dimension at the EU level?

The biggest initial fear was that the internal market's deepening and widening would engender a Thatcherite wave of deregulation across the EU¹². In the Hannover European Council of 1988, this fear was dispelled by announcing high standards of social protection for the EU, a phrase later incorporated in the Maastricht Treaty. Of course, those standards were not set at the EU level since Member States were very reluctant to transfer significant social powers to the EU. So, it was up to the Member States. However, whenever the EU did have the competences, such a high level of protection had to be pursued at EU level. Similarly, the internal market should not undermine such standards and where a problem might arise, minimum harmonisation would guarantee a 'floor' of social protection. The Social Protocol was attached to the Maastricht Treaty in a legally complex fashion owing to the fact that the UK government was unwilling to ratify. This suggested that the Protocol was socially ambitious (which it definitely was not) and that Member States other than the UK were significantly less sensitive to a further delegation of social powers to the EU level (which was not the case either). In 1997 the Labour government wasted no time in formally accepting the Protocol. During the 1990s and to some extent in more recent years, a series of minimum social requirements have been incorporated into EU directives.¹ The Social Dialogue, also introduced in Maastricht, has been used by the social partners to jointly formulate the texts of some of these directives² as well as a large number of specialised sectoral agreements. Thus, even though Member States are loathe to transfer social competences to the EU level, increasing market integration *has* been accompanied by a considerable EU effort ensuring that the single market was not derailed into becoming an anti-social project. Merely asserting that 'the' social dimension of the single market has been neglected at the EU level seems to be more an expression of a political preference than a factual observation. Lest it be forgotten, the same Member States do not allow for an expansion of the EU budget, say, to engineer an EU-tier of complementary social spending e.g. on unemployment benefits.³ Understandably, perhaps, because such or much other social spending would probably not pass a subsidiarity test and the amounts would have to be quite large before becoming meaningful. But the sole reliance on regulatory approaches severely constrains the EU level in what it can and cannot do. Within the regulatory perspective, in turn, Member States are not keen on a serious expansion of EU powers.

The social dimension after the Eastern enlargement

When the two Eastern enlargements arrived, social anxieties increased in the high-income part of the EU. It is useful to remember that host country control (HCC) had been '*acquis*' since the early 1970s (and still is). Labour unions typically regarded this as a form of (national) social protection, allowing them to accept the free movement of workers (formally, though not practically, in place since 1968). HCC ensures that workers migrating to another EU country cannot compete on the essentials of labour market regulation in the destination country, whether minimum wages, holidays, working time or (most) other aspects. It is a convenient rule among countries with more or less similar income levels: given the complexity of labour law and its manifold links with the local welfare state, clarity about which country's law applies is helpful. With Eastern enlargements, however, income levels suddenly were drastically different. The upshot is an awful dilemma between HCC in high-income EU countries and ensuring in reality the rights of workers from the new Member States. Workers in high-income EU countries tend to stick to HCC, as before, but nonetheless find that somehow Eastern workers flock to 'their' labour markets, in particular in segments like construction, horticulture, cleaning, simple restaurants and meat processing. What is the EU element of this predicament (and what is not)? What is not so 'social' about this manifestation of the internal market, giving the latter a bad reputation?

¹ Without being exhaustive, they concern health and safety at the work place, information and consultation of workers (e.g. on major investments and mergers), collective redundancies, avoiding nightshifts, etc. for pregnant women, maternity leave, working time (with a host of exceptions for special reasons), posted workers, the European Work Councils for large European companies and directives on part-time and fixed-time contracts. Later examples include, among others, a directive on temporary agency work and on protection of workers in the event of insolvency of employers. Also, several of these directives have meanwhile been strengthened.

² Based on Art. 139, EC, now Art. 155, TFEU.

³ The relatively small EU Social Fund and the tiny European Globalisation Adjustment Fund have found their place within today's political EU budget cap of 1% of EU GNP. Ideas about a complementary EU employment fund go back to the 1975 Marjolin report.

Economically, a strict adherence to HCC has the effect of reducing or eliminating the demand for Eastern workers in the high-income EU countries.⁴ This is so irrespective of whether they come as migrants taking up a regular job or as posted workers for temporary services. The only scope for those workers to be hired is 1) the differential between the minimum wage and the wages actually paid and 2) a willingness to work longer hours and on Saturdays since they are away from home in any event. Apart from this limited scope, HCC is therefore protectionist: it keeps Eastern workers out; worse, they cannot exploit their social rights (of free movement) under the treaty, namely, the income-raising opportunity of working in the single market where the well-paid jobs are. Thus, what is ‘social’ for high-income workers, is ‘asocial’ for Eastern workers and they are the poor lot. It is simply incorrect to argue that high-income countries – in imposing HCC on Eastern workers interested to come to their labour market – are exercising a benign form of ‘social protection’ on their behalf.⁵ The contrary is correct: HCC ensures that the effective demand for those workers dries up so that there will be nobody from poor EU countries to protect in the first place. HCC robs free movement of workers (or free movement to provide temporary services) from relatively poor EU countries of its socio-economic meaning. The European Court of Justice (and the Celle court in Germany, having requested a preliminary ruling) spotted this correctly in the 2008 Ruefert case.⁶

The Polish plumber who never was

A closely related social anxiety was the French myth about the Polish plumber. Proof that the Polish plumber in France never really existed – indeed, could not exist – is disarmingly simple. There was no basis for accusations of “the” EU, neither in the EU ‘constitution’ nor in the *acquis* at the time (nor today). One wonders who has talked the French press and citizens into this and why the elementary unravelling of the story never had a chance. There are four options for the notion of the Polish plumber and four is exhaustive:

- i) The plumber may get into France (or many other EU countries) as a normal migrant, taking up a regular job; this labour contract is under HCC (and already was, decades ago); this applies equally when the plumber would work for an employment agency.
- ii) The plumber may come as a posted worker for a temporary (plumbing) job; as noted above, posted workers fall under HCC (Dir. 96/71), irrespective of whether the firm posting him is established in Poland or e.g. in France.⁷
- iii) The plumber may come to France (or elsewhere in the EU) as an independent-without-personnel (IWP); here, matters are different because our plumber can now enter into a service contract for a total work project (say, doing the plumbing of a school building) for a fixed amount; the implicit hourly wage of that contract can be below the HCC wage since he is an independent (with all the risks that this entails). This option is not new at all, however, and has nothing to do with a new twist in the single market or with enlargement as such. Note that most such independents only operate domestically. At issue here are those who make most of their living from contracts in other Member States. What explains the recent increase of the use⁸ of this option is that Eastern workers are more

⁴ For a formal economic analysis, see Pelkmans (2006, pp. 197-198).

⁵ Note that the fine sounding slogan “same workers, same site, same labour conditions” may have similarly perverse effects of locking out Eastern workers.

⁶ Case C-346 / 06, ruling 3 April 2008. The ECJ sided with the Celle court which said that complying with local collective agreements would make them “... lose the competitive advantage which they enjoy...” Similarly, the same obligation does not lead to ‘equal treatment’ with German workers either “...but rather prevents [posted] workers ... from being employed in Germany”.

⁷ Incidentally, since France has general minimum wage legislation, unlike e.g. Germany, one would expect the inflow of posted workers to be far stronger in Germany than in France. This is borne out by the data. In the 2008 “Employment in Europe” report of DG Employment, Chart 5, p. 121, it is shown that more than 80% of posted workers in 2006 in Germany were from the new EU Member States, as against only one-fifth in France.

⁸ In fact, going beyond anecdotes, we know precious little about cross-border services provided by IWPs. According to the European Foundation for the Improvement of Living and Working Conditions (2009), one recently observes both trends of declining IWPs in some Member States and of an increase in other ones e.g. Belgium, France, the Netherlands, Germany, Romania, and the UK. However, in France in 2007, this increase had merely led to a share of 5.8% of total employment for IWPs, when including agriculture, and around 4 % without. Apart from Luxembourg and Denmark, France still has the lowest share of all EU countries. The Polish share is

risk-prone than their counterparts in the EU-15, given the enormous opportunities for skilled construction workers in the west of the Union (today, after the crisis, they might reconsider, but that is another matter). Cross-border IWP services were not frequently supplied before, simply because the sacrifices of this option, with the service providers away for many weeks from home time and again, are such that few people would wish to do this for a long time.

- iv) Our plumber might get into France illegally, that is, work illegally under contracts or arrangements that infringe French law (and EU law as well). The EU cannot be accused because people misbehave (given wage discrepancies) and it is up to local enforcement to stop it.

It follows that the Polish plumber cannot symbolise a lack of the social dimension of the internal market: options i and ii are ‘social’ in the sense of protecting French social entitlements; option iii allows selective competition outside HCC but it has been around for decades (with no ripple effects whatsoever, and balanced by much higher risks for those independents) and option iv is simply a violation of EU and national rules (and France itself ought to stop that).

Balking at Bolkestein’s draft?

Could the turbulent debate around the horizontal services directive have left a lingering idea of a too weak social dimension? The obsessive debate (often actually a non-debate) in the EP on the draft directive made it impossible to pay proper attention to very sensible solutions to the problem, which were surely social, too. One great contribution by the Dutch Socio-Economic Council⁹ was not taken up, much to the peril of the EP and the EU. In a most careful and extremely detailed report, the Council not only explains in a painstaking fashion all the misunderstandings and false soundings around the draft directive but also adopts a limited list of amendments that enabled the text to remain based on the country-of-origin principle, with more derogations (but not as many as the EP allowed due to lobbying) and circumscribing some boundary issues (like private law questions under the Rome Conventions). The report, in fact almost a ready text for adoption, was approved *unanimously* by the social partners and the independent experts. One cannot seriously argue that the Dutch Socio-Economic Council, with the active participation of labour union leaders and a 60-year social record envied by many elsewhere, does not pay due attention to the social dimension.

Is the single market an agent of globalisation?

Could the impact of globalisation on a very open EU market for manufactured goods be the ultimate culprit? Because it is so open, so the story goes, the single goods market boils down to direct competition with China; hence, the incessant pressure to cut non-wage labour costs (mainly, social charges) and to invest in China itself. It is argued that both trends would, in the long run, threaten the viability of Europe’s social models, possibly even the EU’s prosperity levels.¹⁰ Of course, this is a very one-sided picture (and only for goods, not to forget), ignoring the fact that international economic intercourse is a win-win game. So far, the EU problem is one of restructuring, adjustment and shifts to new economic activities and this has worked reasonably well, in part also because Central and Eastern Europe has served as an alternative to remain competitive in certain industries. Indeed, to the rest of the world, it is often the EU that is regarded as a, if not the, leader in globalisation (certainly in services and direct investment, besides capital, intermediate and high quality goods). For the EU to continue this relatively successful shift so far, it needs to be far more aggressive in innovation and change, beginning inside its internal market. Nobody in Europe seriously pleads for the single market to be closed. Other options are all related to innovation and adjustment, the more so as ageing can be a menace to our future productivity growth for another two decades. Since services represent 70% of value added, competition and dynamism in this sector – non-tradable ‘domestic’ services just as much as potentially tradable services in the internal market – must be central to any long-run growth strategy.

fairly high (15%), but shares in Italy, Portugal, Greece and Romania are higher still. What these data do not show is where exactly the services of the IWPs are delivered, home or abroad and to what extent.

⁹ SER, 2005.

¹⁰ Arguably the sharpest reminder of this fear is the title of a famous article in 1995 by Professor Richard Freeman, “Are your wages set in Beijing?”. See also Brenton & Pelkmans, (1999) for extensive analysis of the issues in Europe.

Putting the social dimension of the single market upfront?

In the light of this quick overview, one should reflect on what putting the social dimension of the internal market upfront would actually mean. As shown, the single market already has built in a social 'floor', as it were. Eastern enlargement has increased sensitivities, no doubt, but it has also demonstrated the ugly side of HCC: it all depends on whether one focuses on 'rich' or 'poor' EU workers. Still, with catch-up growth returning soon in Central Europe, this problem will gradually go away in another decade.

Perhaps putting the social dimension upfront means that in 2012 (when the services Directive 2006/123 has to be reviewed), the Socio-Economic Council proposal should be taken up again as an improvement over today's badly drafted and unclear directive, with too many derogations.

Or perhaps it means that the EU should go for growth and jobs even more than before so as to pull workers back into jobs. There has been firm talk by ministers of a European Employment summit and an employment strategy in the framework of EU2020. With so many unemployed in the EU, this is indeed an initiative one can start with. No doubt, the social *and* economic gain of lowering unemployment in Europe renders it an overriding priority. Who would possibly oppose it? But is this tantamount to the social dimension of the single market, or is it once again a coordination of basically national strategies and few if any concrete single market tools?

Or perhaps it means that the internal market cannot be deepened where social sensitivities are expected to pop up. Knowing that such sensitivities persist mainly in labour migration and in services, such prudence would pre-empt any move to bring genuine productivity improvements (except the long-awaited EU patent). It would force Professor Monti into side shows such as education (crucial, true, but the EU has few powers here) or into rehearsing the crucial role of domestic reforms (sadly, also these are in services and labour markets) where the EU can mainly act by persuasion and this has not been successful so far in some crucial eurozone countries. But Barroso has already noted that there is still a range of stubborn barriers to migration inside the single market in matters such as health insurance, mutual recognition of diplomas, pensions, housing (for workers with lower wages) and occasional tax conflicts between Member States.

Or perhaps advocates of putting the social dimension upfront refer to accompanying measures which, in and by themselves, are not part and parcel of the single market, such as typical Lisbon/EU2020-type goals of fostering social inclusion (they are typically local, too), pursuing 'flexicurity' in national labour markets, improving active labour policies and emphasising 'upskilling' the European workforce much more than before. All of these are in principle worth pursuing (and presumably overlap with employment strategies), but not all of them fall into the single market domain (large as it is) and the EU level has no direct powers and just tiny funds at best to deliver.

Finally, perhaps one has to go against the perception that 'the' single market is there for (big?) European business. Of course, that is not and should not be the philosophy: it is overall economic welfare that increases over time, and in specific terms, it is the citizens, workers and consumers, who benefit. However, it has been next to impossible to convey this message convincingly to EU consumers and citizens for many technically complicated measures over many years, still apart from the robustness of the empirical economic analysis. If and when one does try to convey these complicated measures, it quickly becomes an abstract and conceptual exercise, with the fall-back option consisting of anecdotes. The fact remains that it is predominantly the relatively big and successful firms that actively exploit the single market;¹¹ whether we like it or not, they are the effective agents making the single market work. The recent progress on facilitating SMEs operating in the internal market (with the measures in the Small Business Act, by lowering thresholds and cutting red tape) is welcome and can only help. We need them. A renewed emphasis on consumers and citizens in the internal agenda deserves strong support (Malcolm Harbour, Chair of the EP Internal Market and Consumers Committee, has stressed this recently, too), but this can hardly be denoted as 'putting the social dimension upfront'. Consumers and citizens simply are agents benefiting from greater choice and wider options from cross-border competition, hopefully also (more) on-line, and from price discipline exercised by intra-EU competition.

¹¹ For revealing results, based on research with data at the individual firm level, see Mayer & Ottaviano (2007).

Conclusion

Unlike more than two decades ago, today's social dimension of the internal market has created a robust social minimum 'floor' of requirements. Surely, one might wish to add some such minimum harmonisation in a few areas or make them a little more ambitious when revising directives. Broadly speaking, however, the Member States want the EU level to be responsible for the current social dimension of the single market...and no more. The social powers of the EU are limited,¹² which is exactly what the Member States want. It is therefore misleading as well as pointless to accuse the EU as such of not doing enough in areas in which it has no competence to deliver. In the context of EU2020 or otherwise, it is useful to stimulate Member States to reform more at home and to coordinate their national employment strategies, but this is largely independent of further internal market initiatives. Of course, one can bring them together in a wider 'strategy'. After all, both are eminently sensible. If this is what is meant by 'putting the social dimension upfront' in a new internal market initiative, I would be all in favour.

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¹² For an accessible and brief survey of those powers and their limits, see Pelkmans (2006, chapter 15) or Pelkmans (2008). Note that the Convention in February 2003 in working group 11 decided that the social powers of the EU were just about right.