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## The Future of the EU Internal Market

A contribution to the discussion on *the Internal Market Strategy for goods and services*<sup>1</sup>

### The Internal Market needs to take actions to:

- respond to the global phenomena, which were not foreseen in the beginning of 90s.
- unblock the potential of the service sector closely related to European industry, which should result in an improvement of innovation, competitiveness and job creation. To this end the EU should, *inter alia*.:
  - refrain from any restrictions against offshoring while disseminating and applying European values (environmental, social) across the world to secure a level playing field for all entrepreneurs;
  - support outsourcing as a method of cost reduction for entrepreneurs and an open field for expansion of other EU companies from the service sector with products dedicated and tailored to expectations of demand;
  - facilitate 'servitization' as a method of increasing the competitiveness of EU companies, offering their goods in an innovative way, i.e. together with services and with manufactures from outside the EU;
  - introduce voluntary standards on services, which could be used first of all by small and medium-sized enterprises;
  - refrain from the introduction of new requirements on open services, which are unjustified on the basis of the Treaty and could restrict the growth of new and innovative forms of services, including the sharing economy.
- introduce the single EU patent, which would ease access to the EU Internal Market, especially for small and medium-sized entrepreneurs;
- stick to competition rules, including state aid rules, through, *inter alia*.:
  - a simplification of trade procedures preventing imports of dumped or subsidised goods;
  - placing a ban on national protectionism and eliminating all barriers to entrepreneurs;
- Introduce a more strict enforcement policy, which should eliminate existing barriers to the free movement of goods and services;
- incrementally, whenever possible, issue replacement Directives, with Regulations to ensure the uniformity of rules applicable by entrepreneurs and consumers alike and to simplify existing rules.

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1. The internal Market (initially the common market) was developed based on the four Treaty freedoms: free movement of goods, services, capital and workers. This approach assumed the functioning of an open economy under the realities of the 2nd half of the 20th century and was an example of one of the first deepened regional economic integration systems. European integration of the 1980s, aimed at social and economic integration, was at that time ahead of globalisation.
2. However, over the years both the model of economic activities, at the micro level of undertakings and at the macro level of economic policy have clearly changed. Consequently, the idea of the Internal Market of the 1980s does not encompass new ways of pursuing economic activities within the framework of the current globalisation. Recent research shows that the EU internal market remains a relevant outlet for goods sold in intra-EU trade, but when compared to extra-EU exports its share in global EU trade has been decreasing and extra-EU exports, both for goods and services, have increased much more rapidly than for intra-EU sales. This means more extensive links of the EU economy with the world. Thus instruments improving the EU entrepreneurs' competitiveness should take into account the position of companies not only within the EU internal market, but in the global market, vis-à-vis the main world partners and competitors.

3. At present, the EU Internal Market and concepts of how to regulate individual areas within its scope **do not constitute a light post of activities on the international scene and limit themselves to responding to the prerequisites of the world market.** As a result, either nothing is done or we witness clumsy attempts to intervene in the face of the phenomena in the global economy, such as: outsourcing, offshoring, and servitization. We need to stress that these phenomena, even though observable already in the 1980s, have not been reflected so far in the EU legislation. **A common pattern of these phenomena is the increasing value and importance of services. Therefore the Internal Market of the EU needs to undertake new actions to unlock the potential of the free movement of services in order to increase competitiveness of both EU industry, including manufacturing, and the service sector itself.**

#### ***Offshoring of Firms from the EU Internal Market***

4. When it comes to **offshoring**, i.e., moving foreign investment to countries where production costs are lower, it should be noted that these costs include not only the cost of labour but also social, environmental, energy-related and climate requirements. The inappropriate balancing of the need to meet adequate - not necessarily the highest - environmental and climatic standards on the one hand, and on the other hand the need to maintain the competitiveness of the production and services in the EU, has enhanced the delocalization trends (first from the old to the new Member States, and nowadays - under offshoring - to Asian countries). Firms relocate their assets in the search of optimal - in terms of return on capital - location for their investments.
5. Thus, considering that the free movement of capital is one of the freedoms of the Internal Market and enables smooth delocalization within the EU, we should neither be surprised nor try to prevent capital from seeking to maximise profits from its engagement. It needs to be stressed that the free movement of capital is one of the four pillars of the EU Internal Market. On the one hand entrepreneurs are looking for locations offering the highest rate of return. The point, however, is not only to reduce the costs of labour, but also the costs of meeting environmental, social, climate and energy-related standards. It seems that only a comprehensive inclusion of all of these factors

into the equation provides the proper foundation for making business decisions, in that it, above all, offers equal treatment for producers from all countries and does not discriminate against countries making bigger contributions to protection of environment.

6. On the other hand however, moving plants both within the EU and outside of it produces certain consequences for the labour market. This is particularly visible in the face of the concentration of economic activities in urban-industrial-service centres. We need to note that the potential negative consequences for the labour market are usually of a local (regional) nature and are rarely felt at the level of a Member State. Besides, if workers offer specific skills in a given region, old firms are replaced by new ones. With the improvement of infrastructure and the resultant shortening of time to reach the big centres that offer more jobs, regions lagging behind become only pools of labour to industrial agglomerations. Hence, when the currently existing production activities are delocalised and new firms emerge, labour resources from neighbouring regions may still be used. Thus, taking into account only the likelihood of the short-term negative effects of delocalization and the striving of firms to improve their competitiveness, **no efforts should be made to restrict offshoring.** However, if we assume that only environmental and social prerequisites are valid premises for delocalization, **the European Commission should aim at ensuring that these European values are shared and applicable in the law not only in the EU, but across the world to secure a level playing field for all entrepreneurs.**

### ***Outsourcing in the EU Internal Market***

7. **Outsourcing**, understood as the contracting out to other operators of some previously in-house business processes, is one of the major challenges to the Internal Market. It seems that **the freedom to provide services within the Internal Market directly addresses the phenomenon.** Entrepreneurs decide to use outsourcing in their search for reduction of their operational costs, which improves their competitiveness both within the EU and in global markets.
8. However, on the other hand outsourcing may be accompanied by a variety of negative social effects. Since some business processes are singled out from organisational structures of enterprises, there are social costs, such as unemployment in the local market. Up until now this has been a problem for occupations that do not require high skills: cleaning personnel, security guards, caretakers, receptionists, and also people employed to perform repeatable operations for various businesses, e.g. in human resources or finance. **However, recently outsourcing increasingly often expands to other areas of manufacturing and services much closer to the core business activities of a given enterprise.**
9. Irrespectively of its nature, scope and effects, outsourcing is intrinsically linked with the freedom to provide services in the EU Internal Market. Thus, **to enable the enterprises, both manufacturers and service providers, to improve their competitiveness the above mentioned freedom should be fully exercised without any barriers imposed by the Member States.**

### ***Reindustrialization and Servitization in the EU Internal Market***

10. In recent years the share of manufacturing in gross value added has been continuously decreasing in the EU (in current prices). This is mainly due to the drop in the nominal value of industrial products, which is an irreversible trend. The cost of extracting raw materials, and their processing and production, diminishes in comparison to the costs and value of innovative solutions in services. This is also due to outsourcing and offshoring. Consequently the need for EU re-industrialization emerges in the political debate.
11. On the other hand, the share of services in the gross value added of individual countries has considerably increased. Firstly, the average person is more interested in receiving a concrete service than in the purchase of certain goods. Goods require the transfer of ownership and the consumer must take care of them, manage them, and protect and store them. Being an owner of goods also restricts individual mobility. It is also worth paying attention to the fact that more and

more consumers are realising that the goods they have acquired have been programmed only for a specific period of time (usually slightly exceeding the guarantee period). Regardless of whether this impression is confirmed in practice, it is a major impulse encouraging consumers to use services rather than to buy new products.

12. At this point we should also stress that in times of economic crisis consumers are not only more inclined to use telecommunication and transport services, without which they would not be able to function normally, but also to make use of maintenance and repair services rather than purchase new goods to replace those they already possess. As a result, the sales of services in the Internal Market has been gradually increasing over the years of crisis, while intra-Community sales of goods has collapsed.
13. Consequently, besides outsourcing a separate issue to discuss in the context of the EU Internal Market is the so-called **servitization**, i.e., offering goods together with services linked to them. The point is to increase the competitiveness of domestic manufacturers, who, by being able to provide services as components of goods they have manufactured can improve their competitive position vis-à-vis imported goods. Modern enterprises more and more often offer not just finished products but also assembly, operating and use-related services. In the face of increasingly restrictive environmental and energy regulations, production costs in the EU are on the rise compared to production costs outside the EU, e.g. in countries like China, India and Indonesia. It seems that **one of the ways EU companies can compete with manufacturers from outside of the EU is to offer their goods in an innovative way, i.e., together with services**. This is a new business model in the offer of goods; in the first place for many entrepreneurs, but also for some consumers.
14. The approach taken needs to ensure the adequate position of modern industry in the EU. It seems unquestioned that manufacturing enterprises are cradles of innovation - they develop new products, test them and place on the market. A strong and modern industry may boost innovation and, as a result, the competitiveness of European firms on global markets. However, sticking to traditional sectors without implementing innovation will petrify weak and ineffective economic structures in regions and states, and refusal to adopt servitization will only deteriorate the situation.
15. From the point of view of individual customers, purchasing a service with a product has become an ever more frequently selected option, which guarantees the proper transport, assembly and servicing of the purchased product. To manufacturers this means diversification of business and its extension to include provision of services, often requiring relatively little additional outlays. Such a business model can be observed in, e.g., the construction and refurbishing services where customers buy goods together with the assembly service, paying lower VAT rates (because of the reduced rates applied to services, while construction materials are charged the standard VAT rate).
16. In order for **manufacturers of industrial products to operate smoothly in the area of servitization, we need to ensure them the complete freedom to provide services within the Internal Market**. This should include guaranteeing the possibility to offer assembly, implementation, and application-related services, or permanent use of the product without transferring ownership rights. In this way the owner of goods manufactured in the EU, and at the same time a service provider who offers his product under the freedom to provide services in the EU Internal Market, can continue to modernise, improve, update it, thus ensuring innovation. Such possibilities would be limited for those who supply only goods (importers, distributors from third countries). **Thus, we should not juxtapose industry and services but try to link them with the EU Internal Market legislation**.

### ***Facilitations in Developing the Internal Market for Services***

17. As we have already mentioned, in order to deliver the vision of a joint approach to goods and services we need to ensure the freedom to provide services. In order to mobilise small and medium-sized enterprises and to guarantee them a level playing field in competing for customers

(both business and individual), we need to ensure the visibility and approval of the services they offer. It seems the optimal solution would be to introduce **voluntary standards, which could be, first of all, used by small and medium-sized enterprises.**

18. In this regard we mean the adoption of solutions similar to the new approach to technical harmonisation in the field of the free movement of goods. Measures specifying risks relating to the use of services, or to combined goods and services products, should be worked out at the EU level (by the EU Council and the European Parliament), and then entrepreneurs should draft European voluntary standards. Voluntary compliance would constitute a guarantee of safety to the service recipient. Consequently service providers from the SME sector would not be discriminated against in, for example, public procurement when competing with large firms with a good reputation in the market. Voluntary standards would enable SMEs to offer services “compliant with European standards”, which would give them visibility, while at the same time large and effective entrepreneurs would still be able to implement innovation in their services, which would contribute to technical and technological progress.
19. An alternative measure that could improve the conditions of providing services within the Internal Market is the mutual recognition of national standards by the Member States. **That, however, raises doubts as to whether mutual recognition of services is a sufficient and genuinely expected instrument to liberalise trade in services within the EU Internal Market.**

### ***The sharing Economy and the Freedoms of the EU Internal Market***

20. The so-called ‘sharing economy’ is a specific area that influences the development of services. An example of a sharing economy is that of “copying” from the Internet and the free sharing of knowledge, and “pasting it” into the real sector in the form of, for example, firms that offer passenger transport services or apartments for rent. In fact, these enterprises use IT solutions to match consumers and service providers (drivers or landlords, for example). Such solutions clearly reduce costs to consumers (users) and liberalisation of the EU Internal Market for services has become the major tool enabling such operations (not necessarily delivered by SMEs but rather by EU citizens who do not operate businesses). Simultaneously, such a business model seems much more competitive compared to, for example, traditional taxis or hotel accommodations where specific requirements must be met.
21. On the one hand, it seems that a free-of-charge system allowing for the development of enterprises (especially SMEs) will, over the long-run, increase the public welfare and the growth of services. On the other hand, the growth of the sharing economy reduces the level of protection and safety to consumers, and their certainty with respect to using services rendered outside of their home country. The sharing economy can also hamper the development of regulated services at national level. Consequently, we should consider two independent courses of action: opening up sectors to new service providers (including SMEs), while maintaining consumer safety regulations (e.g. health related) and enabling the market to identify the potential need for new regulations. **Legal solutions should be adopted only when a market failure has been identified (e.g. incomplete information to consumers) and they should not restrict the growth of the sharing economy. Otherwise, an attempt to introduce the same requirements for traditional service providers and for the sharing economy will eliminate a vital component of the competitiveness of the latter.** The Internal Market of the EU is a part of the global world and it is impossible to hide and protect EU entrepreneurs, via restrictive EU laws, against competition from outside the EU.

### ***Intellectual and Industrial Property Protection in the Internal Market***

22. The modern economy is based on innovative solutions implemented by entrepreneurs (in both the goods and services sectors). However, new technologies involve substantial costs and a high

business risk. EU State aid regulations leave a relatively large amount of room to support such activity. In the EU Member States some proportion of European funds, although not the largest, has been allocated to support innovation.

23. After acknowledging the intertwining of innovation and competitiveness for the EU economy, we need to draw attention to matters pertaining to the protection of intellectual and industrial property. On the one hand, **the single EU patent should give easier access to the EU Internal Market especially to small and medium-sized entrepreneurs**. Without the single patent enterprises are forced to apply for patents individually in each Member State, which increases the cost of being a part of the EU Internal Market. This puts small and medium-sized entrepreneurs at a substantial disadvantage.
24. On the other hand, we need to note that the single EU patent facilitates market entry not only to the European firms but also to large non-EU corporations. As a result, such instrument may enhance competition in the internal market for large non-EU firms, mainly American and Chinese. Moreover, it is also worth recalling that a patented product or process may not be freely developed by other firms, including those in the SME sector, which restricts innovation. Therefore there are some doubts if the single patent can really support innovativeness of EU entrepreneurs. However, it is unquestionable that, as it was already mentioned, it can ease access to the EU Internal Market to SMEs.

### *A fair and competitive Internal Market for entrepreneurs and Member States*

#### ***Internal Market Response to Subsidies for non-EU Entrepreneurs***

25. The economic crisis has provoked not only many EU Member States, but also non-EU countries, to instigate **interventions in the market**. These have resulted in more State aid, which although it did not directly target enterprises from the EU real sector but, by subsidising the financial sector, gave them access to working capital loans. Hence, despite the fact that formal support from the government was limited, the interventions could alter the EU Internal Market competition rules to a considerable extent. On the other hand, many states which joined the EU in 2004 and later received relatively large public resources from the Structural Funds.
26. Similar moves, although on a much broader scale (no data is available due to the evaluation methodology of assistance funds, their values and compliance with competition rules) were taken by the Asian and American markets. The only legal measures which can be applied in such circumstances are those which fall within trade policy (anti-subsidy procedures). Thus, **we would need to analyse binding trade procedures from the point of view of their simplification, especially for the SME sector, so that they could prevent imports of dumped or subsidised goods in order to protect EU entrepreneurs**.

#### ***Internal Market Response to Protectionist Measures of the EU Member States***

27. Over the course of the economic crisis, the EU Member States have started to resort ever more often to **protectionist measures**. In the first place, purposefully incorrectly implemented EU legislation, or put in place more restrictive requirements which are harder for entrepreneurs from other countries to comply with. With respect to the movement of goods, such measures include the introduction of additional, burdensome veterinary and sanitary controls for agricultural and food products, or taxes on products not manufactured in a given country. In services, there can be additional requirements for delegated workers or service providers, which obviously distorts the idea of the Internal Market.
28. Hence a justified doubt arises whether all the barriers identified back in 1992 have been removed, and whether new ones have not been introduced. Considering the fact that in many conclusions

of the Council of the European Union - adopted as a response of the Member States to the documents of the European Commission - we could find statements that enable the adoption of “justified and proportional barriers”. The evaluation of such restrictions was usually left to the Member States and it seems that the European Commission has taken insufficient actions in this area.

29. In the face of so many measures undertaken in the Member States, we need to admit that these initiatives should be understood as the structural juxtaposition of the freedoms of the Internal Market and reflect nationalistic visions of the protection of domestic markets. **Consequently, we could expect that a lack of involvement of the Commission in restricting national protectionism - even in single cases and irrespective of their real scale and economic impact - may restrict all other freedoms and prevent the most innovative entrepreneurs from taking advantage of them.**

### *Legal Framework and enforcement policy in the EU Internal Market*

30. The EU Internal Market, established under the 1992 Programme, came about as the implementation of the provisions of the Treaty establishing the European Economic Community. The Treaty provided for the completion of a common market within 12 years. However, only after a variety of barriers to the movement of goods, services, capital, and workers had been identified was it possible to specify the scope of necessary changes to the legislation at both the EU and national levels.
31. Despite a series of legislative measures that have been adopted, the Internal Market project still remains uncompleted. The 1985 White Paper on completing the Internal Market listed 282 legal acts to be adopted as Directives to harmonise the legislation of the Member States in order to eliminate the major (but not all) differences. It should be noted that the Directives, due to their legal nature, should facilitate the implementation of EU regulations while taking account of the characteristics of the various national legal orders. Apparently, from the viewpoint of competitive and effective entrepreneurs, the optimal solution would be to have uniform EU legislation binding upon all Member States. It is worth highlighting that this is exactly is the objective of the Directives which, if implemented correctly, should eliminate the instrumental differences among Member States.
32. However, according to the Commission’s scoreboards we can observe that there is an implementation deficit, and that a delay in enforcement is widely tolerated. Unfortunately, due to the aforementioned problems, national legal instruments designed to transpose the Directives have often become tools of discrimination on grounds of the origin of goods, services or the nationality of an entrepreneur or worker within the EU. Bearing in mind that even an opposing vote in the Council does not authorize Member State to not implement binding EU law, we should apply a “zero tolerance” approach. The decision of the Heads of State or Government to ‘only reduce’ the implementation deficit can be seen as a political compromise. We should rather, however, expect a full elimination of - and not only a reduction in the number of - unimplemented directives. Every single non-implemented EU law leads to entrepreneurs or consumers losing their profits or wasting their money, skills, and abilities on struggling with unnecessarily restrictive regulations in the national law. This leads us to the conclusion that **the Internal Market needs a more strict enforcement policy, one which should eliminate existing barriers to the free movement of goods and services. Otherwise all the best actions taken within the Strategy, but without a rapid and appropriate implementation in EU law in Member States, will not attain their main goals, which in economic terms is an improvement of competitiveness, and in political terms assuring a spirit of unity.**
33. It seems that in the face of the Internal Market segmentation caused by erroneous or incomplete implementation of the EU legislation into the legal orders of individual Member States, an optimal solution would be to gradually, whenever possible, **replace Directives with Regulations** to ensure

the uniformity of rules expected by entrepreneurs and consumers alike. At the same time, EU legislation should be simplified, meaning there should be fewer legal acts in force and also they should be clear to those to whom they are addressed. Nowadays, the EU is perceived as an over-regulated economic area, hence the idea of replacing Directives with Regulations should be accompanied by **the reduction of the body of (EU and national) legal acts binding in given social and economic areas**. In this manner the addressees of regulations (mainly entrepreneurs but also consumers) could easily learn the requirements of an individual market of goods and services, evaluate the feasibility of entering them, and assess the transborder aspect of an offer. Under the present situation the plenitude of different legal acts that regulate one economic area constitutes a *de facto* barrier to entry for new firms. On top of that, the lack of legal certainty when it comes to the binding force and interpretation of EU regulations in individual Member States restricts the expansion of SMEs within the EU Internal Market.

34. We also need to note the necessity to take account of factors internal and external to the EU in its legislation. Impact assessment studies drafted by the European Commission, in cooperation with entrepreneurs, consumers and research centres in the Member States, would be good tools to ensure that this is done. **Taking into account that the involvement of individual Member States and stakeholders in consultations launched by the European Commission is rather limited, the latter should extend its contacts in key economic areas to research centres from all the EU Member States.**





## The Future of the EU Internal Market

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### List of discussants:

- **Prof. Elżbieta Kawecka-Wyrzykowska, Ph.D.**, Warsaw School of Economics, Collegium of World Economy, Jean Monnet Chair of European Integration,
- **Prof. Grażyna Wojtkowska-Łodej, Ph.D.**, Warsaw School of Economics, Collegium of World Economy, Institute of Foreign Trade and European Studies,
- **Prof. Anna Zielińska-Głębocka, Ph.D.**, University of Gdańsk, Faculty of Economics, Economics of European Integration Chair,
- **Prof. Krystyna Gawlikowska-Hueckel, Ph.D.**, University of Gdańsk, Faculty of Economics, Economics of European Integration Chair,
- **Prof. Ewa Małuszyńska, Ph.D.**, Poznań University of Economics, Faculty of International Business and Economics, Department of European Studies,
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- **Maria Celina Błaszczuk, Ph.D.**, University of Łódź, Institute of Sociology, Department of European Culture Research,
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