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Natolin

MORE SINGLE MARKET? food for integration scholars

Jacques PELKMANS

College of Europe, Bruges & CEPS, Brussels

Paper for the UACES conference 2010,
College of Europe, Bruges, 6 – 8 Sept. 2010

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Introduction & purpose

- Barroso “The Single Market has been, and remains, the cornerstone of Europe’s integration and sustainable growth”, Oct 09
- Nani Beccalli (CEO of GE) “The main obstacle...is the ‘tons’ of barriers that still exist in the single market, lamenting the EU’s inability to fully leverage its vast internal market” (in EurActiv,6 May 10)
- From The Economist “Too many countries...tell voters the single market is an obstacle to growth and the prosperity of their citizens ..[] ..single market rules are an obstacle to the ‘social’ policies that they think may be needed to keep them in office” (Nov. 14, 09)
- Mario Monti “[Some] see the single market as a source of tensions, dislocations and fears..[] .. the single market is less popular than ever, yet it is more needed than ever” (9 May 10)

Introduction & purpose (2)

- scholars of European integration show relatively little interest in the Single Market [political scientists the least and EU lawyers far more systematically ; economists mainly cyclically]
- although they know very well that it is the **hard core** of EU's integration
- ever heard of (any ?) research centre on the Single Market, for example ?

Introduction & purpose (3)

- why little interest in ‘what matters most’?
- may-be, because it is “completed” (isn’t it ?) ;
- or, too massive a subject
- or, demanding too many specialized forms of expertise ?
- or, because the COM, EP and Council are no longer organized along SM lines, creating incentives to hide the S. M. behind a ‘veil’ of fragmented ‘policies’ ?
- or, because, seen as boring, it does not arouse any interest among academic readers ?
- or, because both mono- and multi-disciplinary analysis is required ?

Introduction & purpose (4)

purpose of paper:

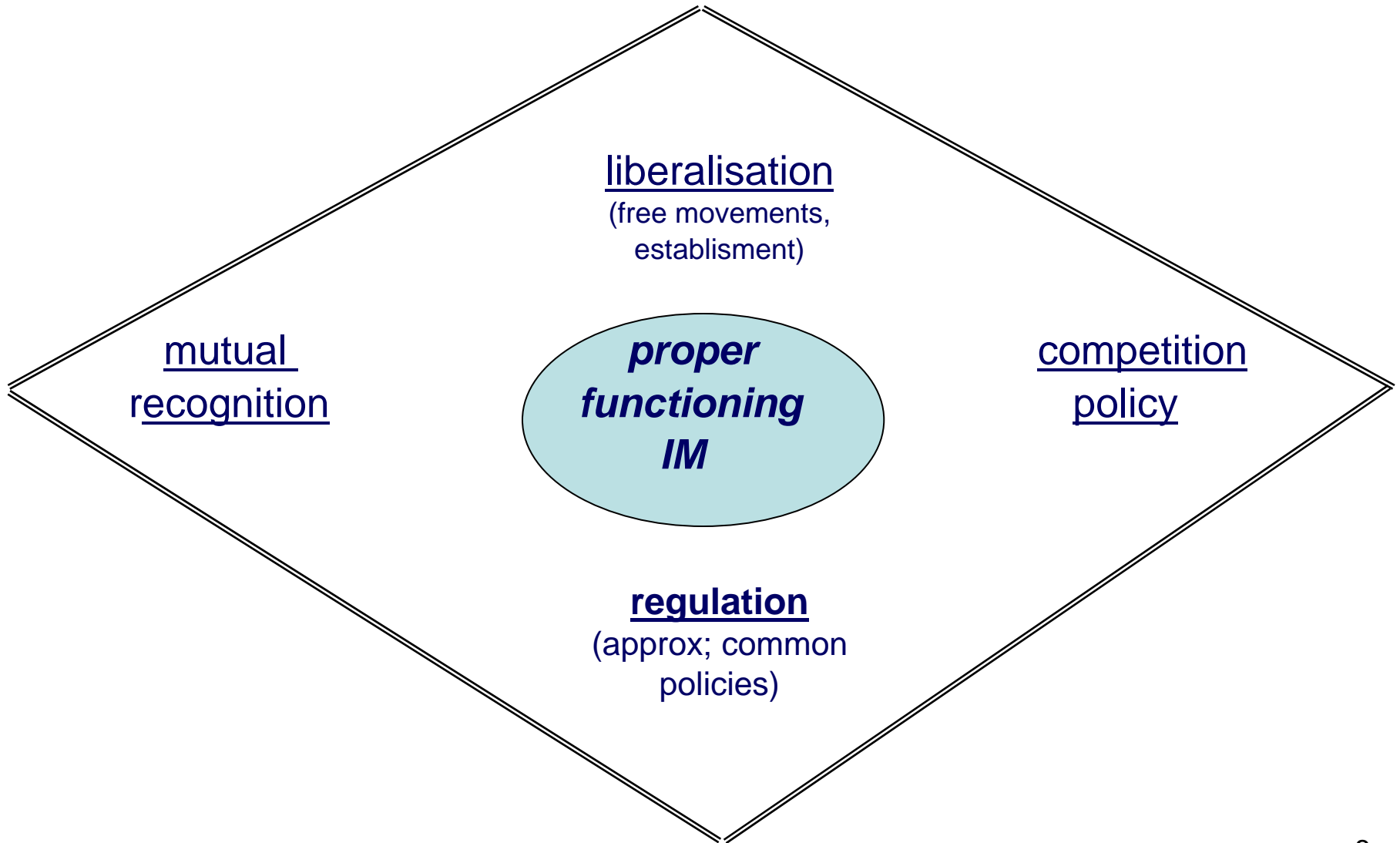
- reviewing the “more single market ? “ question analytically,
- yields a mouthwatering research menu for integration scholars
- lots of fascinating legal, economic and political analytical issues need to be addressed and assessed

MORE SINGLE MARKET

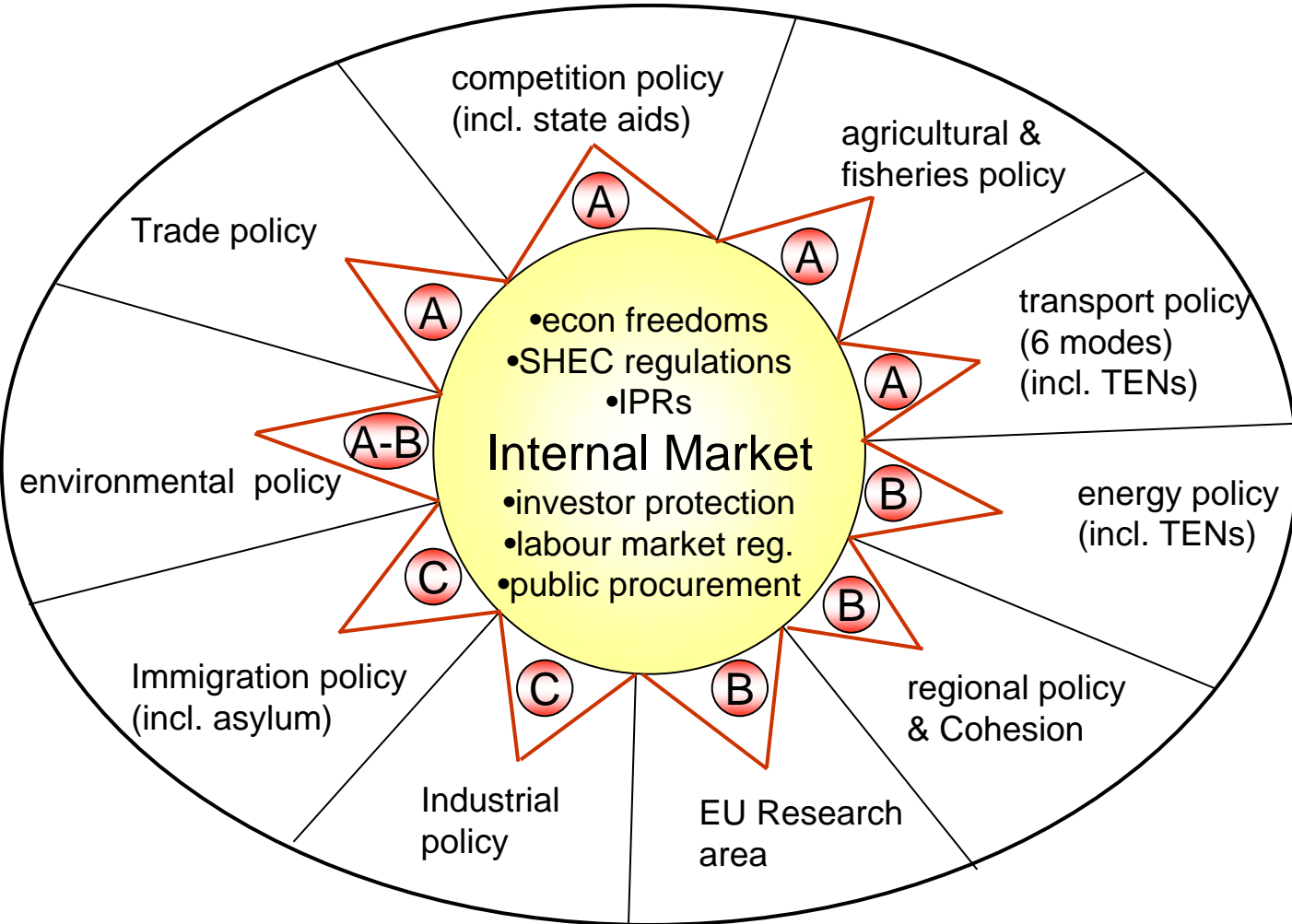
what does it mean ?

- measured against some benchmark (a 'complete' or fully-fledged SM),
- widening of scope and deepening (greater binding, fewer derogations / exceptions) of the current SM acquis
- SM acquis understood as the '*internal market diamond*' (see further), so by-no-means only the five freedoms
- ***“more SM” is to (better) serve objectives*** of the Union, as the treaties have it

Internal Market Diamond



SM links with Common Policies



A = critical for IM

A-B = critical for IM, but partly not at EU level

B = important for IM, yet, has other powerful drivers, too

C = (currently) of minor importance for IM

MORE SINGLE MARKET

what does it mean ? (2)

- but what benchmark to take ?
- a pure classroom ‘economic’ concept ?
[market integration .[] .. activities of market participants in different regions or Member States are geared to supply-and-demand conditions in the entire Union]
- the ‘common market’ in the Rome treaty ?
[a customs-union-plus, without stable exchange rates (+ exch. controls), and little attention for services/labour/IPRs]
- the SM since the Single Act?
[deep in goods, selective in services & network industries, half-baked in IPRs, weak on labour]

MORE SINGLE MARKET

moving definitions or EU policy targets ?

- the Rome treaty never defined the ‘common market’ but
- the Single Act has done so, now art. 26/2 TFEU
[> no internal frontiers ; freedoms ensured !]
- as a ‘mother principle’, it is (purposefully ?) fuzzy
- “persons”, not ‘workers/labour’ ; nothing on IPRs (codified technology flows) ; too vague/loose on services given that art.s 56 – 62, TFEU have not altered substantively (and these are far too weak)

MORE SINGLE MARKET

is 'completion' feasible & sensible ?

- suitable for the EU : a practical economic concept as a more ambitious benchmark than art. 26 TFEU
- “*establishment & proper functioning of the IM for 5 markets : goods, services, capital, labour and codified technology*”
- it is clear, inclusive and insists on ‘proper’ [functioning] (absent in art. 26) >> gives it economic meaning !
- pursuing this concept is **sensible** as a handmaiden for treaty objectives
- going for ‘completion’ in an absolute sense is **neither feasible nor useful** ; there will always be pockets of fragmentation or new issues to be resolved ; also, the marginal political or other costs of ‘completion’ rise quickly, once the basic acquis is no longer questioned

ARE FEDERAL SINGLE MARKETS COMPLETE ?

- No, they are **not**
- one can find amazing examples in e.g. Canada, Switzerland, USA or Australia
- however, this has to be understood in a federal context : federal institutions, federal redistribution, dominant federal budgets, federal macro-economic policies...and a single country with a single political system >> unlike EU or (instit.s; macro pol.) not nearly to the same extent
- federations can “afford” some fragmentation, as it were,
- but their single markets, though not ‘complete’, are very far advanced (as one would expect) in the areas where the EU SM is weakest >> services, labour and IPRs

WHY MORE SINGLE MARKET?

5 drivers, with partial overlap:

i. treaty motives and CJEU case law

- from art. 3/3, EU, it appears that the SM is the 'super workhorse' of the EU : it serves four major objectives, conditioned by four formidable policy constraints
- essentially, it is still about economic growth (as in Rome), but with a host of conditionalities and add-ons, which all matter !
- CJEU case law exhibits many 'balancing' rulings which weaken the restraints of art. 26/2, TFEU, for services, labour and IPRs, but its limits are in sight
- unless EU legislator acts firmly (or treaty is changed)

WHY MORE SINGLE MARKET? (2)

ii. Economic motives

- analytically, micro-, meso- and macro growth benefits can be derived and estimated/ simulated ; second-order dynamics are speculative (e.g. entrepreneurship ; innovation ; new – green ? – markets) ; key are services and services/ goods markets linkages
- for ‘double [growth] dividend’, domestic reforms in these areas are required ; is not necessarily SM

iii. Prerequisite for (proper functioning of) eurozone

- without (serious) EU budget and without exchange rate instrument, eurozone’s ‘economic union’ requires (the 5) markets to adjust flexibly ; one can prove empirically that shock adjustment will be faster and less costly, with less inflation pressure (allows ECB to accommodate reforms)

WHY MORE SINGLE MARKET? (3)

iv. External pressures

- globalisation (trade competitiveness & attractiveness of location/hubs) while creating a dynamic business / innovative environment for new activities
- EU is party to many treaties, prompting 'invisible' pressures to adapt the SM

v. “Inner dynamics”

- without any claim of an integration-theory, there are numerous marginal and less marginal forms of 'creeping integration' in SM affairs every year

WHY MORE SINGLE MARKET? (4)

- call them 'neo-functionalism', or a variant of the bicycle theory, or path dependencies, or hysteresis, or resolving MLG inconsistencies, plus urgent responses to new markets

WHY NOT MORE SM?

i. treaty motives and CJEU case law

- vetoes on SM issues have not been removed entirely ; on labour, when linked to welfare states, and patents, they still exist,
- the EU patent saga (since 1962 !) combines motives ii. and iii. (see further) in a total disregard of the EU public interest [possible, due to extreme asymmetries of info, recently coated by language symbolism of a few countries]; so far, no treaty change could move this to QMV, although all EU leaders say they want far more innovation in the SM (sic)
- labour vetoes may qualify under a subsidiarity test but can (and are) still be misused in blocking progress
- case law in services runs up against severe limits without the origin principle in dir. 2006/123

WHY NOT MORE SM? (2)

i. treaty motives and CJEU case law (cont'd)

- going for specific services regulation is not a panacea ; examples >> cross-border health care services draft directive or the extreme fragmentation in the internal market for audit services
- the Meroni doctrine (prohibiting EU regulatory agencies for e.g. network industries) is a major (though not the only) reason why an internal market for network services does not exist (and may not easily come into being) ; EU lawyers become increasingly critical of the rigidity of this doctrine ; the COM is suspected to play a game here, since hiding behind Meroni in stopping powerful independent agencies from coming into being also sustains a strong COM position

WHY NOT MORE SM? (3)

ii. classic political-economy resistance

- vetoes or not, classic resistance by vested interests, blending cleverly private and public interests arguments, can be found everywhere
- the conduct of patent lawyers, labour unions and various services providers merits much more analytical attention by integration scholars – a goldmine for political scientists

WHY NOT MORE SM ? (4)

- ‘creeping integration’ over time may wittle away the bluntest resistance via recurrent EU regulation, now helped (one hopes) by EU regulatory impact assessment (examples : 2008 goods package ; MIFID dir.; network industries ; employment agencies dir)
- but consumer protection (given that contract law is national) is just as much a problematic example, with its illusory insistence on ‘maximum harmonisation’; in retail finance, consumer protection seems to be misused by the supply side to keep competition local

WHY NOT MORE SM? (5)

iii. National autonomy

- Member States have insisted on enumerating the (shared and exclusive) competences of the EU in the Lisbon treaty [but in a messy way, since item (a) in art. 4/2 TFEU (the internal market) overlaps with 8 other aspects mentioned]
- but MS still have four motives **not** to want “more SM” at times, even for shared powers
- to wit : (1) “red lines” (such as tax) as unnegotiable positions ; (2) regulatory discretion ; (3) protecting national agencies/regulators/supervisors ; (4) assuring certainty about the exact boundaries of ‘national’ powers such as education, health, media, social housing, etc. and the line between SGIs and SGEIs
- besides the interaction with motive ii. (political economy, local interests) and with iv. (socio-political legitimacy)

WHY NOT MORE SM ? (6)

iv. Socio-political legitimacy

- the 'permissive consensus' has greatly weakened and (EU or SM) legitimacy questions have become paramount
- probably due to the confluence of many sensitive 'new' issue areas at the same time between 2000 and 2010 [two Eastern enlargements with low-wage countries, also requiring EU funding ; the EU constitution & the Lisbon treaty, with their confusing referendum debates; permanent reform efforts (markets & welfare state) ; disciplines in the eurozone ; upheavals about services dir + REACH ; Turkey looming ; anxieties about globalisation in an open Europe and about asylum seekers]

WHY NOT MORE SM ? (7)

iv. Socio-political legitimacy (cont'd)

- citizens, social partners (but esp. labour unions) and consumers disgruntled ; how much SM for them ? why no digital SM for citizens/consumers despite 15 yrs of telecom SM ? why can patient rights for cross-border health care (confirmed by the CJEU) not be EU-regulated ? ; Laval and Ruefert CJEU cases brought home a need for balancing between workers from the East of the SM (free movement) and from the West (respect for local social traditions, even when closing the local labour market totally?); where is the borderline between (non-economic) SGIs and the SM, again causing anxiety with providers of social services ?
- national politicians (and not only eurosceptics) smell short-run political gains from EU bashing, amplifying fears whilst SM is rarely presented carefully

WHY NOT MORE SM ? (8)

iv. Socio-political legitimacy (cont'd)

- probably, the loss of 'permissive consensus' is overplayed by academics ; under this consensus, vetoes and trenchwars in Council were normal, the acquis could be lousy or damaging or half-baked ; taboos remained
- nowadays, many vetoes have gone, the EP is far stronger, RIAs discipline law making and force all options on the table ; decisions are taken in sensitive domains
- with hindsight, the permissive consensus was so easy b/c of loopholes and strong MS powers – given QMV and 'more SM', we simply harvest more politicisation, a good thing most of the time

WHY NOT MORE SM ? (9)

iv. Socio-political legitimacy (cont'd)

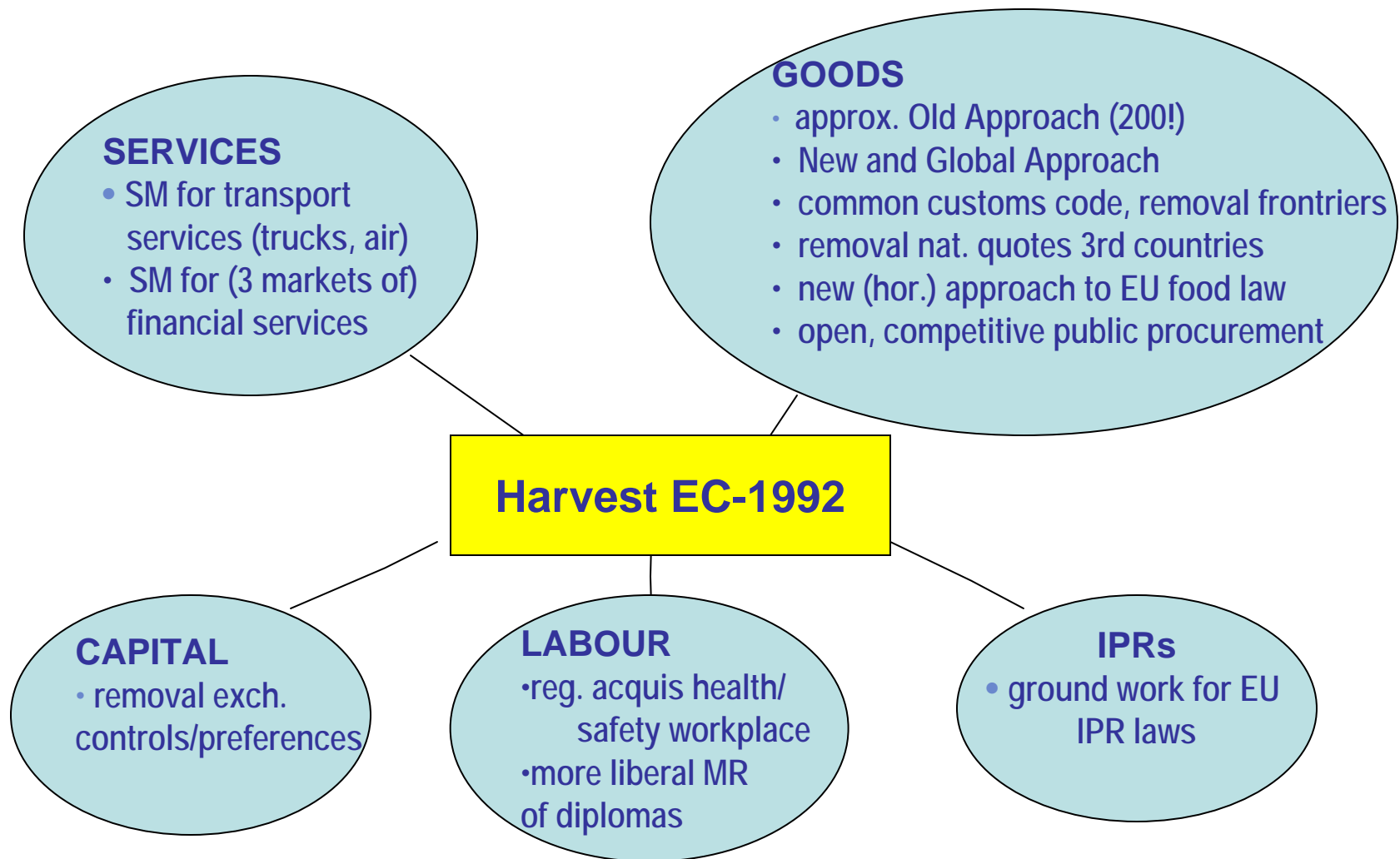
- “the” social dimension affects legitimacy but is unsolvable b/c the EU cannot (legally) conduct social policy much more than it does now – the Convention, WP no. 11 confirmed that it was ‘just right’
- also, ‘the’ social dimension of the SM is far richer than is known (esp. the minimum “floor” in regulation)
- note, too, that those asking for more social dimension are precisely those always having insisted on the primacy of national welfare states and the autonomy of national social protection
- nonetheless, there is no denying that ‘more SM’ requires socio-political legitimacy, and this constrains EU actors ; one effect of the crisis has been some degree of rebalancing, due to a ‘rediscovery’ of the merits of the SM by politicians and citizens

WHY NOT MORE SM ? (10)

v. Competing EU agenda priorities

- more SM, except via ‘creeping integration’, is a very demanding strategy with many DGs involved
- EU agenda has many pressures for (other) priorities e.g. urgency of exit from the crisis, new powers under Lisbon, further enlargement, climate strategy. EU2020 goes even further with 7 flagships
- note that ‘going by the piece’ (as done since EC-1992) is easier politically and yields results ; however, it lacks coherence, avoids the harder barriers, neglects SM fatigue and creates a huge communication problem [who remembers the Nov. 2007 SM Review ?]
- more SM is far from a ‘done deal’ for political leaders

WHAT EC-1992 ACCOMPLISHED



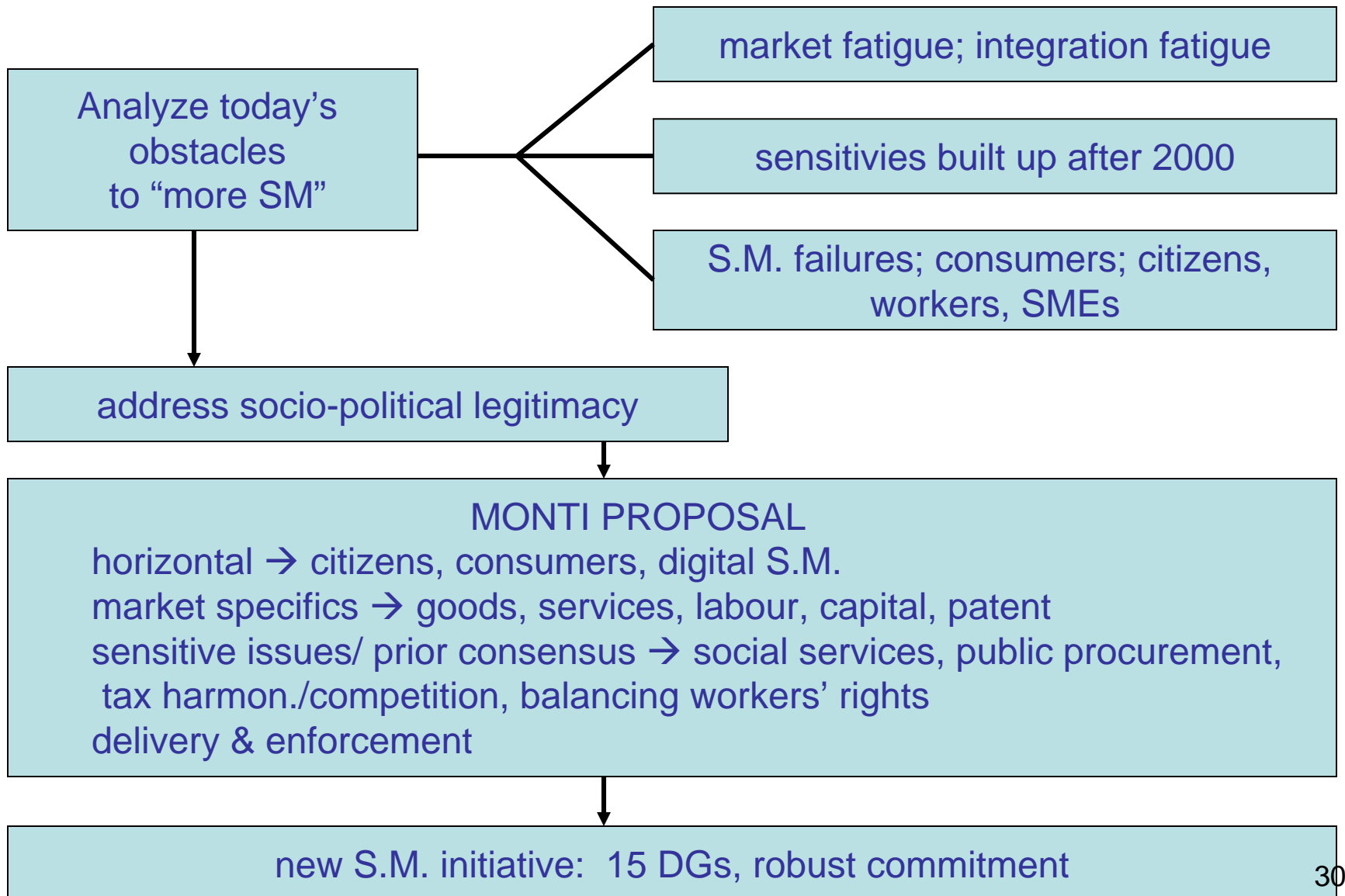
NOTES: (i) CJEU case law promoted M.R.; (2) preventing new barriers in SM via 83/189; (3) merger control '89; (3) network industries not in White Paper (exc. broadcasting); began early 1990s

SM harvest 1993-2010

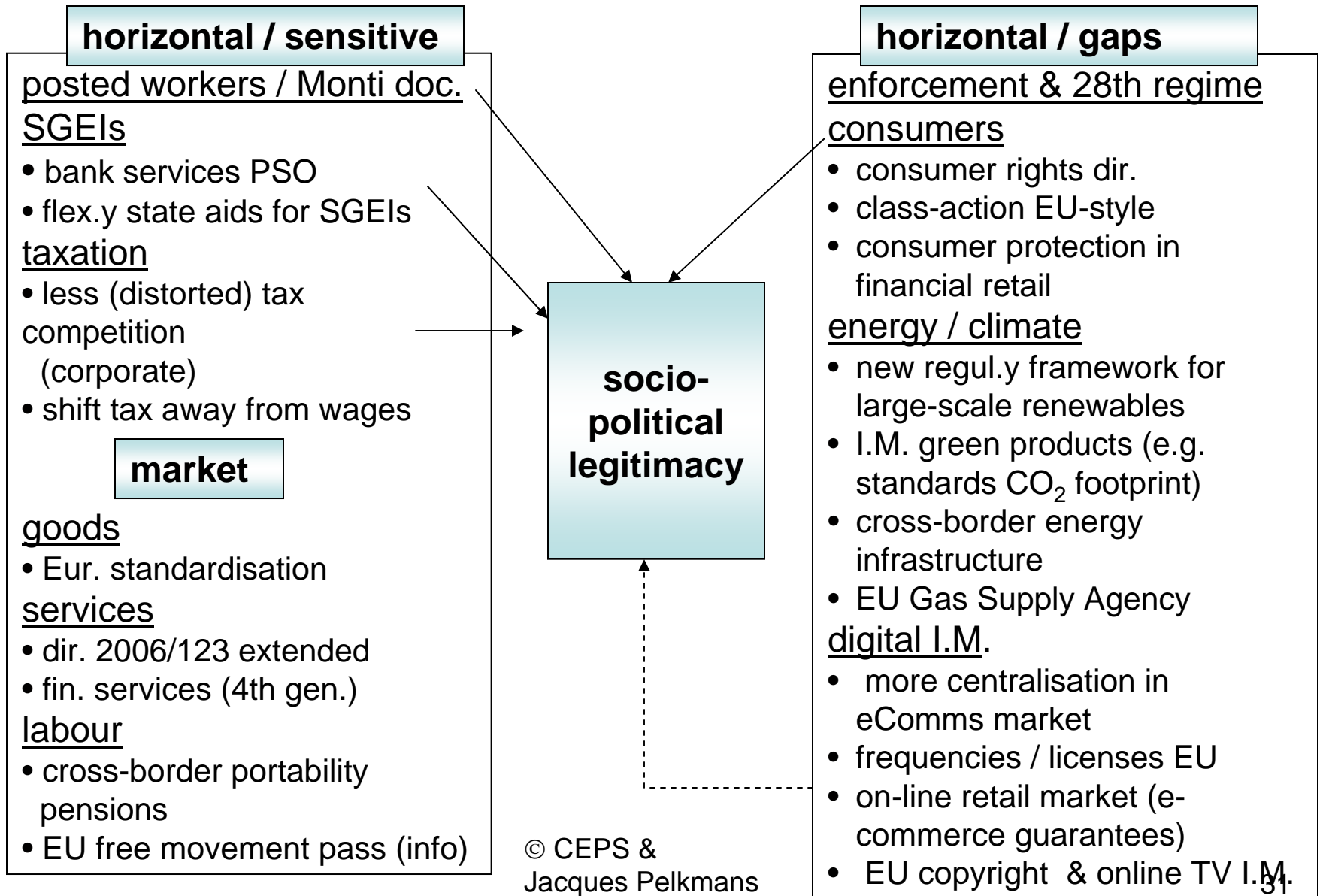
<p style="text-align: center;">SERVICES</p> <ul style="list-style-type: none"> • 3rd generation EU regulation financial services (FSAP) • 4th generation (id.) [since 2008] • opening up of 6 network industries (in stages) • EU Agencies (Safety, Air, Maritime, Rail; Air Traffic) • horizontal services dir. 2006/123 	<p>(selective)</p>	<p style="text-align: center;">GOODS</p> <ul style="list-style-type: none"> • 2008 Goods Package (+ MR) • REACH (chemicals) • adaptation Old Approach (+ simplif.n food specific dir.) • EU Medicinal, Chemical, Food Agencies • EU emission trading system & climate policy • prudent liberalisation of EU SM in defence goods
<p>More Single Market</p>		
<p style="text-align: center;">LABOUR</p> <ul style="list-style-type: none"> • MR for professionals • minimum labour market reg; + 300 sectoral agreements Social Dialogue 	<p style="text-align: center;">CAPITAL</p> <ul style="list-style-type: none"> • stock exchanges; more competitive and standardised cross-border securities trade 	<p style="text-align: center;">IPRs</p> <ul style="list-style-type: none"> • EU trademarks regulation and EU Agency • other EU IPR (copyright, design)

NOTES: 1. modernisation of EU competition policy 2. RIAs (since 2003) and Better Regulation
3. better inter-MS horizontal/adm. cooperation

MONTI 2010: STRATEGY & SUBSTANCE



Monti's I.M. Strategy



TOWARDS A NEW SM STRATEGY

