

# **The EU Internal Market in Comparative Perspective**

**Economic, Political  
and Legal Analyses**

Jacques Pelkmans, Dominik Hanf & Michele Chang (eds.)

**COLLEGE OF EUROPE**  
*Studies*



P.I.E. Peter Lang

The European Union's internal market is the “hard core” of integration and by far its most precious asset. However a number of deep-seated factors have impeded the development of a systematic and wide-ranging academic research programme dedicated to the internal market. The purpose of this book is to begin to address this predicament with a tri-disciplinary analysis of the internal market, as scant opportunities for mutual understanding and learning across disciplines (law, economics and politics) currently exist. Internal market scholars from all three disciplines collaborated on this project, in which each chapter was read and critiqued by a scholar from a different discipline. The editors trust that this unique exercise reveals to many readers the enormous potential for in-depth and continuous analysis of the internal market and all that it entails. It also provides an accessible text for students and scholars from all three disciplines interested in the internal market.

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Bruxelles · Bern · Berlin · Frankfurt am Main · New York · Oxford · Wien



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## Preface

The College of Europe participates in EU-Consent (<http://www.eu-consent.net>), a huge research network coordinated by Professor Wessels at the University of Cologne. In this framework, the editors carry out a project on the EU Internal Market which is co-funded by the European Commission (through EU-Consent) and the College of Europe.

The present book contains the results obtained after two years. Its concept and content were first discussed in a workshop (May 2006) and then more fully developed in a conference (April 2007), both organised in Bruges. The purpose and the structure of this publication are described in Chapter 1.

We would like to thank the contributors – but also those colleagues who discussed with us the preliminary papers during the preparatory workshop and conference. Editors and authors have greatly benefited from the observations and suggestions of Jacques Bourgeois, Juan Delgado, Eric de Souza, Uyen Do, Aylin Ege, Brigid Gavin, Laurence Gormley, Inge Govaere, Adrienne Héritier, Elise Muir, Rodolphe Muñoz, and Bastiaan van Apeldoorn. We also benefited from Jacqueline Minor's explanations of the Commission's Single Market policy.

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Bruges and Natolin (Warsaw), 28 January 2008

*Jacques Pelkmans, Dominik Hanf and Michele Chang*



## CHAPTER 1

# Introduction, Purpose and Structure

Jacques PELKMANS, Michele CHANG  
and Matteo NEGRINOTTI

### 1. The pre-dominance of the internal market

Few, if any, scholars of European integration would dispute the vital importance of the EU internal market. Despite Jacques Delors' confession that it was difficult to fall in love with the internal market, he swiftly grasped the fundamental significance of its deepening and widening for the pursuit of the major socio-economic objectives of the EC Treaty, as a robust basis for the position of the Community in the world economy and as a credible leverage for the testimony of European values in world politics. The Single European Act's 1992 programme constituted a major step in the advancement of the four freedoms mentioned in the Treaty of Rome (the free movement of goods, services, capital and labour). Moreover it ushered in an era of Euro-phoria that included not only the internal market but also allowed for important policy changes (such as the extension of the qualified majority vote). In addition, previously under-developed issue areas piggy-backed on the momentum behind the 1992 programme, giving environmental and social policy greater prominence than they had previously enjoyed. Given the significance of the Single European Act and the strides made towards completing the internal market, what often gets lost is the fact that, while the 1992 programme has been completed, the internal market has not. Despite the rhetoric, important exceptions prevent the four freedoms from being completely realised. For example, the vast services sector is a vital one to the EU economy yet it was only very selectively part of the 1992 programme. Indeed, much work needs to be done before the work of the internal market can be considered as finished.

Two decades later, and long after the EC-1992 programme had been completed, the EU internal market shows further deepening and widening. This has largely been accomplished by a series of seemingly unconnected or technical measures following the December 1993 White Paper on Growth and Competitiveness as well as several follow-up

‘internal market strategies’ between 1999 and 2006, sometimes blended with the Lisbon strategy (initiated in 2000). It also resulted from a continuous stream of new case law, in particular in sensitive markets or for predominantly national policies where the EU legislator appeared inapt, or simply failed, to address the question what the proper combination of free movement (or, establishment) and common regulation had to be while respecting national competences. Unlike the EC-1992 programme that was comprehensive in its goals as well as its rhetoric, subsequent measures to strengthen the internal market were piecemeal in nature. Nevertheless, the EC-1992 ‘completion’ ranks high among the greatest of the EU’s success stories and its accomplishments are significant despite the fact that the internal market is still work in progress.

The internal market and the prosperity it has helped EU citizens to reach, has served as a magnet to ever more European countries. From a Community of 10 Member States in the early 1980s, it has meanwhile grown to a Union of 27 Member States and 500 million people. Whilst the former communist countries eagerly sought an anchor to ensure human rights, democracy and other values the EU stands for, they opted for the EU as a presumably more effective route than merely the Council of Europe and the OSCE. For these countries this anchor function was and is inextricably linked with the benefits of the EU internal market. Given the values of the Union, Eastern enlargement is about prosperity. The internal market serves as a magnet because it greatly facilitates catch-up growth of Central European countries, given the institutions, the rules, their credibility and the very deep market integration with its endless opportunities. Lest it be forgotten, also Austria, Finland and Sweden switched from EFTA to the EU in 1995, motivated predominantly by the desire to be a full-blown participant in the internal market, rather than enjoying only partial benefits via the EEA without having much of a say in regulatory decisions.

## **2. A lack of interest?**

In the light of the overwhelming significance of the internal market for what the EU has become today, one might perhaps expect the academic interest to be similarly massive. However, this is not the case, especially not once the formative years of the EEC were over. After a second wave of academic research inspired by EC-1992, relatively little systematic work has been published. In telling contrast to the multitude of centers or institutes studying EU domains such as competition policy, trade policy, transport policies, environmental policies, energy, agriculture or even social, the authors are not aware of the existence of a single institute for research on the internal market! Neither has there been

much initiative with respect to the systematic collection of research, evidence, data and reporting on this vast terrain, even if it is next to impossible to grasp the overall dynamics and trends for scholars, policy-makers, national and EU legislators, business or consumers without such an information base. There are (or have been at one point in time) EU Observatories on Textiles & Clothing, on Media, on SMEs and on Social aspects but the far more complicated, extended and multi-faceted domain of the internal market – which nobody can really comprehend and follow properly without major investment in reporting and intelligence – has not been blessed with such a body. Recently, the European Economic & Social Committee has started an Observatory ([http://www.eesc.europa.eu/smo/index\\_en.asp](http://www.eesc.europa.eu/smo/index_en.asp)) with very limited resources and mainly for use of the Committee itself. Moreover, the Kangaroo Group, consisting of MEPs, independents and business executives, has tirelessly called attention to current policy issues and debates with respect to the internal market (<http://www.kangaroogroup.org>) Meritorious as these initiatives are, they are not (and cannot possibly be expected to) filling the gaping holes in information, in following trends and spotting relevant publications in the numerous, often highly specialised sub-domains of the internal market, let alone, in systematically bringing together academic work while stimulating more scholarly contributions.

### **3. Why so casual about the Union's main asset?**

It is interesting to speculate what the reasons are for this lack of sustained interest in systematic and in-depth information as well as research on the internal market. A few difficulties are well-known to begin with. First, the internal market (=IM) is so incredibly comprehensive that, beyond the bare basics of the concept, one can expect a natural tendency on the part of scholars, policy-makers or observers to zoom in on one or a few sub-domains only. The upshot is an incentive structure leading almost everyone to favour a highly splintered approach to the IM, given one's own knowledge or specialisation or profession. Specialisation pays. In contrast, trying to master an overall IM approach seems daunting and the lack of systematic support via Observatories or centers adds to the discouragement. Second, the EU institutions tend to regard the IM as a cake to be cut up in many pieces. Thus, while at least 8 or 9 DGs in the Commission actively deal with the IM on a routine basis and some other ones now and then, there is only one IM Commissioner and numerous sub-domains are not easily recognisable as IM areas, labelled as they are in their own terms. The direct responsibilities of the IM Commissioner are the product of political and bureaucratic processes and have little or nothing to do with a sound conceptual approach to the IM, no matter how crucial the IM is for the Union. To

some extent, this is replicated in the services of the Council and in the committee structure of the European Parliament. There are advantages for such a division of labour but the overall IM idea is merely paid lip service to, in this set-up. Indeed, there is a risk that the IM is felt to be a constraint in pursuing what are regarded as separate policies, rather than that the IM is automatically assumed as the hard core of the Union, with the specific sub-domain just being an instance of ‘positive integration’ necessitated by the overriding importance of the free movements.

Third, in terms of communication of EU achievements to the public, the IM has been presented more than once as being on the way towards ‘completion’ (the title of the EC-1992 White Paper of 1985). Little wonder that many citizens vaguely associate the IM with a ‘done job’, and that the current policy work, the new case law and ongoing research are regarded merely a kind of ‘maintenance’ of an inevitably technical, specialised nature. As a result, the inherent problems of communicating on such a broad area of EU activities have been amplified by the fact that EU citizens have been lulled into disinterest on the IM by the very successes of the past. Fourth, the EU itself is inconsistent as a creator, guardian and beneficiary of the internal market. In important sub-domains of the IM, the prominence of the internal market is ill-recognised and hence it suffers from undue fragmentation. We give two examples as illustrations. In network industries the EU has accomplished far-reaching liberalisation (and the accompanying regulation and competition policy refinement needed). However, these developments are more often than not connected to EU competition policies (which is to some extent correct once the liberalisation has gone ahead) whereas the first and foremost EU motive is and must be the IM! It is the IM which provides the EU with the legal basis to intervene in the first place – the Union is not competent to arrange national liberalisation, that is, without the IM. Once a potential for cross-border economic activities is restored by forms of liberalisation in a Member State, can EU competition policy begin to come into play. However, this logical sequence is not adhered to: even today the IM for network industries is profoundly fragmented (whether in broadcasting, telecoms, postal, electricity & gas, rail and even airlines) despite the progress in liberalisation, EU regulation and competition policy.

The other example concerns an even vaster area of economic activity: the truncated IM for services. In services, not only have blatant breaches of the IM rules and practices long been left unaddressed until, finally, a services strategy was adopted as a part of the Lisbon strategy in 2000, the hectic debates on the so-called Bolkestein draft directive of 2004 clarified that deep-seated misgivings about the IM persist in many quarters throughout the Union. In the Council and the European Parlia-



ment, the IM for services and the connected cross-border labour movements were frequently portrayed as a threat rather than the very foundation of the Union. It cannot be surprising in such a socio-political climate that a very broad category of derogations as well as restrictive interpretations of the IM rules in the directive were needed to have the directive finally adopted, although this largely prolongs the costly fragmentation of the IM which had to be overcome in the framework of the Lisbon strategy, if not the Treaty itself!

#### **4. The role of internal market scholars**

The four obstacles to sustained interest in systematic and in-depth information and research about the IM are probably not exhaustive. Nevertheless, the authors are of the view that these four reasons do explain the deep-seated inhibitions in the EU to be sufficiently transparent and well-informed about the internal market as a whole and more welcoming to sustained academic and other analysis. The upshot is counterproductive in the medium and long run: the IM as such is neither understood nor appreciated for what it is and what it signifies by a wider public throughout the EU, including large sections of the media and even national or sometimes European parliamentarians. This was exemplified by many debates during the 2002/03 Convention on a constitutional Treaty, the numerous misunderstandings and errors in the services discussions in the period 2004 – 2006 and the frequent caricatures of the IM in the French referendum debates in 2005 (and the fact that they were hardly withspoken), to mention only a few harmful instances. No communications strategy can ever even begin to substitute for such major shortcomings. The IM is the Union's most important asset and it should go without saying that it deserves permanent high-quality information and good asset management, to the benefit of its principal: the EU citizens.

The present book is written by internal market scholars. They might be capable of helping to offset to a modest degree the problematic consequences of the second, third and fourth reasons mentioned above. But this would hinge on the presence of a large, well-resourced and motivated network of reputable scholars permanently engaged with the IM. Unfortunately, however, the first disincentive mentioned above amounts to a powerful barrier to engage in sustained research and effective, durable networking on the internal market at large. The editors of this book seized on the opportunity offered by the huge CONSENT network to attempt to pursue a network approach for the three years that the funding provides. The idea behind the project is to revive a systematic academic analytical attention for the EU internal market. Of course, a single book cannot hope to accomplish such a

revival alone. It is planned to produce additional products during this CONSENT project. More important still, the authors hope to ignite a renewed interest in the overall theme across the EU and beyond.

When setting out to prepare this venture, it rapidly turned out that there is no such ‘thing’ as an ‘internal market scholar’ in the literal sense of the word. Academic analysts working on the IM do exist (although their number would seem to be small due to the disincentives mentioned) but they are either IM lawyers, or economists interested in the IM or political scientists studying the politics connected to the IM. Thus, the question was raised whether it would be fruitful to bring no less than three disciplines together for a serious exchange on the nature and properties of the EU internal market. It is well-known that interdisciplinary studies are intrinsically difficult to conduct. The investment in one another’s methods of analysis and thinking as well as the background literature is simply too large to pay off for most scholars. In addition, even if one succeeds in having a profound and truly mutual exchange in all openness, the published contributions are likely to rank low in the esteem of one’s own discipline. In today’s climate of almost permanent monitoring of publications in learned journals, interdisciplinary work is easily dismissed as a waste of time or an escape from the rigours of one’s mono-disciplinary peer review. Nevertheless, our preliminary discussions clarified that the notion and meaning of the IM in each one of the three disciplines are far from identical. The common ground we expected to find in the same theme was less common than first taken for granted. The academic approaches would appear to differ, too – perhaps not surprising when working within three distinct disciplines but the point is that these distinct approaches entail distinct ways of looking at what we all conveniently call the internal market.

Examples of significant interaction between the three disciplines on IM topics abound. In the debates about the Bolkestein services draft directive, the legal need to do away with major violations of free movement and free establishment (also following ever firmer case law) while respecting certain derogations seemed obvious but (initially) few, if any, hard economic studies were available to support the claims (in itself, a curious omission after more than four decades of free services movement in principle); by the time these studies had become available and did indicate net welfare gains, the political legitimacy of the proposal had been seriously damaged, so much so that it inflicted more general damage on the Treaty discussions too. In the case of the proposed but never realised Community patent, the economic case is very powerful not only in terms of major costs prevented year after year but also in the dynamic sense of stimulating more innovation driven by the lure of a giant internal market, in particular for SMEs. This is one prominent

example among several where legal and political obstacles have been thrown up for so long and on such flimsy grounds, even at the level of prime ministers in the European Council. A third example is ECJ case law in areas which are broadly spoken under national competences, but where the boundaries of the exercise of such national powers have to be defined so that the internal market is not fragmented more than is indispensable. Here, the economic meaning of boundary cases is usually trivial but the political sensitivities turn out to be great, in particular because ECJ case law may undermine national political compromises. Such illustrations may serve as reasons why the editors became convinced that the IM as a whole deserves to be analysed having all three perspectives in mind. This book is a first result of this conviction. The editors have attempted to resist the powerful tendency in every discipline to conveniently retreat into one's own jargon and traditions, and to reject the very low tolerance for exposure to ideas, emphases and approaches used in the other two disciplines.

## **5. Crossing disciplinary boundaries for the internal market**

In stepping out of the 'protected' segmentation of European Integration studies, there is an immediate need to get some idea about the differences between the three disciplines as to the concept, place, meaning and importance or salience of the internal market. In the following, all we can do is to provide just a flavour of how distinct the approaches or perspectives of the internal market or significant parts of it are.

Between European law and economics, one stark contrast is undoubtedly the interest in precise interpretation (in case law and given a strong attachment to the treaties) versus the focus on broad means-end relationships, whether in economic theory or empirical economic analysis. These distinct approaches cause, perhaps unintentionally, the disciplines to develop appreciable barriers when communicating. We give three examples for the sake of illustration. First, whereas European law has had some difficulty in accepting that the 'internal market' and the 'common market' are materially the same, not least because the presence of both terms in the Treaty turns out to entail some institutional consequences, practically no economist would seem to be even aware of a possible distinction between the two, for the simple reason that it would not make any conceptual difference in economic analysis. Second, economics has long treated 'services' (except for two sectors, financial markets and transport) as the 'cinderella' of EU economic analysis – both theoretically and empirically<sup>1</sup> – whereas European law

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<sup>1</sup> See Pelkmans, 1992, strongly encouraging fellow economists to invest in services research as a way to understand the potential of the IM better.

and especially the ECJ have been actively engaged for at least two decades in attempts to facilitate the deepening and widening of services market integration in considerable detail. Third, European law and the economics of European integration have developed sharply different, if not sometimes outright opposed, approaches and appreciation of a central principle of EU integration, namely, subsidiarity. Whilst EU lawyers regard subsidiarity as a procedural principle, often with misgivings about the ‘fit’ of the principle in the legal and institutional traditions of the EU, economists see and use it as a functional assignment principle for what ought and ought not be done at the EU level and why.<sup>2</sup> On the other hand, in an important subset of European law – especially competition law, EU regulation and network industries, all three of major importance for the internal market – economic analysis and EU law are no longer ignoring one another. Stronger, more and more attention is given to suitable combinations of the two disciplines when preparing EU regulation and regulatory impact assessment, in ECJ cases and in EU and national competition policy.

When it comes to political science, the contrast with the other two disciplines is first of all that the internal market has not figured as a prominent and well-researched subject in political science except to some extent in response to EC-1992 (see also Schmidt, in this volume). On a fairly high level of generality, the internal market does play a major role in the field. The ever lasting debate between (modern) neo-functionalists, and (as some denote them) neo-supranationalists, on the one hand, and (liberal) neo-intergovernmentalists, on the other, hinges in no small part on key moments, critical conduct of key actors as well as long-run processes (exposing functional linkages arising from pressures generated by ‘integration deficits’ in the *acquis* or unsolved issues) about the EU internal market. Nevertheless, political scientists seem more inspired by soft topics like ‘new’ forms of governance in Europe or relatively weak and very partial EU powers such as social policy than by the internal market. If and when political scientists show interest in the ‘hard core’ issues of the EU, apparently they seem drawn much more to common policies (trade, agriculture, environment, less so for transport and competition policy) and explicit regulation – with the visible political conflicts of interest or political bargaining in Council and the European Parliament – rather than the four free movements and the right of establishment, no matter how paramount these are for the internal market. One might see this as understandable since the several dozens of typical internal market directives every year prompt political

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<sup>2</sup> See Pelkmans, 2005, for a juxtaposition of how the two disciplines deal with subsidiarity.

and social lobbying of great variety, not to mention the colourful and continuously changing coalitions among Member States. Yet, there is a lot of social or political anxiety about, or support in favour of, as the case may be, cross-border liberalisation issues based on the four freedoms and establishment, not seldomly combined with competition concerns. This can even go so far as irritation about 'Brussels' becoming too powerful, even if the constraint on national regulation or (say) a regulatory tax is nothing else than the free movements themselves or mutual recognition. This so-called negative integration does not give rise to any rule or intervention from 'Brussels' and still it is sometimes perceived as 'centralising' because it may affect national 'institutions' or entitlements expected to be outside the realm of the EU level. In areas such as health, education and media – normally regarded as national or even regional competences – such perceptions can lead to politicisation of what the Treaty logic would treat as judicial.

With respect to free movement of persons, political scientists and lawyers tend to display a common interest in Justice & Home Affairs (with only incidental contributions from economics). At times, economists and political scientists find common ground in the political economy of specific internal market issues. Nonetheless, where the relatively smooth functioning and further development of the internal market does not ignite much political friction or (say) blocking minorities in Council, there is a suspicion that political science practices a kind of benign neglect. Political integration theory tells us that much of this 'a-political' work hinges on a 'permissive consensus' in EU countries leaving great discretion to the decision-making elites without endangering the political legitimacy of the EU project. But the permanent absence of explicit political debate because of the permissive consensus runs the risk of slowly eroding mechanisms of accountability and eventually the consensus itself. The eruptions of resistance and politicisation in the years 2004 to 2006 about the free movement of workers (but this time with a huge wage differential between origin and destination), the services directive (and indeed the labour market issues connected to it) and the perception (of some) that the internal market serves as (an unwanted) agent of globalisation, with the low-skilled blue collar workers in the West of the Union possibly being the losers in all three instances, have quite suddenly done away with the permissive consensus, impeding progress in the internal market. For economists attempting to show the economic rational of these steps forward as well as for European lawyers attempting to apply the Treaty and case law logic, the 'new' politicisation came rather unexpected. Unlike the typical political economy aspects of many directives, this politicisation is about the political legitimacy of (aspects of) the internal market and, by extension,

about attempts to adopt a Treaty which would further facilitate what was now distrusted.

There might also be a *fundamental definition problem* for the internal market which plagues all three disciplines, but in distinct ways. The actual realisation of the internal market requires significant degrees of liberalisation of cross-border movements and considerable freedom to establish (oneself or a company) in other Member States. Such cross-border liberalisation is a necessary, not a sufficient condition for the EU internal market. Indeed, this basic requirement should *not* be confused with the *concept* of the internal market in the EU, neither in the Treaty nor in actual practice. The internal market is defined by what it takes to ‘function properly’ as the Treaty calls it. This can only mean, logically, that *both* liberalisation and regulation (whatever form this takes) are part and parcel of the internal market, *as well as* those common policies indispensable to pre-empt or avoid distortions or fragmentation of that internal market.

But this conceptual logic is not always applied in the three disciplines. More often than not, the IM is regarded as ‘one of many common policies’. However, the very reason that these policies are common is derived directly from the idea that the internal market has to “function properly” for it to serve as the means to pursue effectively the aims in the Treaty. The point is of particular importance in political science where many studies are made of specific policies, without much of a (or, any) link with the IM. Common policies are hardly or not recognised as an inevitable result of a functional liberalisation logic. Rather, they are studied in terms of substance and this tends to be subject to political strategies, of interest to political scientists. This would suggest that political scientists tend to avoid the IM not only because it is technical but even more so because it tends to be functional and not so attractive from a political perspective, always interested in power relationships and their drivers.

Lawyers and economists may be more comfortable with the notion of a well functioning IM but it is only recently that more ‘economic’ (often, effect-based) approaches are beginning to be accepted in European law, including competition policy guidelines, and in regulation (e.g. in regulatory impact assessment). However, it is questionable whether and to what extent economics of European integration and European law are growing closer to and more familiar with each other. The resistance in both disciplines is profound and, it ought to be underlined, the legal and economic ways of reasoning remain quite distinct. Today’s position might be summed up in the formation of an ‘enclave’ of economists and lawyers willing to invest deeply in order to be able to work together on the triptych ‘competition policy, regulation and net-

work industries (where the two are combined without exception)'. In the internal market the importance of the triptych is beyond any doubt, but the requirements for analysts to contribute effectively here are very demanding indeed. The enclave is therefore no more than a small elite and it seems to exert only a limited influence on the disciplines of European law and the economics of European integration at large.

Giving merely a flavour of how the three disciplines see and work with the IM is by definition partial and incomplete. It is worth exploring much more systematically and that is precisely an important reason to publish this book as an attempt to begin doing so.

## **6. The purpose and structure of the book**

The purpose of this book is to enhance our understanding of the EU internal market by studying this vast area of European integration from the perspective of European law, EU political science and the economics of European integration together. The limitations or omissions of each discipline in comprehending the nature, logic and development (or, stagnation) of the internal market are clarified by direct exchange and complementarity, whilst a far richer perspective of the predicament of this foundation of the Union emerges. The cross-fertilisation is inspiring, indeed so much so that the editors plan to organise a follow-up.

Given the exploratory nature of this tri-disciplinary approach to the EU internal market, the editors opted for a simple and recognisable structure. The book focuses on four core subjects, dealt with by scholars from the three disciplines. These core subjects are: (1) the basic approaches to the internal market in the three disciplines, juxtaposed in part I; (2) a closer inspection of the EU internal market for services, conducted from an economic and from a legal analytical perspective in part II; (3) surveys of the external dimension of the IM in the three disciplines in part III; (4) and an attempt to learn lessons from the internal market approaches in Canada and the USA, with the two authors blending legal/institutional, economic and political aspects.

All chapters have gone through a process of discussion by scholars from the other two disciplines, in addition to the work of the editors, one from each discipline. It is hoped that the result is therefore more inter-disciplinary than multi-disciplinary. One cannot expect the former to be realised to the full extent, since the three disciplines have their own logic, traditions, proven value to serve relevant analysis and jargon. The ultimate value of the book lies in the interest of the readers: are readers only interested in an *à-la-carte* approach of the internal market, where everybody would 'pick & choose' selected chapters – typically the ones from one's own discipline – or does one seek the adventure of

trying to grasp what other disciplines have to say about the very same internal market and thereby complement one's insight? The editors and indeed the authors have made an effort to keep all chapters as accessible as possible for experts in other disciplines. European market integration simply cannot lean solely on a mono-disciplinary perspective, even if such specialisation is fully justified when it comes to the technical deepening of analysis.

## **7. Introducing the substance of the book**

Basing himself on the fundamental economic idea of a well-functioning internal market among otherwise independent countries, Jacques Pelkmans explores six concepts of the internal market which play or have played a role in the EU. The author also addresses the question how 'deep' in economic terms today's internal market integration is, insofar as the analytical economic literature allows us to establish that. While recognising the traditional view of the internal market as a means to achieve the EU aims, the author tries to flesh out this statement and to find its boundaries by addressing two provocative questions: do we need a more goal-oriented internal market and to which extent internal market can be used as a 'jack-of-all-trades'? He then outlines three alternative economic strategies for deepening and widening the internal market and, in the light of the proposed strategies, provides a first assessment of the November 2007 Commission proposal on a single market for 21<sup>st</sup>-century Europe.

Dominik Hanf depicts the legal concept of the internal market, firstly clarifying the legal meaning of the synthagms 'internal market', 'common market', and 'single market', whose correct comprehension is crucial for understanding and circumscribing EU and Member States regulatory powers respectively. The author then moves to the legal significance of the internal market within the EU institutional setting. In particular, assuming a constitutional perspective, Hanf explains the consequences for the regulatory and de-regulatory powers of the EU stemming from the qualification of the internal market as the economic constitution of the EU.

Political scientists have often preferred examining selected issues concerning the positive integration dimension of the internal market rather than focusing on the internal market as the combined result of negative and positive integration. In her contribution Susanne Schmidt, in contrast, tries to focus on the latter approach in looking at the institutional dynamics, the working and the consequences of the internal market. In particular, the combination of positive and negative integration as well as the role played by the new modes of governance (NMG),



are carefully analysed. Furthermore, the author provides an enlightening analysis regarding the impact of the internal market for Member States, discussed not only in terms of Europeanisation, but also [with reference to the suggestion that the internal market can be conceived as a neo-liberal project as well as in terms of political legitimacy.

Services are nowadays the cornerstone of European economy; however, the internal market for services is still fragmented: a patchwork in Arjan Lejour's words, because of the high degree of national regulation still existing in many sectors. The cost of regulatory heterogeneity is particularly evident in retail distribution and professional services sectors, where cross-border trade and FDI are almost inexistent.

*Eppur si muove!* (And yet it moves): the author shows, however, that cross-border trade and FDI in services are increasing, in particular in those sectors like networks industries touched by the liberalisation process. The economic impact on such a picture (or patchwork) of the services liberalisation as was proposed by the European Commission in the so-called Bolkestein proposal draft services directive is also analysed on the basis of a gravity model, with the innovative use of a heterogeneity index, which falls with increasing liberalisation. Furthermore, the author remarks how European service market integration could represent an advanced model in the framework of the WTO as far as the GATS is concerned.

The legal issues related to the internal market for services are explored in an authoritative contribution by Vassilis Hatzopoulos. The author firstly reviews the jurisprudence of the European Courts showing how the material scope of application of Art. 49 has been stretched by the case-law and how the justifications set forth in the Treaty have been applied, in particular with respect to public service obligations. On the basis of such case-law he highlights how the interpretation of the Treaty provisions on services has shifted from the mutual recognition paradigm to a near HCC (Home Country Control) principle in the field of services. The last part of Hatzopoulos' chapter is devoted to the analysis of the services directive (2006/123), assessing, on the one hand, whether this piece of legislation constitutes a retreat from case-law and, on the other, to which extent it could represent a step forward for the governance of the service economy in the IM.

To what extent and how the IM has been used to promote the common interest at a global scale: these are the queries Peter Holmes, Roland Klages and Sieglinde Gstöhl answer in their contributions, approaching the questions from the economic, legal and political point of view respectively.

Peter Holmes, in chapter 7, lucidly analyses the stages in the establishment of a common commercial policy and its impact on trade flows (from outside the Community), verifying whether it constitutes, as often blamed, the ditch of 'Fortress Europe'. In the second part of his contribution the author studies the internal effects of the external trade policy, focusing in particular on the repercussions from the EU membership of the WTO (in the beef hormones and the GMO cases) as well as from signing Regional Trade Agreements.

The contribution by Roland Klages sheds light on the legal framework underpinning the external commercial relations of the Community. He firstly reviews and pieces together the legal provisions enshrined in the Treaty itself, followed by the role played by the ECJ in the development of the external economic competences of the Community. He then turns to the legal consequences on the Community and national legal orders of the treaties concluded by the Community or to which the Community has adhered to. The analysis is carried out looking at the application to international agreements entered by the Community of two general constitutional principles of the EU legal order, namely: supremacy and direct effect.

The political dimension of externalising the internal market, in its three components: polity, policy and politics, is at the centre of the stimulating analysis by Sieglinde Gstöhl. After having examined the different combinations of these elements, the author applies this theoretical framework to study the agreements concluded by the Community with its many neighbours, showing not only how different they are, but foremost for explaining these differences on the basis of the different mixture of politics, polity and policies. The author also discusses the promotion of the internal market at a global level rather than regionally and draws some political implications of these processes in the conclusions.

In the last two chapters, European market integration is compared with the American and Canadian experiences, which are dealt with by Michelle Egan and François Vaillancourt respectively.

After having highlighted the similarities and differences between the American and the European political, economic and social histories, Michelle Egan carefully analyses the role of the institutional and constitutional framework in the establishment of the American internal market, pointing at the entrenchment between state building and market making as well as the role played in the US by the judiciary system in restricting the powers of state and municipalities in the area of intra-US trade. The author draws some lessons from the comparison of the US and the EU experience with the aim of providing insights for successful market integration in other regional markets.

The building of the Canadian market for goods, services, financial capital and labour is extensively set out by François Vaillancourt assuming a truly tri-disciplinary perspective. The author reviews these four markets showing firstly how the legal and institutional framework has contributed to the different levels of integration achieved in those markets. He then analyses the barriers to trade still in place and their impact on the Canadian economy. The role played by the political arena is also examined in considerable detail, on the one hand, in showing the impact of tensions in the Canadian federation, in particular with Québec, on the integration process at federal level; on the other, by singling out the importance of politics in the unilateral or multilateral initiatives undertaken by provinces in order to foster Canadian market integration.

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## **PART I**

### **THE CONCEPT AND MEANING OF THE INTERNAL MARKET**



## CHAPTER 2

# **Economic Concept and Meaning of the Internal Market**

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### **1. Introduction<sup>1</sup>**

What is ‘the’ internal market, as economists see it? Can economics formulate a single rigorous benchmark, against which Treaty design and the actual practice of building the internal market and making it work well can be assessed? How useful is it to dispose of a benchmark derived from economic theory, if the politics, the institutional complications of a two-level governance and legal aspects are merely considered as exogenous requirements or simply assumed to be appropriate? What are the benefits and costs of the various steps of the long and steep ‘market integration ladder’, whether in ex-ante economic analysis or in ex-post empirical verification? Once all of this would be known, why would the EU want an internal market (=IM) in the first place? Are such merits of the IM still the same today as 50 years ago, and, if not, what is or should be the value-added of a ‘deeper’ or ‘wider’ IM nowadays? Does economics have anything to tell about the political and/or legal prerequisites or complementarities which would render the IM more effective in serving EU goals?

The present paper is inspired by these questions, without claiming that all of them can be satisfactorily addressed, let alone, solved. It aims to facilitate an understanding of the economic approaches to ‘the’ IM idea(s) in the framework of this tri-disciplinary project. However, because ‘the’ IM is a massive undertaking and refers to an incredibly

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<sup>1</sup> I am indebted to the conference participants for discussion and, in particular, to Michele Chang for very detailed further comments.

wide spectrum of markets and activities (with profound changes over time as well), it is inevitable to limit the exposition to a survey of the essentials.

The structure of the paper is as follows. Section 2 hopes to stimulate a conceptual discourse by distinguishing six different meanings of the IM, with the sixth one being the economic benchmark in an ideal setting. Section 3 looks at what the IM is meant for: the IM as a means, indeed as a means to what? This is done, first, by studying the EC Treaty design, followed by the quest for a more goal-oriented IM (presumably, instead of a legalistic or too instrumental approach). Thirdly, one can look at the IM as the ‘workhorse’ of the EU, serving many masters: a true ‘jack-off-all trades’. Apart from some Treaty objectives, there is discussion about services (in a Lisbon context), innovation, social Europe and globalisation. Also a workhorse can be overtaxed.

Section 4 briefly considers the future of the IM: how can deepening and widening be pursued best, and is a functional, economic strategy feasible? Three stylised strategies are considered and the November 2007 Commission proposals are briefly assessed.

The final section sums up the conclusions.

## **2. Concepts of the internal market: an economic perspective**

In economics, a market is an abstract notion of demand and supply coming together and determining price and non-price aspects of transactions. Linked to location and space, price and non-price aspects (e.g. quality, newness, etc.) are determined over the relevant geographical space. It is then a minor step to define market integration (Pelkmans, 2006: 6) “[...] as a behavioural notion indicating that activities of market participants in different regions or Member States are geared to supply-and-demand conditions in the entire Union”. Later in this section, we shall explore a little further what the profound implications of this definition are. To some degree it can also be subjected to empirical measurement.

This ‘classroom concept’ was not in the minds of the founding fathers of the Community, the authors of the Spaak report (1956). Nevertheless, as shown by the routine application of economics to the definition of (relevant) markets in competition policy, there are ways to bridge the seemingly wide gulf between the theoretical notion and actual practice, also in the EU context. A possibly useful approach to narrow the gap in a stepwise fashion is to consider, in a stylised form, how the internal market notion in the EU was deepened and widened from a minimal initial idea to the much more ambitious IM of today.