The Monti Report: A Critical Appraisal

Introduction

It is widely remarked that the recession adversely impacted the European building process. The main impact was due to the abrupt transition from a moderately positive growth rate to a markedly negative one, which thoroughly disrupted priorities, both at the European Union level and at the member States'. Moreover the crisis—which erupted in 2007 when the subprime bubble deflated in the U.S., infected the rest of the economy in the following year and degenerated into a sovereign debt crisis in Europe in 2010—prompted a deep re-thinking on the paradigms underpinning the EU-building effort, particularly the principle of liberalization and the notion of the single market. To ascribe the present difficulties exclusively to the impact of a single event—however sweeping and dramatic—would be naive. In fact, the integration of the European markets appeared to be stalling long before the onset of the crisis. A number of events of a strictly political nature—the gradual shift of the focus of the EU efforts from the opening to the regulation of markets, the demise of the Bolkenstein Directive on services, the scaling down of the objectives of the third EU energy package, to mention just a few—was already pointing to a standstill—if not the outright exhaustion—of the drive provided by EU institutions.

We must also note that the trend towards liberalization coexisted—perhaps ever since the establishment of the EU—with an opposed trend towards harmonization. Thus, if on the one hand there was the attempt to defang the interventionism at the national level (as witnessed by the several markets which were partially opened to competition only—or mainly—thanks to the effects of a EU Directive), of the other hand the attempt emerged to integrate the several national regulation—particularly in the taxation realm—as well, to secure a more effective implementation of public policies and to pursue the EU's "general interest." whatever this may be. In truth, the European building process was significantly less linear and internally consistent than it may appear. To conclude—even granting a little simplification—that the "liberalizing" trend yielded to the "harmonizing" one would be wrong. Both trends are historically present in the Commission's stance, and both are internally contradictory: in a few cases the harmonization was apparently instrumental to liberalization (as an example, to make compatible a technical standard), whereas in other instances an attempt to harmonize was marketed as "liberalization" (as shown by the insistent temptation to over-regulate many industries).

The crisis, however, did undoubtedly reinforce a pre-existent trend, nudging the European Commission in the "harmonizing" camp instead of into the "liberalizing" one. At the same time, the urgent task of facing the consequences of the crisis has brought to the fore the several Member States and relegated the Commission to a secondary role.

It is against this background that the newly reappointed President of the European Commission José Manuel Barroso asked the former EU Competition Commissar Mario Monti to draw a report and advance "options and recommendations" to re-launch the European Union internal market. The report

> highlights that today the single market is at a critical juncture, as it faces three challenges (chapter 1). The first challenge comes from the erosion of the political and social support for market integration in Europe. The single market is seen by many Europeans—citizens as well as political leaders—with suspicion, fear and sometimes open hostility. Two mutually

> reinforcing trends are at work: an "integration fatigue", eroding the appetite for more Europe and for a single market; and more recently, a "market fatigue", with a reduced confidence in the role of the market. The single market today is less popular than ever, while Europe needs it more than ever.
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> The second challenge comes from uneven policy attention given to the development of the various components of an effective and sustainable single market. Some of the difficulties encountered by the single market in recent years can be traced back not only to the incomplete "welding together" of the national markets into one European market, but also to the unfinished business on two other fronts: the expansion to new sectors to accompany a fast changing economy and the effort to ensure that the single market is a space of freedom and opportunity that works for all, citizens, consumers and SMEs.
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> A third challenge comes from a sense of complacency that gained strength in the past decade, as if the single market had been really completed and could thus be put to rest as a political priority. The single market was felt to be "yesterday's business", in need of regular maintenance but not of active promotion. The shift of attention away from the single market was further strengthened by the need to concentrate the EU's political energy on other challenging building blocks of the European construction: monetary union, enlargement and institutional reforms. With the entry into force of the Lisbon Treaty in January 2010, all the three major priorities have been achieved, and there is no reason to deflect attention away from the single market. On the contrary, the correct functioning of the monetary union and of enlargement call the single market back on stage.

The report, titled "A New Strategy for the Single Market. At the Service of Europe's Economy and Society," is characterized by a number of pointers aiming to strengthen the internal market, as well as to build the internal market or to create a consensus thereto. It is mainly a restatement of the goals already adopted by the European Commission and that could not be fully achieved, either for technical reasons or for the opposition of national governments and assorted vested interests. However, not all the proposals contained in the Monti Report are consistent with an authentically market perspective. Behind Monti's consideration, in fact, underlies the notion of a "grand bargain:" to establish a single market the member States are supposed to create a welfare safety net strong enough to soften the impact of the transition and sustain consensus. To this end, a grand design of tax harmonization is needed, with the aim of striking at all instances of tax competition within the EU and—most importantly—at the dreaded "tax havens" without.[1]

The costs and benefits of tax harmonization were thoroughly investigated by Istituto Bruno Leoni (IBL) in a recent paper.[2] This Special Report, instead, looks at the Monti report from a different perspective: we'll take Monti's challenge at face value and we'll scrutinize the proposals contained in the former Commissioner's report. As we hope to show in the following pages, our researchers have confronted this task in a thoroughly constructive spirit: we wanted to focus on the proposals of the Monti report—disregarding all the strictly political issues and those related to consensus-building—assessing them from the standpoint of the free-market paradigm that informs IBL's approach. We have often expressed a positive appraisal of Monti's proposals, whereas in other instances we have detected a number of flaws or we have strongly criticized them. We hope to provide a modest contribution to a public debate and wide discussion about our future and thus to play a part—as all of us should do—to the building of a better e more free Europe.

This Special report follows the structure of the Monti Report. Each Chapter's title reproduces the title of the corresponding chapter in the Monti Report (the page numbers thereof are within brackets). We provide a criticism of the analysis and the proposals that can be understood to be a suggestion of an

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1 See, for instance, Mario Monti, "Un patto (vero) per l'Europa", *Corriere della Sera*, 10 May 2009

2 dalibor Rohac, "Tax Competition: A Curse or a Blessing"? *IBL Working Paper*, July 2010

economic or industrial policy. We have chosen not to comment considerations of a strictly political or expedient nature, as well as all the proposals related to the issue of the building of a consensus.

Making the single Market work for citizens, consumers and SMEs

Sez. 2.2 – pp. 40-46 R.M.

Pierre Garello

The Monti Report aims to relaunch the idea of the single market, an indubitably praiseworthy goal, but one that is flawed by two kinds of ambiguites. First, Professor Monti is far from being convinced that market processes are adequate by themselves to yield beneficial results (he seems to think, as an example, that the market itself that caused the crisis) and he is thus convinced that the market can be regulated to correct its excesses. Second, he feels a number of concessions are in order to "sell" his plan to relaunch the single market—concessions to be made mainly to those that see the market as a nuisance of sorts, without raising the ires of the market staunchest defenders. The Report turns therefore to be a balancing act, more political than theoretical. Occasionally it is even difficult to say whether the positions expressed in this document do in fact reflect the deeply-held opinions of the author or are merely an attempt to appease the skeptics.

The second section of Chapter 2 of the Monti Report is titled "Making the single market work for citizens, consumers and SMEs" and is a perfect fit for this twin track. As the Report's author explains, consumers, citizens, and managers of SMEs need to e persuaded that the single market does not work just for large companies, but that they are in fact its greatest beneficiaries, so long as the reforms required to make the benefits real are introduced. In short, this Section deals with what must be done to bring the "common citizens" in the reformer's fold. A praiseworthy effort since—if we must believe the surveys referred to by the Report's author—the public is somewhat unsympathetic to the single market.

Interestingly, the author opens this Section by remarking that consumers and small enterprises are already benefiting from the positive impact of the single market, although they tend to underestimate it. Of course, it is true that we tend to take for granted a liberty to which we are accustomed, and only taking away this very same liberty might open the eyes of the European citizens. Still, quite simply, citizens are preoccupied for the liberties they do not yet enjoy, or for the hurdles they meet in their exercise of this liberty. Or they may find lamentable that these new liberties still haven't yielded the miracles they expected (or that were promised). This observation is thus quite interesting, but regrettably too brief. Before accepting any "amendment" to the principle of the single market—the strategy ostensibly advocated by the Report's author—should not a further attempt to persuade our counterparts be made? Aren't European citizens famously lacking an economic culture and knowledgeable and brave political representatives? Following the author's logic, the new Member States ought to make an about face in their implementation of a society based on private property just because a part of their population is somewhat nostalgic for their Communist past. Such a backtrack would certainly have a devastating effect.

After this observation, the Monti Report takes stock of the current circumstances of the European citizens, emphasizing the room for improvement. In this, it definitely relies upon the report authored by MEP Alain Lamassoure and commissioned by French President Sarkozy in 2008 before assuming the presidency of the EU.

On the whole, the observations and recommendations presented in the report are mostly relevant to the issue. Commendably, for instance, the report emphasizes that the path of persons willing to move to work abroad is strewn with obstacles and that the administrative burden is heavy. The proposal on mobility and mutual recognition of official documents is a distinct improvement. The wisdom of forcing such a mutual recognition might well be questioned: if a Member State decided to be obdurate and hindering those that wish to move in it, who would gain from this policy? A fortiori, the notion of a "European Free Movement Card" that certifies name, nationality, professional and social security status of a European citizen appears a dubious proposition. Would this not be in contrast with the very principle of mutual recognition? Would not amount to a further administrative bur-

den for many individuals (all the more so, since they would still need to produce their passport and the other national papers)?

A number of interesting proposals are advanced to ease the burden for European citizens. More specifically, a stress on the the mutual recognition of the official documents related to marriage, succession and inheritance. However far this may be from explaining the distinct lack of popularity of the single market (as the number of individuals that display a modicum of interest in this issue is still limited), this is a proposal worth of consideration, as is the recognition and the recovery of cross-border debts by residents of a different Member State. Still, it is important to be reminded of the fact that the harmonization of the legal systems of the Member States in these domains—civil law, family law—is not a desirable goal. A far preferable option os to rely on mutual recognition and leave specific laws free to evolve at their own pace.

The Monti Report goes as far as reflecting on the subject of the free circulations of cars. This is an extremely vexatious issue for those European citizens that wish to drive across Europe with a rented car or settle in a different country keeping their own automobile. The double taxation that bears on these individuals should be abolished.

Two other matters touched upon by the Monti Report are worth of our attention: consumer protection and the Statute for a European Private Company. On both issues our appraisal is less than favorable.

To guarantee a "high level of protection for consumers" the Monti Report suggests the regulation of independent intermediaries." As in other instances, the Report's author approach to the market is dubious. Competition, understood as freedom of enterprise, is the best protection for the consumer, whereas the proposal advanced by the Monti Report is liable to advance once again the exceptions to competition that have long prevailed in the EU (as exemplified by the distribution in the automotive market). We assess the single market to be still too undeveloped for the competition between producers and intermediaries to have yielded its positive effects. The several market actors should therefore be granted the time they need to adjust to the new environment, aware that consumer protection through regulation entails not insignificant costs for the consumer itself.

By the same rationale we do not share the author's unease for the small share (8 per cent) of small and medium enterprises involved in cross-border trade. A small enterprise with ten employees is almost necessarily bound to serve the local market and the percentage quoted by Monti appears entirely reasonable. Conversely, the proposal to encourage the enactment of a Statute for a European Private Company does not appear to be a valid one: far preferable is the competition of the several corporate laws—as well as in other legal domains. This is, after all, the system that prevailed in the United States.

Last, the notion of introducing—however prudently—the recourse to cross-border class actions is worth a closer look, but does not appear to be the key to reclaim the confidence of the European citizens in the market.

In brief, the proposals advanced in this section seem to be occasionally sensible ones (as in the case of the plea for a less invasive bureaucracy or the end to double taxation), but they are often characterized by a degree of ambiguity. The author of the Monti Report underestimates the ability of individuals to cope with the threats to the welfare of the consumer and overestimates the ability of lawmakers to influence the mergence of the relevant solutions. Perhaps, all this could be understood as the desire to woo the citizens of the Union that find the notion of freedom of enterprise a bewildering idea.

Shaping Europe's digital single market

(Monti Report 2.3—pages 44-46)

Diego Menegon

The need for a European regulation on the collective management of copyright that Monti believes must be addressed stems from a real legal vacuum that threatens to hinder the development of the new digital markets.

The results that can accrue by the establishment of common rules on the mechanisms for the purchase of pan-European or transnational licenses can potentially harm those States characterized by a greater opening to the market. This may obtain in case a more intrusive regulation is introduced, particularly on the relations between the parts of a contract, thus overstepping the mere regulation of cross-border exchanges.

The contribution that the industry of the collective management of copyright can offer to the establishment of a common European market can be gleaned by its revenues, totaling about 4 bns euro per year. The starting point for a real progress towards a common, open market is to convert into a binding act (if at all possible, a Directive) the Recommendation of May 18th, 2005, in which the Commission favoured the possibility of applying to the collective management of copyright the same UE rules that discipline the free movement of services, and thus the consumer's freedom of choice and the freedom if establishment.

The 2005 recommendation urges the Member States to grant the holders of copyright and similar rights "the right to entrust the management of any of the online rights necessary to operate legitimate online music services, on a territorial scope of their choice, to a collective rights manager of their choice, irrespective of the Member State of residence or the nationality of either the collective rights manager or the right-holder."

A further step forward may be accomplished by demanding the elimination of the remaining legal monopolies in the management of copyright in several European countries (among which Italy, Belgium and Denmark). The same result may well accrue by the competitive pressure and the erosion of market share of public monopolists by the greater efficiency of Copyright Collecting Societies (CCS), despite their lack of legal protection.

The main reason that led a number of national legislators to establish an exclusivity regime for the collective management of copyright is the structure of supply, characterized by significant scale economies, together with the resulting, and natural, inclination to the creation of monopolies. In a confined market, such the several EU Member States', this contention can still be moderately cogent. The evidence, however, convincingly shows that a possible de facto monopoly can be better addressed by a good regulation, as opposed as being legalized outright. The above contention, moreover, becomes untenable as soon as the reference market is widened. In a broader context, such as the European cultural industry's, the greater scale economies can be exploited by relatively few competing collective copyright management societies. This situation obtains in the United States, where three large collecting societies (ASCAP, BMI and SESAC) operate in the collective management of copyright.

The case for a single copyright collecting society in each Member State can only make sense if deployed against the very same national legal monopolies. In a continent-wide market, in fact, a few large competing actors can exploit greater economies of scale than national-level copyright managers.

The raising of a "opposition front" seems foreordained in Strasbourg, where the European Parliament—apparently more responsive to the organized interests of the several national monopolists—was criticizing the line drawn by the European Commission as early as October 2005, under the banner of the protection of the cultural industry, which apparently is best achieved by the several

national copyright collective management agencies. A weak argument, to be sure, the last refuge of whoever feels to be no longer able to plead the notion of natural monopoly to uphold the exclusivity regimes granted in a number of Member States to those very same agencies.

This attempt of closing ranks around the protection of the uniqueness of local cultures barely conceals the intention of safeguarding the monopolistic position of the national copyright collecting societies, whose inefficient operations would inevitably cause them to be trounced by their competitors in an open market.

A common European market, open to competition and embracing the services of collective management of copyright would reward the efficiency of the best CCS and would curtail the intermediation costs currently borne by the authors and the ICT industry of the Continent.

A number of national regulations provide for the transfer to these collecting societies of the revenues generated by the compensation for private copy, namely the fees charged directly on supports and devices (CD-ROMs, DVDs, cellphones and music players) suitable for the recording and reproduction of copyrighted audio-video works.

The fair compensation for private copy is legally sanctioned at EU level in the Directive n. 2001/29/CE of 22 May 2001, despite the distortions which it engenders. Devised to deal with the difficulties of reining the diffusion of pirated copies created with new technologies (from CD burners to file-sharing), it evolved into a resource redistribution tool from the ICT industry to the less efficient collective copyright management agencies. Fixed by statute, the compensation for private copy does not differ form an ordinary consumption tax prom the standpoint of its exaction method. Its mandatory rules run counter the logic of the market and its beneficiaries are characterized by a substantial degree of unfairness. Not only the contention that the supports and devices subject to this tax are actually used to make private copies, but the ultimate recipients of the tax's revenues do not necessarily correspond a compensation to the right holders of the purportedly copied works. The "fair" compensation, bearing on the consumers of the entire European ICT industry, rewards the several national CCS and their members, despite the fact that the works copied by means of supports and devices can be created by foreign artists, member of a different CCS.

It is plainly a measure potentially harming competition and hindering the creation of a single market of digital content and cultural products, and it should be struck out the European law.

As to the information and telecommunications industries, ever more intertwined, Monti's pointers toward a greater network integration and the creation of a Europe-wide radio frequency allocation system ought to be resolutely and staunchly followed. The Monti Report calls for the rules on State aid and competition to be enforced on these industries. The recommendation ought to be more aggressively translated into action than hitherto shown by the EU. The private industry was able to innovate and grow in the ICT market more than in other industries, launching new products and technologies at a pace far outstripping the race of public policies to regulate it. At the same time, it is in the deeper layers of this industry—particularly as pertains to infrastructure and TV frequency—that the rigidity of the governmental management is still mostly felt.

The major network infrastructures in the telecoms industry are owned still today by the incumbent, as a rule a former public monopolist still controlling a large share of the traditional or semi-traditional market.

Such an operator does usually not have strong incentives to invest in its network, which should consequently be made available to its competitors. These, moreover, are constantly liable of suffering an unequal treatment, since the incumbent that manages the network is interested in designing network development strategies aiming to favour—more or less overtly—the market segments where the incumbent's position is stronger. Further, each operator in a dominant position in its national market is driven to protect its position from foreign competitors, which could jeopardize it offering competitively priced services through more integrated networks. There is thus an urgent need to in-

tegrate the directives on electronic communications (telecom package) with the enactment of a regulation on the proprietary, non-replicable network unbundling, encouraging the privatization process of fully or partially government-owned corporations.

In the mass telecommunications industry, in almost every country a government-owned operator accounts for a significant market share, and it often can avail itself of public financing channels hat can be reasonably be seen as an improper form of State aid. Whenever the government can exert a degree of influence on the management of a TV corporation, a clear case of conflict of interest does arise, due to the jealous defence by the government of the information market share it presides over. A true market reform that paves the way towards a Europe-wide telecommunications market and the creation of innovative cross-border networks requires the definition of a discipline for the licensing of public radio and TV services, the privatization of state-owned TV broadcasters and the elimination of those financing channels that today introduce distortions in the news industry, which negatively impact market access and even the freedom of information.

The Single Market and Green Growth: Energy, Climate Change, Environment...

(Monti Report 2.4—pages 47-49)

Carlo Stagnaro

In dealing with energy and environmental (particularly climate-related) issues, the Monti Report does not move significantly away from the usual rhetoric of the European Commission. A number of propositions about energy and the environment are correct, but advanced in a tired and not particularly assured way. Other assertions show that the Monti Report does share in essence the widespread belief that the re-orientation of the European energy system towards a "green" path is not only a zero-cost option, but that it is bound to yield substantial economic—as well as environmental—benefits.

This analysis sets out from the recognition that, as opposed to other businesses, the energy market—despite the undeniable progress in this sense—is still very far from approaching the desired state of a single market. Energy markets still are confined within the respective national borders or, at best, they reflect a previous integration of regional markets, a state of affairs that preceded or at any rate cannot be explained by the European integration drive. This does not imply that the European directives were entirely futile: such a contention would be wrong and disingenuous. The fact remains, however, that the results so far were disappointing, particularly when contrasted with expectations and promises, as well as that in most cases such results as were achieved did mainly stem from the progress engendered by the policies of the individual member States. Just to look at two rather distant examples, Britain—the European country that made the most progress—did make most of the choices in this field in the Eighties in the context of a broader liberalization effort that interested virtually every industry and economic field. Of the opposite end, Italy—that has undoubtedly made a number of far-reaching choices in the electrical markets—followed an independent path that did rely only in part on the implementation of European directives.

To start the decisive leap, Monti suggests a number of moves that, unfortunately, entail an enhanced EU regulation effort. The suggestion substantially focuses on the harmonization of technical rules and of the competitive framework to force a formal convergence that, however, does not necessarily imply an actual and significant integration of the several markets involved. The European experience abounds of formally open markets that remain effectively dominated by the respective national monopolists. In fact, the emphasis on the details prevents to focus the attention on the structural measures that could give the decisive boost to the integration effort, starting with the requirement of the proprietary separation of essential infrastructures.

Not only Monti calls for the creation of a tighter regulatory framework, but he goes as far as championing the creation of a true European budget to finance the building of the material and immaterial

infrastructure required for the single market. Once more, however, the confusion emerges between the substance of a single market and the notion that this goal can be pursued by substituting de facto public choices (and investments) to private ones. Paradoxically, the Monti Report hedges on the very facet of the issue that might be suitable for a European intervention to prevent the capture of the national governments—namely, the building of interconnections—choosing instead to ply less controversial and politically sensitive seas.

The Monti Report does not hesitate instead to raise the bar in those instances in which it expects to meet the favour of the Commission, namely in unreservedly promoting—if not outright urging—the building of "green markets." in this case, Monti takes at face value the most enthusiastic and extravagant estimates:

> The global market is currently estimated at €1 trillion annually and is projected to reach €3 trillion world-wide by 2020. The EU industry is one of the most competitive—with market shares ranging from 30% to 50%—and is fast growing. It generates already a turnover of €300 billion and provides nearly 3.5 million jobs.

Regardless of the reliability of such estimates, it is perplexing that an economist of Professor Monti's calibre does uncritically accept the apparent benefits, but does not even make mention of the hidden costs. In particular, what is the opportunity cost of the jobs created by the requirement to invest in technology X instead of in technology Y? And would the contribution to the GDP of the resources invested in the "green" industries be greater or lesser if their destination were not bound by specific regulatory requirements? Although the Commissions contends that the net contribution is positive, a growing literature, both peer reviewed and in the "grey" area, is challenging the rationale of this strategy. At a minimum, a more circumspect assessment of the real state of affairs in this field might be in order.

Instead the Monti Report seems chiefly worried by the fact that Europe is losing its leadership in a market that it created and in which Europe itself provides the largest demand. But if this is indeed the problem, the logical move is consequentially the implementation—called for by a number of Member States—of more or less explicit forms of protectionism (as exemplified by the "green tariffs" favoured by France). The notion that the survival of the internal market can justify its shutting out foreign competitors flies in the face of three centuries' worth of evidence collected by economists of all stripes. Still, this is the logical outcome of the assumptions of the Monti Report. The same argument can be advanced for the other "strong" proposal, namely the creation of a European budget in support of renewables (currently financed within national frameworks on the basis of European targets). The defence of this approach requires showing that (a) the multiplier of the European spending is substantially greater than 1, and (b) the benefits of this move are greater than those yielded by the institutional competition among Member States. Neither point can be shown from the available evidence.

To conclude, reading this chapter gives the feeling that it is not aimed to present proposals to the Commission, as instead to justify or buttress decisions or strategies already adopted by the Commission itself. Even when such decisions or strategies are acceptable from the standpoint of the opening of the markets, the schemes proposed are questionable or vague. In sum, this chapter appears less a contribution to the debate than a reiteration of truisms.

The Single Market for Goods: Reaping the Full Benefit

(Monti Report 2.5, pp. 50-52)

Luigi Ceffalo

The unhindered movement of goods is one of the four basic freedoms that underlie and enable the process of the European economic integration. The creation of a single market for goods is thus among the main goals established by the Treaty establishing the European Community.

As maintained by the European institutions, Europe is to become something as close as possible to a genuine internal market in which goods, services and capital can freely move without restrictions to guarantee to European consumers and companies all the benefits of the division of labour and of the exchanges it engender. To make the benefits of free exchange available to the whole European population the elimination of tariffs and quotas between Member States was provided since the beginning. This condition, however, despite the significant improvement of the volumes of trade, does not appear to fully exploit the potential offered by the vibrant European economic circumstances. Besides the customs barriers still remain other factors curbing the free deployment of competition among producers and traders in Europe, so that the establishment of a genuine common market—albeit in an advanced stage—is far from being completed.

The movement of goods is still hindered by hurdles less visible than the earlier national borders, but no less arduous to negotiate. Although the customs union that banned the levying of taxes on goods produced in other EU countries and uniformed the tariff system to extra-EU goods is now completed, there still are other barriers of a technical and/or regulatory nature that make the exchange of goods within the EU rather troublesome. To remove these hurdles, the rationale of "negative integration" was replaced with the rationale of "positive integration," whereby the EU's efforts are no longer limited to identifying and removing all direct barriers to the free movement of goods—as taxes, quotas or equivalent measures—but Member States are actively enjoined to achieve a degree of uniformity in their respective national commercial law and to build the broader interconnection infrastructures, to streamline the merger of the several national markets and make its effects more tangible.

The regulations and directives of these last few years have undoubtedly facilitated the growth of intra-European exchanges. However—by virtue of the centralization in the EU of several regulatory powers—they involve the risk of hyper-regulation and bureaucratization inherent in all centralization drives. To minimize the likelihood of these drawbacks of dynamics of collective choice to materialize, without giving up the benefits of a single regulatory framework—at least as related to principles—in the case of harmonization "less is more." If the immediate benefits of a top-down policy are preferred to the possibility of institutional competition among States and the mid- to long-term convergence towards a minimal regulation that it is bound to bring about, the EU's legislative efforts ought to focus on deregulation and—whenever this turns out to be impractical—al the very least on the simplification of regulations. Whenever—for reasons of public health and safety—the widening of the scope of the mutual recognition principle to authorizations and the documentation required to the movement of goods cannot be implemented, any standardization should aim to lessen to the maximum extent the compliance requirements charged on traders.

In similar fashion, the definition of common transport policies—by raising the executive level of a number of decision related to public works for a trans-continental network of fast railways and roads—has achieved the co-ordination of the national infrastructure projects but, at the same time, increased the likelihood of errors in the assessments related to the planning of infrastructures and the threat of a severe misallocation of the available resources. In this case, too, in assessing the greater benefits of the centralization of competencies in the EU, the contribution of the private sector ought to be held in the highest regard. Private actors—in accord with the principles of project financing and competitive dialogue—should be involved operationally and financially since the outset of the project, avoiding the recourse to public financing and relying exclusively on venture capital

and on the lending by financial institutions.

To kill the two birds of the European integration and the Ricardian comparative advantage with one stone is only possible if the move towards a central planning approach will be avoided.

The Single Market for Services: the Powerhouse of European Economy

(Monti Report 2.6—pages 53-56)

Filippo Cavazzoni

The service sector is a crucial business for the economies of the European Union. This notwithstanding—as acknowledged in the Monti Report—barely 20 per cent of services provided in the EU is of a cross-border dimension. To draw on this unexploited potential, in the last few years an intense discussion developed on the integration of services in a single market. The outcome of debate—with its divisive effects on the public opinion—was the adoption of the "Services Directive." this is the starting point of the Monti Report to advance a number of measures aiming at strengthening the internal market.

The first goal is the full implementation of the Services Directive. The Monti Report does not questions the Directive itself under any respect but it proposes its full implementation. This position is in fact a minimal condition. The assumption is that the Directive strikes a good balance and its full implementation in all member States is advocated.

The Services Directive set a number of ambitious goals: making the establishment of companies within the EU easier and guaranteeing the freedom of providing services in the single market. This should be achieved by means of a renewed administrative co-operation among Member States. This goal is underpinned by the belief that a greater movement of services yields benefits for the consumers, both in term of quality and of price.

The already mentioned figure (just 20 per cent of services is provided across national borders) is evidence of the inherent complexity of providing services outside one's national home.

The Monti Report thus affirms that the priority should be the full implementation of the Directive whenever a Member State is not found to be in compliance with any of the mandates provided by the Directive itself. Among these, a number of procedures are mentioned that are still not legally implemented in several countries: from the screening of legislation to the establishment of points of single contact to help service providers to comply with the relevant requirements of the Directive. A cornerstone of the reform, in fact, is the quest for an inter-governmental co-operation, seen as a necessary condition lest legal or administrative barriers be raised to the provision of services and the establishment of companies in a different State.

The Commission should

> maintain the pressure on Member States that are lagging behind to ensure a rapid full implementation of the Directive. The Commission should also keep the European Parliament, the Council and stakeholders informed of the state of implementation of the Directive. At the same time, the Commission should continue to work with the Member States in order to further improve the administrative procedures and administrative cooperation mechanisms.

Up to this point the Monti Report calls for the Commission to play the role of watchman and advocate to make the Directive yield tangible results. The first advice beyond the letter of the Directive's language is the proposal of having the roles of the points of single contact to "extend to areas and procedures not covered by the directive such as taxation."

As already mentioned, the positions of the Monti Report may well be labeled as "minimalist," since it uncritically embraces the Directive's contents. There is no doubt that the debate on the first draft

of the Directive (widely known as the "Bolkenstein Directive") had a very divisive effect of the public opinion. The infamous "Polish plumber" became the symbol of an Europe scared by the prospect of a degree of competition that might have changed the social and economic course of the EU. The principle that the then-Commissar Bolkenstein attempted to introduce was the so-called principle of the country of origin. This principle was already in force, mainly for goods, but was not at yet formalized for services.

The version approved in 2006 differs from the Bolkenstein Directive chiefly for the lack of any mention of the principle of the country of origin. In practice, this principle would allow a service provider to operate under his country of origin's law. As the French economist Pascal Salin explains: "the Bolkenstein Directive specifically included the principle of the country of origin, namely the notion that a provider offering his services in a different country was to abide to the laws and regulations of his country of origin, and not to those of the country of destination."[2]

As compared to the original proposal, the oversight requirements on services provided on a temporary basis (e.g. Tourist services) were transferred from the country of origin to that of destination. The Directive was thus toned down with the elimination of its more rigorous aspects, although this entailed undermining its more advantageous effects.

It is the case of noting that the Services Directive is a framework measure, establishing rules for the entire services industry with the exception of a number of businesses. Among these are the financial services, services provided in the transport industry, temporary work, healthcare, audiovisual services and many more. Indeed one of the two final recommendations of the Monti Report, addressed to the Commission, deals with a renewed effort in the industries that are not covered (or are partly covered) by the Directive.

A number of industries are disciplined by specific regulations, such as the Directive MiFID (Markets in Financial Instruments Directive), whereas other industries excluded by the Services Directive are lagging behind in their regulatory adjustment to favour the provision of services across borders.

This is the focus of the second recommendation of the Monti Report, which advocates the adoption of the directive of healthcare services, as well as further action in this industry, such as a comparative analysis of the healthcare systems of the Member States.

In 2008 the Commission presented a "Proposal for a Directive of the European Parliament and of the Council on patients' rights regarding cross-border healthcare." This document aimed to "allow patients to seek any healthcare in another Member State that they would have been provided at home and be reimbursed up to the amount that would have been paid had they received that treatment at home."[3] The patients were supposed to bear the financial risk of any additional costs arising.

The "rights of reimbursement" are the stumbling blocks hindering the growth of the cross-border provision of healthcare services. A greater clearness on this aspect would undoubtedly favour the movement of patients among the Member States. This directive would in no way diminish the freedom of each Member State to organize its own healthcare system as it may see fit, but it would certainly be a step forward towards a greater competition in healthcare.

The Single Market for Capital and Financial Services

(Monti Report 2.8—pages 61-63)

Luca Fava

The Monti Report calls for the establishment of a European single market for the issue of government bonds. According to the Report, this proposal would lower costs both for governments and consumers.

If it is easy to see the short-term benefits yielded by the issuing of European Union bonds, still we

cannot take for granted that in the long-term this mechanism would work smoothly.

With the heightening of the financial crisis, the spreads between the yields of the Treasury securities issued by the several Member States of the European Monetary Union widened considerably. In April 2010 the spread between the government paper of the so-called PIIGS (Portugal, Ireland, Italy, Greece and Spain) and Germany's—the benchmark of the European market—on the secondary market with ten-year maturities reached levels unprecedented since the inception of the Union.

At the moment of the establishment of the common currency, the yields of the Treasury bonds of the countries in the Euro Group did align downwards to those of the economically stronger countries, such as Germany, the Netherlands, and France. This allowed Italy, Greece, Ireland, and Spain to benefit from a distinct lowering of the cost of servicing their respective debts. The lower risk resulting from the establishment of a common currency (sterilization of the currency risk caused by the possibility of devaluation) and the creation of a European single market allowed spreads to remain for a sustained period at a very low level (25-30 bps for Italy, 25 bps for Ireland, and 80 bps for Greece), despite the clear differences in the growth rates of the Euro countries. With the onset of the crisis, this situation changed abruptly.

The States characterized by a growing deficit were harshly punished by the market. The greater risk premium demanded by investors raised the yield of government bonds and thus the borrowing costs of the "errant" countries, as opposed to the "virtuous" ones, such as Germany, which saw the yield of their bonds fall as a consequence of the "flight to quality" by several investors.

Against this backdrop, the supporters of the Union Bonds—of which Monti is just one—maintain that the "stronger" countries ought to help the "weaker" ones. The common issue of securities would cause the borrowing costs of the distressed countries to be considerably lower. However, the creation of Union Bonds would effectively imply—despite the plan outlined by Monti provides for a small part of the debt to be issued against specific guarantees in each country—that the market would be unable to correctly assess the risk premium of the bonds themselves. Moreover, this scheme would further amplify the issue of liquidity that the Monti Report itself makes plain. Inevitably, the market of the bonds underwrote directly by individual States would not feature the same degree of liquidity of the Union Bonds', with the consequence of a possible "contagion" of the latter. The real problem of the UE market, therefore, is not the liquidity of the individual European securities.

Since intervening n the exchange rate is impossible, the spread on Treasury bonds plays a major role in the assessment of a country's finances. The market is thus serving a beneficial and crucial function. The fact that the euro is a rather long blanket cannot and must not conceal the difference between a country which has sound finances and one that does not. The current crisis has once more shown that making some securities—whether they are securitized or Treasury bonds—less risky that they actually are does not protect the financial system, but causes instead severe harm. In case the positive feedback inherent in the system does not suffice, the virtuous circle cannot go on indefinitely. Sooner or later the harsh reality—widely, but wrongly associated with speculation—prevails on the delusion.

The supporters of an European bond are also neglecting a significant detail: this proposal does not gather a wide consensus. Non just the Germans, but the French, too, are not ready to give up their economic independence, neither are they willing to accept a further and larger redistribution of wealth. It is worth recalling that the notion of a European bond is the brainchild of Jacques Delors who advanced the proposal of such a security ever since 1996 to finance the large public works supposedly needed for the European development.

Not only the scheme advanced by Monti would yield just an illusory and short-lived benefit for the financially weak countries, but it might well trigger once more the moral hazard that is the true cause of the current two-digit deficits in several European countries. A common bond cannot be the cure for the lack of fiscal discipline of individual countries.

As currently conceived, the Euro bond would entail too high a cost for the more virtuous States and—more ominously—it would threaten the credibility of the Eurozone. The cost of this de facto tax cannot be foreseen, but it is certain that the issue of Union Bonds would pave the way to a bail-out of the European Union and with it to the demise of the EU itself.

The Physical Infrastructure of the Single Market: Meeting the Investment Challenge

(Monti Report 2.9—pages 64-66)

Luigi Ceffalo

The process of integration of the European markets needs a network of physical infrastructures suited to the demands of a largely globalized economy. The volume and the rate of exchanges can keep growing despite the decline of consumption only if the national and transnational links allow an ever more faster and safer movement of goods. The producers and middlemen of the Old Continent need to be able to rely on tight and certain timetables for their trade, lest they are doomed to become less competitive and be reduced to mark time in regional markets at best, or shut down their businesses at worst.

The wants of the European connection infrastructures are still many everywhere, but their nature and seriousness differs from area to area. If in the new Member States the infrastructural gap is chiefly apparent in terms of coverage (too few roads too concentrated in a few areas, motorways are scarce, high-speed railways are almost non-existent), rather than in terms of capacity, in the Western part of Europe the opposite applies. There are precious few areas in Western Europe that are not served by a modern transport route, whereas a substantial number of infrastructures does not seem to be able to meet the demand for mobility, particularly in some times of the day and parts of the year.

The causes of this gap do not lie in the limited scope of the EU powers in this area as compared to the national ones, as instead in the wrong approach in their exercise. Keeping unchanged the decisional patterns, even transferring all decisions in the area of transportation and infrastructure policies from the national to the EU level, the situation would not improve. Worse, it might well worsen, since the larger the scope of governmental action, the greater the magnitude of the mistake can be. So long as the planning, financing and management are charged to governmental agencies, the assessment of the need and the expediency of a work can hardly reflect a careful cost-benefit analysis of the investments, rather than a debatable political mediation process. Transportation policies do usually pursue wrong objectives, such as the re-fashioning of mobility to favour public mass transit or a territorial economic re-balancing, generating waste and inefficiencies in the process.

To make the European infrastructure network able to fully satisfy the needs of citizens and businesses, it is necessary to stop conceiving the infrastructure area in opposition to the market, as instead as part of it. All decisions on construction must therefore be disassociated as much as possible from governmental agencies, and be the outcome of the interplay of the offer and the demand of mobility. The task of the government should be confined to the authorization of the projects, similarly as other economic areas, and should only exceptionally extend to the power of expropriation, in view of a progressive abandonment of this instrument and a movement towards the free bargaining among private parties. This is in fact the one approach that can provide for the peaceful settlement between different interests, thus avoiding the onset of social tensions that can result at worst in outbreaks of violence.

The involvement of private actors form the outset of the planning phase through the instrument of project financing can help to prevent the execution of doubtful—if not completely useless—projects. The project financing, however, is not only valuable in the allocation of resources, but also from a financial perspective. As evidenced by the current situation of debt distress of several European States, the availability of public funds is increasingly constricted by the public debt and might

no longer suffice to cover the investments for the realization of the really necessary infrastructures. Rather than relying on the subsidies for underdeveloped areas and on the issuance of European bonds (see also the preceding chapter), a better approach would be to make the financing of infrastructures an appealing proposition to companies and institutional investors by guaranteeing a clear, straightforward and—most importantly—stable legal framework to minimize the political risk for the actors that bear the risks inherent in the building and the operation of the infrastructures in exchange of the right to collect a toll from their users.

Only if they can be confident of the enforcement of the concessions and thus on reasonably certain return will investment and savings banks, pension funds and insurance companies raise and make available the resources needed for enhancing the European infrastructure network and streamlining the integration of the markets.

A Single Market for a "Highly Competitive Social Market Economy"

(Monti Report 3.1—page 68)

Carlo Lottieri

The Monti Report emphasizes "the benefits of market integration" and suggests that it is necessary to further advance, despite the opposition from many quarters, towards the economic integration of the Continent, by means of "a reconciliation between the single market and the social and citizens' dimension in the Treaty logic of a 'highly competitive social market economy'".

A few remarks are in order.

It is plain to see that, particularly in the current state of affairs, Europe cannot just set as a goal the completion of a Europe-wide single market. When compared to the global economy, Europe's is too small a market and the single market, as currently conceived, appears to be a defensive move aiming to shut the EU off the global markets. Economic integration is to be achieved by means of a genuinely free market, open to the rest of the world while bringing the several European economies closer together. This goal is a crucial one, not only from the standpoint of more general insights (all protectionist moves are self-destructive, both at the national and supra-national level), but also in view of a couple of more specific reflections.

First, it is evident that in its current predicament the European economy is hurting and is liable to keep hurting for a time. A sustained growth rate for the next few years is not likely, whereas a high growth will characterize most BRIC countries, an area wherefrom the EU cannot shut itself out since this would impair significant opportunities of exchanges and development. Second, a "single market" integration—meaning a "Fortress Europe" closed to the outside world—can only worsen the economic, political and social conditions of the countries around the rim of the EU which would see every new entry in the Union as a lost trade opportunity because of the closed nature of the single market, as evidenced by the case of Ukraine after the admission of Poland in the EU.

The Monti Report stresses that the European economic integration can occasionally entail some frictions, since Europe has "accumulated internal asymmetries between market integration at supranational level and social protection at national level." This observation is correct as far as it goes, but the proposed solution—labeled as consistent with the "social market economy"—appears to be entirely deficient as it is based on the assumption that the response to difficulties pointed at in the Monti Report can only be provided by one of two approaches:

- "adjusting existing single market rules to take account of the need of social and local contexts;"
- "introduc[ing] greater coordination of the national regulatory systems, to ensure their coherence and fit with the EU principles."

Both answers are mistaken in that the goal ought to be the establishment of an open market, avoid-

ing as far as possible that each national government keep intact the barriers against the other Member States (as evidenced by the tortuous and not entirely successful odyssey of the Bolkenstein Directive). Devising a centralized regulatory system barely loosened by occasional "exceptions" does not bide well for Europe's future.

The inherent tension contrasting the goal of a single market as opposed to a genuinely open market is quite apparent and the recourse to the notion of *soziale Marktwirtschaft* to vest the Monti Report's proposed course with a veneer of legitimacy does not seem to be reasonable. This can only be done by ignoring that the most momentous move originated by the "social market economy" perspective was in fact the removal of all price controls. The then German Chancellor Ludwig Erhard took this decision in the immediate aftermath of World War II, against the recommendations of the liberal economic advisors sent by the U.S. Administration.

The notion of a free market wide-open to all Europeans and to actors from other parts of the world points to a competitive process among several regulatory systems, in the expectation that such competition may force the government to bear less heavily on the economy (by lowering of taxes and lessening regulations). The market cannot be built in a top-down fashion by virtue of a series of politically enforced directives, but is instead a political and legal order emerging from the bottom, as long as the government leaves room for economic actors in the several national market to co-operate ever more freely.

The very tensions described in the Monti Report should lead to a reflection, since it essentially envisages the lowering of uniform rules on the whole of Europe and its diverse national economic actors, as the European market could stem from a sole regulatory scheme (paralleling the previous national regulatory systems) as opposed by the overcoming of this very centralist vision.

In this respect we are witnessing the clash between two opposed views of law-making: whereas the Monti Report cannot conceive a way to provide rules to the market other than the efforts of lawmakers and regulators, genuinely free markets do develop and emerge chiefly through a process of rule-making that is driven by market actors, law firms, doctrine, judges and so on. Only this second course can display the flexibility needed to take into account all the features—cultural and otherwise—of the diverse areas of the Continent.

When the Monti Report emphasizes the need of a "greater coordination of the national regulatory systems," it is obvious that the economic integration of Europe is conceived as the outcome of a growing harmonization of the several legal systems in the EU. However a competition among the institutions providing public services—namely, the member States—is essential to have a really competitive setting. To achieve the goal of an ever more free market the lessening of institutional competition must be avoided. Moreover, the objective of coordinating the tax, social, industrial policies of the several Member States can only yield a "cartel" among governments, with the consequence of a heavier taxation and a more burdensome regulation.

Today, the beneficial competition of Chinese companies is only made possible by the great diversity of legal systems, of taxation, of regulation and so on. In case this diversity were to disappear and—in the most extreme case—European regulations were to be applied to Chinese firms, we would witness the opposite of a greater ability of Chinese firms to compete in Europe: the negative outcomes would affect not only the consumers—as it is obvious—but also the European companies, less incited to realize innovations and find sectors where they can obtain profits.

The emergence of a free market open to the competition from the world over can only stem from the defence and the enhancement of the current complexity of the diverse institutional arrangements. It is absurd to hope to increase the competitiveness of European economic actors by dashing the competition among Member States.

Social Services and the Single Market

(Monti Report 3.3—pages 73-75)

Lucia Quaglino

As to social services, from the Monti Report emerges the vision of the universal service as a goal to be guaranteed in our times as in the past. In this section a number of proposals are outlined that aim to allow the free movement and—in some respect—a "single market" in this domain, too.

A first suggestion, related to state aid and the selection of the provider, entails the strengthening of the rules pertaining to the financial compensation. The author writes that "[t]here is room to strengthen the general approach adopted in 2005 in the package of measures to increase the legal certainty about financial compensation paid for to a large number of small, often local, public services." If increasing the flexibility of such rules could have positive effects, the same cannot be stated for raising the thresholds and expanding the list of activities for which compensation does not have to be notified to the Commission. Irrespective of the amounts involved, given the current crisis and the parlous state of the national budgets, such proposals may well turn our to be unsustainable.

Of course it is hard to forgo this approach, particularly from a political perspective, as the above compensations cannot but be very welcome to the main stakeholders. In fact their actual effect is far from being what is commonly imagined: the recourse to financial compensation distorts the signals on the market, preventing the most efficient providers to emerge and encouraging moral hazard. The real costs are thus concealed, only to make themselves to be sorely felt later through higher taxes.

The Monti Report does not envisage clearly alternative solutions to the past and current ("paternalistic") approach, making no mention, for instance, of the encouragement of the provision of services by means of tax incentives or offering economic and/or financial relief. Likewise, in the vein of a well-known idea advanced by Milton Friedman,[3] the provision of direct cash subsidies to citizens might well be preferable. They would then spend their sums as they see fit, without the government being involved in providing inadequate services at a loss or being forced to pay a hefty compensation to purchase adequate services if offered by third parties. Lastly, another possible course might be—as in the United States—to leave a greater leeway to the private provision of social services.

From the Monti Report emerges a notion that is more controversial than it usually appears, namely that in a truly single market all citizens are supposed to have access to a range of basic banking services, with the only proviso of having a bank account. Since a good 20 per cent of the adults in the EU-20 and almost 50 per cent in the EU-10 do not have a bank account, the response of the several Member States differs widely: the proposal hereby advanced is to strengthen the regulation of financial services to improve financial inclusion. However necessary a minimal regulation can appear to enable the citizens to enjoy the benefits of the single market, it is well to take into account that an excessively centralized regulation threaten to have the opposite effect, namely to engender a further fragmentation of the market and a greater distortion of its signals. More that further rules, what is really needed is to make the current regulatory framework more strong, stable and credible, leaving to competition and the market process the task of making the best outcomes emerge.

The same rationale applies to the suggestions about public service obligations in transport and the rights of air passengers. The Europe-wide disruptions experienced during the recent eruption of an Icelandic volcano, mentioned in the Monti Report, should be a reason to leave each individual airline free to draft its own rules in this domain—within the bounds of a minimal regulatory framework—allowing the most efficient solutions to emerge to deal with similar unexpected emergency situations. Operators should be allowed to make up for the lack (or the inadequacy) of rules and should be free to compete, instead of being dictated uniform requirements of passengers' rights. The reason is not that such rights are unimportant, but that it is very likely that, leaving each airline free to

3 Antonio Martino, "L'assistenzialismo che ipocrisia", published online on the website of Istituto Bruno Leoni (2005) at: http://www.brunoleoni.it/nextpage.aspx?codice=2614.

choose in this domain, they will ultimately accommodate the rights of their own passengers in the attempt of meeting their demand and keeping their custom.

As for the proposal of upgrading the broadband internet connection of EU citizens and to broaden to electronic communications the notion of universal service, the contention that a technology that reaches everybody at a modest price would be an impressive instrument for the European economic integration is plainly uncontroversial. However it is no less obvious that in this instance the key variables have a technological and entrepreneurial, as opposed to a political nature.

In short, the goal of establishing a single market in the social services domain appears to be quite problematic. From a survey conducted in February 2010 a foreseeable results emerged: Europeans are "somewhat happy" with the quality of their lives, but are worried about the future, particularly for their economic and social circumstances. Significant differences between Member States are apparent:[4] the greatest level of satisfaction is found in Denmark (+8.0), followed by Sweden, Norway and Finland. The lowest levels are in Bulgaria (-1.9) and Hungary, Greece and Romania. Against this backdrop, the notion of guaranteeing to all European citizens the access to a number of basic services of general economic interest can appear a sensible one. However it is hard to see the rationale for the joint responsibility of EU and Member States—as advocated by the Monti Report—for providing a specific legal base to the regulation of this sector. The problem is that in this domain the Monti Report mentions—only to summarily discarding it—only a solution, namely horizontal regulation, without suggesting an alternative, thus leaving the issue unanswered.

It is plain that the establishment of an effective single market of social services is far from being close. Since the proposals advanced to improve the situation in this sector are not always consistent with the aim of creating an Europe-wide single market, the most desirable option is to free as far as possible the market to let the best solutions to emerge, charging the Member States and the Commission with making stable, proportionate and credible the rules that will thus materialize. To this end the solutions hitherto advanced should be critically appraised, encouraging innovative and creative proposals without being afraid of disavowing all those ideas mainly based on the search for a political consensus.

Harnessing Public Procurement for Europe's Policy Goals

(Monti Report 3.4—pages 76-78)

Carlo Stagnaro

In a part of the world famous—or infamous—for a "social model" characterized by a pervasive and burdensome government and a large public spending, public procurement lies in a "grey area" that is to be carefully investigated and efficiently regulated. According to the Monti Report, the amount of goods, services and labour purchased by the public sector totals around 17-18 per cent of the EU's GDP. Within this hefty amount a significant, albeit minor, share—389 bns euro, or 18 per cent of a total amount of 2,155 bn euros in 2008—is allocated through auctions regulated by EU directives. The directive of 2004 is informed by the principles of transparency and uniformity in the evaluation of the bids, to make public auctions more competitive and to limit the opportunistic behaviour of the national and local governments of the Member States—in particular the more or less overt recourse to a preferential treatment of national bidders. According to estimates of the European Commission itself, the adaptation to European standards in the last few years yielded the several governments savings up to 5-8 per cent.

The Monti Report correctly acknowledges the progress made under this respect and stresses that a proper framework for this matter is crucial not only to make public spending more efficient, but also to avoid a "Balkanization" of the European internal market. Since governmental agencies are a major actor due to their spending power, it is essential that their efforts do not hinder the process of

4 http://ec.europa.eu/social/main.jsp?langId=en&catId=89&newsId=696&furtherNews=yes

integration of the European markets. From this standpoint, the Monti Report raises a number of observations aiming to further broaden transparency and non-discrimination in public procurement, in the understanding of a greater "horizontal integration" of national policies.

A crucial point emphasized by the Monti Report is the detailed definition of in-house production and of its proper boundaries, particularly in the case of local government. As it happens, there is a discord between the public debate—in which such production is often understood as a guarantee of democratic oversight or even of quality—and a more opaque setting, with more or less leeway for potential instances of corruption or patronage.

The leading recommendations of the Monti Report are thus entirely agreeable from the standpoint of the free market and of European integration:

- Re-think public procurement policy to make it simpler, more effective and less onerous for national and local authorities; Strengthen SMEs participation by applying the Small Business Act Code of Conduct;
- Clarify the rules applicable to "in-house" provision;

Along with these "procedural" recommendations, Monti deploys a third argument of an opposite nature. As the Monti Report reads:

> there is probably room for a greater use of public procurement as a tool to achieve policy objectives set out at EU level. Public purchase can be a boost for innovative products and technologies in the area of climate change and energy. It may give a push to research and innovation, promote social cohesion and help meet the poverty reduction and employment objectives set out in the Strategy. Harnessing public procurement towards these goals would require assessing the possibility to impose mandatory requirements relating to policy objectives set out above in the Public procurement directives. Greater clarity regarding concrete operationalisation of the requirements should be provided through legislation based on delegated acts.

In this case it appears that two divergent goals are somewhat—and not necessarily efficiently—mingled: on the one hand, the goal of a greater efficiency and transparency in public procurement, to be pursued by an effort of definition-clarification-harmonization of the rules and by means of a greater integration of the markets. On the other, public procurement is awarded an inchoate function of industrial policy tool, calling for all government agencies to procure not so much the "best" goods and services—meaning those providing the best compromise in terms of quality, price and performance—as instead the "right" goods and services—for instance, those purportedly offering a better environmental or social value. This appears to be a very "Italian" lapse: as the action of local governments in Italy was often understood as a surrogate of sorts for the welfare state—as with the recourse to local government-owned utilities hiring to lower joblessness—the Monti Report seems to support the notion of harness the procurement by governmental agencies to affect the private supply of goods or services.

Paradoxically, therefore, what Monti hopes to achieve in terms of efficiency might well be wasted because of a sub-optimal allocation of the resources and the recourse to clearly inefficient instruments in relation to the stated objectives. If the goal is supporting the efforts of research and development, the necessary tools are already available. If the EU wishes to favour the spreading of low-carbon technologies, the relevant policies are already extant, with their impact on the market price of these technologies. The adoption of a "fast lane" in the procurement standards of governmental agencies appears to be bound to create excessive distortions.

The Tax Dimension of the Single Market: working Together to Safeguard Tax Sovereignity

(Monti Report 3.5—pages 79-83)

Dalibor Rohac

The Monti Report contains a mix of few good ideas, of bad ideas and also suggestions which seem to be mostly orthogonal to the substance of issues of tax competition and tax harmonization. On the positive side, the section is based on economic reasoning of some kind—on which we may or we may not disagree—which cannot be taken for granted in the case of all economic policy-related documents that originate at the Commission. On the negative side, we believe that the treatment of some of the key issues is fundamentally flawed and may be used to justify policies that are likely to be harmful. Moreover, it is difficult to take all of the proposals presented in this piece at their face value, since some of them are presented only in very vague and abridged form.

An appealing feature of this section is that it takes seriously the economic side of taxation. Taxation always involves welfare losses because it alters individual behavior. In many instances, taxes discourage people from engaging in productive activities—from deploying capital and labor to produce goods and services that other people would have found valuable. Taxes interfere with economic activity on various margins—and not just through their rates and through the definition of the taxable base. Doing business on a continent that has many heterogeneous tax systems can present an important challenge to companies that operate in numerous countries at the same time. Compliance costs thus present an obstacle to economic integration and to cross-border competition. In this spirit, efforts to reduce such obstacles ought to be welcomed. The report proposes to simplify and modernize VAT invoicing rules facilitating electronic invoicing and introducing a binding dispute settlement mechanism. We do not find these particular proposals controversial and would like to see them transformed into specific policy measures.

Likewise, we can see the rationale for arriving at a common definition of corporate tax base, even though we do have reservations about this particular idea, which will be explained below. Especially in the case of corporate taxation we would have welcomed a transparent estimate of the costs of compliance under the current conditions, as this would have greatly facilitated the discussion of the merits and demerits of tax base harmonization. Unfortunately, such estimates are not presented in the report.

Still on the positive side, we appreciate that the argument in favor of tax competition is being partly understood by the report, as can be illustrated by the following quote: “Tax competition, to some extent, serves a healthy purpose of putting pressure on governments to keep spending under control.” From this perspective, it seems that the EU has come a long way from perceiving tax competition as something unambiguously dangerous, interfering with the allegedly benevolent government policymaking to a more realistic perspective, in which the governments’ tendency to overspend is recognized.

In spite of these merits, we perceive the section on taxation and tax competition to be suffering from fundamentally the same flaws as the earlier official policy reports published by EU/OECD (e.g. EC 2001 or OECD 2004). Most importantly, while it recognizes that governments might have a problem controlling their spending and that tax competition might be a potential avenue towards curbing that problem (p. 80), it focuses in our view an undue degree of attention to the distortions that can be provoked by tax competition. Namely, one of the key problems the report identifies is the shift of burden of taxation from capital, as the mobile factor of production, towards labor. The report notes that not only did the statutory tax rates decrease from close to 50% in 1985 to less than 30% in 2007, but revenue from taxation of labor accounted for 46 % percent of tax revenue on the arithmetic EU average (with corporate income taxes accounting for mere 9.8%). The section on taxation thus worries that labor might be taxed more heavily than before. However, it does a very poor job in showing the

actual trends in taxation. In fact, looking at the data on implicit tax rates reveals that labor taxes have decreased since late 1990s and capital taxes have increased sharply, partly due to the broadening of tax base. (EC 2009, p. 14-15) Hence even if we recognize that tax competition ought, in theory, lead to a shift of the burden of taxation towards immobile factors of production, actual development in Europe shows that this shift has been only very weak. True enough, the counterfactual could easily be a much more onerous taxation of capital and a much lighter taxation of labor but to conclude on the basis of available data, as the report does, that "the tax burden in Europe over the past decade tended to concentrate in a higher proportion on the less mobile bases, i.e. on labor" is unwarranted.

However that may be, the reduction of tax burden on capital is something that ought to be welcome, since under fairly general assumption the taxation of capital is not desirable and capital income taxes should not be used as policy instruments. If tax competition has contributed to a reduction of the tax burden imposed on capital—which is itself debatable—the shift towards other forms of taxation (consumption taxes in particular) is something that ought not to be deplored.

The report also suggests proceeding with the harmonization of the VAT rates, as its variation "affects capital and trade movements, at least in the short run."(p. 82) The remedy proposed is one of "raising the standard VAT rates or limiting the application of reduced VAT rates." One immediate quibble is that no evidence of effects of variation in VAT on capital and trade movement within the EU has been given in the paper. But there is a more fundamental point. It is certainly conceivable that the variation in VAT rates and the application of the lowered rates has indeed affected capital and trade flows in Europe—in the same way as tax competition over corporate income would. One should recognize that for most practical purposes a VAT tax is essentially equivalent to a corporate income tax. This means that, once we recognize the benefits of tax competition over corporate revenue, it is difficult to deny the existence of these benefits in the area of competition over VAT rates.

The section on taxation also suggests harmonized tax policies could be used to facilitate the fiscal consolidation efforts. This is obviously a very topical subject, especially given the Greek crisis and the rapidly deteriorating state of public finances in PIGS countries and also in the UK. It is a funny paradox that the report indicates an ambition to "work together to safeguard tax sovereignty," while it comes in a period in which there are strong pressures to harmonize fiscal policy and to move much of the fiscal authority from nation-states to Brussels—a move that classical liberals ought to oppose vigorously.

In this specific context, the idea that tax harmonization could play a major role in getting European public finance in better shape is deeply misguided. First, to provide any marked increase in tax revenue, the tax harmonization would have to be very deep and very well coordinated. It is completely unrealistic to expect any such harmonization within the horizon of the next few years over which the countries in question will have to address the problems of their fiscal sustainability. More importantly, the present fiscal disorder is not about a lack of tax revenue and higher tax revenues would thus not necessarily improve the matter. The present crisis seems to be a result of myopic political behavior in which politicians who pretended that their country was richer than it actually was were the most successful at exchanging promises for votes. The way out of the crisis is thus not higher revenue collected in taxes, it is a correction of the misperception of the economic fundamentals of the countries in question and about what the public sector can realistically afford. The way out are serious budgetary cuts, a reevaluation of how public money ought to be used and an explicit constraints on the spending power of the public sector. Indeed, in this process the tax competition can play a beneficial role—as the report itself explicitly recognizes (p. 80).

Another area in which the section on taxation suggests that harmonization can yield important benefits is environmental taxation. Unfortunately, the section lacks an explicit discussion as to the direction in which the policy ought to be steered. Yet, it is not difficult to imagine a well-argued case for tax-harmonization that would be motivated, say, by an effort to mitigate climate change. A Pigouvian tax on fossile fuels could play the same fundamental role as the cap and trade system was sup-

posed to play. After the disintegration of the Kyoto framework, carbon taxation will probably appear to some as a desirable policy option, although this view is problematic for a variety of reasons—most importantly because of the fundamental uncertainty about the size of carbon-related externalities and thus about the appropriate rate of such taxation. Such consideration aside, if carbon taxation is to be adopted, it is clear that it will have to be done in a harmonized way, otherwise it won't be able to achieve its ends. Just as the "carbon-leakage" is a key problem of the cap-and-trade system, it will occur in a system of Pigouvian taxation. To prevent it, the tax rate needs to be harmonized, not just at the EU level but worldwide. Unless such harmonization is achieved, introducing such tax at a harmonized EU level will hurt EU competitiveness and will be likely to achieve nothing to reduce carbon emissions. Prins et al. (2010) argue that if policymakers intend to reduce carbon emissions, they will not be able to do so without significant technological improvements. R&D for such advances could conceivably be funded from a token tax on carbon, yet it is simply utopian to think of imposing a unified carbon tax at a European level, particularly in a situation of a very fragile recovery.

We have no reason to think that the intentions of Professor Monti are other than completely benevolent when he suggests that the EU should move in the direction of a common definition of corporate tax base (p. 82). And there certainly is a compliance-costs argument that one could make for a common tax base. Yet, as students of public choice, we should also recognize the enormous temptation for tax rate harmonization, once a common definition of tax base is arrived at. Indeed, without such definition, the EU lacks the ability to impose a minimum rate since this could easily be counterweighed by a change in the tax base done at the national level that would make such a minimum rate ineffective. So, while Professor Monti's report recognizes the benefits of tax competition, it is very easy to imagine that its recommendations will be taken as inputs into future efforts towards tax harmonization. In other words, the ideas prescribed in Section 3.5 are not robust to less-than-ideal assumption about the behavior of politicians and civil servants—both at the national and at the EU level. This is, in a nutshell, our main worry about this part of the report.

Competitiveness and Cohesion: the Regional Dimension of the Single Market

(Monti Report 3.6—pages 84-85)

Josef Sima

A red thread that runs through this short section is the following belief stated by Monti: "market integration could be a win-win process only when complemented by action at EU level to correct structural imbalances at subnational level". He believes that market integration would leave some people in some regions outside of the EU market and though nominally a part of it, they "would not be able to participate in full to the single market." We believe strongly, that the root of the debate over competitiveness and cohesion is exactly in this general notion and not in the technical details. Technical details of existing or envisioned new policies do constantly change, from focusing on "structural adjustments" to "forward looking dimension of supporting the delivery of the Union's policy objectives", from manufacturing to "green and digital economy", from policy priority A to policy priority B... When Monti introduces his new vision, who would ever dare to object to his recommendation calling for tightening up rules preventing the misuse of funds? Making a better use of the funds is however not what is at the core of the problem. As there is no way how to define the "right," universal, priorities, these would constantly change and the new ones would always be described by their supporters as modern and more efficient, contributing to the main (and too general) goal, i.e. increase benefits from participation in the single market. And any time the new generation of politicians arrives on the scene, they would be eager to come up with their new, ad hoc, priorities and sets of policies "improving" the previous ones. Citing Monti: "Such rules have proved effective, but not entirely." Guess what that means? (A long and dismal post WWII history of development aid effort should be studied carefully to see how much money can be wasted with minimum, if not nega-

tive, result)

Hence, rather that criticizing something what is going to be changed shortly after anyway, let us elaborate on the core idea that stays and justifies the whole process of EU involvement in regional development. As stated above, Monti believes, that the single market only when complemented by redistribution in accordance with the politically declared priorities is a win-win situation. In other words, trade is not a win-win situation unless you take from some and redistribute it to others. The logic of exchange and trade however shows that the reverse is true. Trade creates benefits for all. Yes, it may happen, and it is indeed often the case, that in different places the terms of beneficial exchanges differ—labor costs are different, risk is different, transportation costs are different, etc. Why? Because the quality of infrastructure differs, people have different skills, regional governments do their jobs differently and so on. All that means that the mere fact that GDP per capita is below or above X % of the EU average is not a market failure that would need to be politically corrected; it is so for a good reason. A reason that has nothing to do with ad hoc political priorities but rather with (un)willingness of millions of people in their roles of sellers or buyers to risk their money. It is their behavior that makes some parts of Europe more and some less prosperous. In this situation the politicians come and attempt to reverse—by political means—what people themselves wanted. Politicians want to "invest" (into political priorities) and risk the money which individual people have not been willing to risk. Indeed, it is more than likely that the money is going to be spent less carefully in the political process than on the individual basis when everybody pays for his mistakes from his own pocket. You do not need to take Greece as an example to document this. A sound argument for a beneficial redistribution between regions must prove, not only that political "investment" in accordance with political priorities is more successful than profit-oriented private investment (in itself an extremely difficult venture), but also than the long-term benefits of these investments are bigger than the losses suffered by not investing in successful regions elsewhere.

In addition to these problems, we cannot overemphasize the dynamics of rent-seeking within the recipient countries and regions. Rather than focusing their productive effort on satisfaction of consumers' satisfaction, thousands of Europeans discovered, that it is in their interest to focus on satisfying EU political priorities and live off the grants. Hence, a substantial part of economic life is nowadays driven by EU politics, and not real economic needs. And since redistribution of wealth is radically different in essence from new wealth creation in production, societal productive effort gets reduced. We get more rent-seeking and less production and new wealth.

We strongly believe that discrepancies between regions of Europe should be a challenge for profit seeking businesses to make the best of the difference, rather than an excuse for politicians—who misunderstand what market economy and price mechanism is—in their attempt to orchestrate an EU-wide redistribution of resources crippling the successful regions and not helping the less successful ones.

The Single Market and Industrial Policy

Sez. 3.7 – pp. 86-89 R.M.

Andrea Giuricin

In the Section devoted to the Single Market and industrial policy the Monti Report attempts to square the notion of competition with that of industrial policy. It reminds the reader that the current crisis triggered a debate on the merits and limits of an active industrial policy and states correctly that "competition is necessary to create the varieties, comparative advantages and productivity gains on which growth and innovation flourish."

The control on mergers between companies is an important point. The Report stresses that the Commission did not oppose the birth of several "European champions," such as AirFrance-KLM or EADS. But the mentioned examples are themselves evidence of a dubious mindset: if competition is

deemed in theory to be a priority and does not goes against an active industrial policy—as emphasized by the Report—in practice the Commission's stances went as a rule against this principle. In the case of AirFrance, during the crisis the Commission decided to suspend the rules governing the allocation of landing slots, creating an insurmountable barrier for the companies willing to invest in the development of air transport. As for EADS, the WTO did recently confirm that the aerospace company did in fact receive state aid.

If the conflict between competition and an active industrial policy does not exist in theory, real-world cases—in the very examples mentioned by the Report—showed ample evidence of the contrary.

In the domain of merger control the Commission wavered aplenty. Whereas in some occasions mergers—particularly those originating in non-European companies—were energetically opposed, at other times the Commission's stance was more lenient. The factor dictating the different positions of the Commission appear to be less the specific merits of the individual cases than its political views.

The Report suggests to abolish the so-called "two-thirds rule," which requires that mergers are left to the national competition authorities—instead than being referred to EU review—whenever more than two-thirds of the turnover of the involved parties is realized in one and the same Member States. The rationale of this proposal is to avoid any inconsistencies in the interpretation of competition law by the several national authorities. Under this respect, this proposal appear to be a positive step.

The issue of state aid is extremely sensitive, as the crisis made clear. The return of protectionist notions was particularly evident in the automotive industry, in which a number of governments granted subsidies to the respective national automakers. The French government went as far as suggesting that any loan to French automakers was to be conditional to the guarantee that the companies will not relocate their plants abroad. The budget crisis did help to solve the problem: most European governments could not afford to grant any subsidy in 2010 and the distortion of the market was thus short-lived.

As the report correctly observes, a collective rush to grant state aid by Member States only results in a waste of resources in unproductive investments. Any distortion, however, might impact not just Europe, but also affect non-European countries.

Under this respect the Report might have profited by a sharper reaffirmation that subsidies are incompatible with a greater competitiveness. At the present time, as correctly restated by the European Commission in the case of the 300 million bridging loan to Alitalia, direct aid to individual companies are illegal, but this prohibition regrettably does not extend to subsidies to whole industries. The case of Alitalia also highlights another flaw of the Commission, namely the slowness of its decisions. The ban on the bridging loan to Alitalia was arrived to after a six-month deliberation, after the company went broke. The delay of the decision allowed de facto the company to use the funds provided by the Italian government without the need of giving the back.

Finally, the Section on the Single Market and industrial policy might have profited by some suggestion to streamline the workings of the Commission.

Regulating the Single Market, "ma non troppo"

(Monti Report 4.1—pages 93-94)

Alberto Mingardi

The Monti Report sets off from an observation: the delay between the issuing of a directive and its implementation by the several national legislatures can lessen its impact.

The Report notes that most regulation in the EU was achieved by means of directives, but it questions the effectiveness of this instrument, on the basis of two different—and not necessarily consistent—assumptions.

On the one hand, the need is asserted of favouring markedly regulatory actions, with the aim of setting the boundaries and supporting the development of some areas of the common market based on shared and detailed regulations.

On the other, the need is stressed of make the broadest recourse possible to the "28th regime," namely the option of having a common reference regulatory framework that does not automatically supersede the existing regulations at the national level.

The Monti Report correctly observes that

> The advantage of the 28th regime is to expand options for business and citizens operating in the single market: if the single market is their main horizon, they can opt for a standard and single legal framework valid across Member States; if they move in a predominantly national setting, they will remain under the national regime.

Hitherto the recourse to the device of the "28th regime," as acknowledged by the Monti Report itself, was rather limited and relatively unsuccessful. The Report explicitly advances its use for "the area of commercial contracts where a reference framework for commercial contracts could remove obstacles to cross-border transactions." In fact, with a little ingenuity, it is possible to identify a substantial number of regulatory areas in which a "28th regime" might function, at least as a benchmark.

The most apparent benefits of such a scheme are:

- The emergence of legal standards that—albeit not binding for the individual States—have the potential of becoming benchmarks for the economic actors to appraise the national legislation to which they are subjected;
- The very fact that the "28th regime" would not immediately and unavoidably cause its adoption by individual Member States allowed a greater leeway to the European lawmakers, lessening the pressures from special interests and the need of a "clearinghouse" of the several national interests that ail most rules issued by Brussels.

The Monti Report contends that the regulation at the EU—as opposed to the national— level is more impervious to the risk of "regulatory capture," although this seems to be a questionable proposition. Instead, as a general rule it can be maintained that pressure groups that are strong at the local level but do not have the capability of organising their action beyond the national borders have next to no impact at the EU level.

The Monti Report sees this fact as evidence of a potential issue from the perspective of the legitimacy of European regulations, and advances the notion of "smart regulation" defined as "informed by an accurate knowledge of the factors at play and by a sharp awareness of its potential impacts on the economy, the social context and the environment." The idea of giving an hearing to special interests that was thrown out of the door is coming back through the window, emphasizing the need of an ongoing relationship with the stakeholder impacted by all proposed regulations, which are to emerge no longer from discrete acts, but need to involve entire economic areas and industries.

The interplay with NGOs and lobbies is seen as a crucial element, but the instruments to constructively bound its limits are at best rather unsophisticated (a register for lobbies, more transparence in the workings of the European Parliament Committees, and so on).

More intriguing is the idea that the "[e]ffective single market regulation can benefit from a shift of focus from individual policy interventions to whole policy sectors and from ex ante measurement of impacts to ex post assessment of what works and what does not work in a given field." The recourse to market monitoring" to identify regulatory needs seems to betray a more humble and less constructionist approach but—as the Monti Report itself does not fail to note—it implies substantial costs. Moreover, an extensive recourse to this tool might have perverse effects, particularly in respect to the declared goal to help the streamlining of the functioning of the markets.

In fact, the Monti Report suggests that this approach might affect “not only mature sectors where bottlenecks and malfunctioning can be identified, but also new or emerging market sectors, to examine how EU action can help them deliver their full growth potential.” This statement ought to be turned completely upside down: whereas a regular assessment of markets in which the bottlenecks are clearly identified and there is a broad agreement among observers and operators about the relevant regulatory issues can be beneficial, the attempt of frantically follow the developments in innovative industries is bound to fail or to have a negative impact. There is no guarantee that a regulator—however well informed—can envisage the development of a particular market, its potential, the trends in the competition balance. “What can be said at all can be said clearly, and what we cannot talk about we must pass over in silence.”

More generally, the Monti Report contends that “[s]mart regulation is [...] quality regulation, but also regulation that does not burden business and citizens with unnecessary administrative obligations and do not impose excess compliance costs.” Likewise, the Monti Report stresses the need of act to counter the perception that EU legislation is “over-detailed and useless” and suggests that “[t]he Commission should make all efforts to achieve the objective of reaching a cut by 25% in administrative costs by 2012.”

On the whole, however, the overarching goal remains unclear. The harmonization of regulation is not informed by a few clear-cut principles (such as the reduction of barriers to entry to markets, or conversely the defence of particular “social rights”), but seems to be pursued as an end in itself. The notion of streamlining regulations—causing them to be more clearly understood and, indirectly, stressing the value of economic efficiency—appear to be curbed by the constant appeal to the need of overcoming the “democratic deficit” of the EU. The recourse to clichés such as a “quality” regulation that shields—instead of burdening—the European companies does not help to define the goals, and thus the limits, of regulation. Absent these, a more streamlined and efficient—and therefore more “productive”—legislative process might paradoxically lead to harming the rule of law.

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