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The internal market and EMU: from common market to economic union

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This paper explores the evolution of the internal market of the EU.¹ It argues that there have been different paradigms of market integration. The initial paradigm was the common market. As envisaged in the Spaak Report that prepared the ground for the Treaty of Rome and in the early years of integration, the European marketplace would combine freedom and fairness, and would largely be achieved by the legislative activity of the EU. The common market paradigm was replaced by the single market paradigm in the course of 1970s and 80s. Under this paradigm, the European Court of Justice became a more important actor, and the substance of the law shifted towards a less centralized model, with regulatory competition occupying a larger role. However, it will be argued, the single market paradigm suffered from instability and weaknesses. It did not satisfy the key stakeholders. Further, the crisis in the eurozone has demonstrated both the close connections between the internal market and the EMU, and the bad fit between the single market model and the EMU. As a result, a new economic union paradigm may be emerging. The change can be detected most clearly in the field of financial services, and seems normatively justified to support the EMU. However, it is likely to lead to new tensions, given that the internal market encompasses 28 Member States, while only 18 participate in the EMU.

A note about terminology: The original Treaty of Rome used the term common market. The Single European Act of 1986 inserted the term internal market, which coexisted with common market in the language of the Treaty. In the political discussions, the term single market was often preferred. The Lisbon Treaty, which came into force in 2009, replaced all references to the common market with internal market. The Court has tended to use all three concepts interchangeably. For example, in *Gaston Schul* it stated that the common market ‘involves the elimination of all obstacles to intra-Community trade in order to merge the national markets into a single market bringing about conditions as close as possible to those of a genuine internal market.’² However, legal scholars have insisted that the common market and the internal market are different concepts.³

*The themes of this paper have also been explored in J Snell, ‘The Internal Market and the Philosophies of Market Integration’ in C Barnard and S Peers (eds), *European Union Law* (Oxford: Oxford University Press, 2014).

¹ See also P Craig, ‘The evolution of the single market’ in C Barnard and J Scott (eds), *The Law of the Single European Market: Unpacking the Premises* (Oxford: Hart Publishing, 2002), M Egan, ‘Single market’ in E Jones, A Menon, and S Weatherill (eds), *The Oxford Handbook of the European Union* (Oxford: Oxford University Press, 2012), and LW Gormley, ‘The internal market: history and evolution’ in N Nic Shuibhne (ed), *Regulating the Internal Market* (Cheltenham: Edward Elgar, 2006).

² Case 15/81 *Gaston Schul* [1982] ECR 1409 para 33.

³ See eg LW Gormley, ‘Competition and free movement: is the internal market the same as a common market?’ [2002] EBLR 517.

1. The common market

The common market was at the heart of the Treaty of Rome of 1957 that established the European Economic Community. The EEC was a response to the failure of a more ambitious attempt to integrate Europe.⁴ In 1952 Treaties for the European Defence Community and the European Political Community of 'supranational character' had been put forward. They did not survive the national ratification process, and were killed off by the French Parliament in 'an atmosphere of riot'.⁵ A more modest approach was called for, and a Benelux proposal for a common market was chosen as a vehicle to move integration forward despite the ratification crisis. The groundwork for the common market was laid down in the Spaak Report,⁶ which was produced under the chairmanship of Paul-Henri Spaak, the Belgian foreign minister. He had also been the author of the European Political Community Treaty, but with the common market project he expunged supranationalism from his vocabulary and focused on producing a blueprint for a Treaty that would be acceptable for all parties, in particular France.⁷

The Spaak Report argued for the merger of separate national markets into a common market to arrest and to reverse the perceived international decline of Europe. The key benefits were thought to be the increasing division of work that would lead to efficiencies, achievement of economies of scale, and greater competition. To achieve this, three sets of actions were proposed. First, national protections creating obstacles to trade had to be suppressed. This involved the abolition of customs duties and quotas as well as those national regulations that resulted in the practical elimination or control of foreign competition. At the same time, however, it was recognized that common European level regulations would be needed in the public interest or due to the nature of production or particular markets. Second, distortions of competition needed to be dealt with, whether they resulted from business practices, state aids, or disparities between national legislations. Third, conditions for common growth had to be ensured by helping underdeveloped regions, by assisting business in adjusting to competition and modern production methods, and by freeing the circulation of factors of production: labour and to a degree also capital. The practical realization of the common market required the creation of institutions that would apply competition law, ensure state compliance with Treaty obligations, coordinate national policies, and provide parliamentary or judicial control.

The EEC Treaty followed closely the blueprint set up by the Spaak Report. For goods, there were rules on elimination of customs duties and quotas, and also a new provision outlawing measures of equivalent effect that apparently followed from a query of a mid-ranking customs expert concerned about the possibility that States might try to circumvent the rules.⁸ For persons and services, tools and a process for liberalization were established. There were to be issue- or sector-specific initiatives, with the Commission proposing and the Council adopting common rules that would realize free movement. For capital, a more modest degree of liberalization was

⁴ For an excellent short summary of the developments, see D Dinian, *Europe Recast: A History of European Union* (Basingstoke: Palgrave Macmillan, 2004).

⁵ *ibid*, quoting J Lacouture, *Pierre Mendès-France* (New York: Holmes and Meier, 1984).

⁶ Report of the Heads of Delegation to the Foreign Ministers at the Messina Conference, 21 April 1956.

⁷ P-H Laurent, 'Paul-Henri Spaak and the Diplomatic Origins of the Common Market, 1955-1956' (1970) 85 *Political Science Quarterly* 373.

⁸ A Prate, *Quelle Europe?* (Paris: Commentaire Julliard, 1991) 55.

envisaged, again following legislative initiatives. A harmonization mechanism was also created for the purposes of eliminating distortions of competition, and the Commission was charged with applying competition law and policing state aids. There was some coordination of economic policies, and the European Social Fund and the European Investment Bank were established to shelter workforce, to help underdeveloped regions, and to assist business modernization. Following French concerns that its higher social costs would undermine the competitiveness of French companies, social provisions were included declaring, inter alia, the need to improve and harmonize working conditions and standards of living for workers, as well as setting out the principle that men and women should receive equal pay for equal work. The Protocol on Certain Provisions Relating to France was also annexed to the Treaty, allowing it potentially to take protective measures if payments for overtime work put its industry in a disadvantageous position.

The common market was a carefully calibrated mix of freedom and fairness. Markets would be opened, but in a controlled fashion. There would be no creative destruction, but instead a managed process of adjustment, adaptation, and fair competition. All the key concerns of France were addressed. This proved a recipe for political success. The Treaty sailed through the French Parliament just three years after the death of the European Defence and Political Communities.

The early years of market integration proceeded successfully. Customs duties and quotas were indeed eliminated. However, the harmonization of national rules did not work as planned. The empty chair crisis and Luxembourg Accords of mid-1960s had replaced the planned majority voting rules in the Council with the requirement of unanimity.⁹ This made it difficult to engage in successful harmonization. Further, the task of creating a common market was probably greater than had been anticipated. Even for goods, non-tariff barriers proved prevalent. In the words of one observer, 'the lowering of tariffs has, in effect, been like draining a swamp. The lower water level has revealed all the snags and stumps of non-tariff barriers that still have to be cleared away.'¹⁰ Further, technical and other developments meant that ever more issues needed to be dealt with and laws that actually had been successfully adopted at the EU level required frequent revision.

2. The single market

The paradigm began to change in the 1970s. The European Court of Justice stepped forward to take the lead. In the early 1970s, it found in a series of cases that the four freedoms, with the exception of capital, were directly effective. They could be applied even in the absence of the legislative activity that the Treaty had envisaged.¹¹ Starting in the late 1970s, it reinforced this by creating the principle of mutual recognition.¹² The Treaty freedoms went beyond simple non-discrimination rules and also required that the host country accepts goods, services, or economic actors that fulfill the requirements of the home country on its markets, unless the host state has a good reason to oppose

⁹ See eg J Gillingham, *European Integration 1950-2003: Superstate or New Market Economy?* (Cambridge: Cambridge University Press, 2003), 68-72

¹⁰ R Baldwin, *Non-tariff Distortions of International Trade* (Washington: Brookings Institution, 1970), quoted in MP Egan, *Constructing a European Market: Standards, Regulation, and Governance* (Oxford: Oxford University Press, 2001), 41.

¹¹ See eg PP Craig, 'Once upon a time in the west: direct effect and the federalization of EEC law' (1992) 12 OJLS 453, at 463-467.

¹² Case 120/78 *Rewe v Bundesmonopolverwaltung für Branntwein* [1979] ECR 649.

such market access and does so in a proportionate fashion. In other words, the principle is that a product good enough for, say, French consumers, is also good enough for, say, German consumers, unless Germany can convincingly show otherwise. The Court moved the European market towards a competitive model. At the same time, institutionally, it occupied a key position in advancing economic integration.

The Commission sought to capitalize on the rulings of the Court. It issued a Communication setting out a far-going interpretation of the principle of mutual recognition.¹³ The initial reaction of the Member States was hostile. However, over time they became more receptive.¹⁴ A national experiment at socialism had failed in France, and the French government moved from autarkic policies to support internal market liberalization. The Britain of Margaret Thatcher was pushing forward a programme of liberalization, and Christian Democrats had replaced Social Democrats in government in Germany. European businesses were lobbying hard for more economic integration to strengthen their position against US and Japanese competitors. The result was a re-launch of integration under the banner of the single market.¹⁵

The most visible element of the single market was the adoption of a new Treaty to amend the Treaty of Rome, the Single European Act, which followed an important Commission White Paper on the completion of the internal market¹⁶ and entered into force in 1987. This document set out the aim of achieving the internal market by the end of 1992. The internal market was defined as 'an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured'. To allow the aim to be realized, the SEA brought forward a new rule that allowed internal market legislation to be passed by qualified majority voting, rather than by unanimity. The SEA was supported by innovations in the Commission's approach to harmonization. Under the so-called 'new approach', harmonization would be focused on those national rules that survived the direct application of the Treaty. In other words, if the host country had to recognize the product of the home country under the four freedoms anyway, there was no need for the EU to legislate. Only if the host country was able to oppose the importation, for example on grounds of health and safety, was there a need for the EU legislature to engage. Further, the type of legislation would be different. Instead of detailed harmonization of rules on narrow sectors, broader directives would be adopted that would seek to harmonize only the essential health, safety, environmental and other requirements. The details would be left for European standardization process undertaken by bodies such as CEN and CENELEC. Finally, an early warning system was established that required Member

¹³ Communication from the Commission concerning the consequences of the judgment given by the Court of Justice on 20 February 1979 in case 120/78 ('Cassis de Dijon') [1980] OJ C256/2. See generally KJ Alter and S Meunier-Aitsahalia, 'Judicial politics in the European Community: European integration and the pathbreaking *Cassis de Dijon* decision' (1994) 26 *Comparative Political Studies* 535.

¹⁴ See A Moravcsik, 'Negotiating the Single European Act: national interests and conventional statecraft in the European Community' (1991) 45 *International Organization* 19, and W Sandholtz and J Zysman, '1992: recasting the European bargain' (1989) 42 *World Politics* 95 for two classic studies of the impetus behind the single market project.

¹⁵ According to K Nicolaïdes, 'Kir forever? The journey of a political scientist in the landscape of recognition', in M Poiars Maduro and L Azoulai, *The Past and Future of EU Law: The Classics of EU Law Revisited on the 50th Anniversary of the Rome Treaty* (Oxford: Hart Publishing, 2010) at 448: 'When I recently asked Lord Cockfield, Commissioner for the internal market, what he considered the greatest achievement of his career, he answered without a beat: to have exported Cassis from the European Court of Justice and goods to the single market Europe 1992 programme.'

¹⁶ Commission White Paper, 'Completing the internal market' COM (85) 310 final.

States to notify new technical regulations to the Commission, so that it could take preventative action.¹⁷

The single market paradigm had a number of advantages. It aligned the Treaty, harmonization, and standardization. It abandoned unachievable ambitions for complete harmonization. It left room for experimentation and local differences. Most importantly, it was realistic. The measures that needed to be adopted were by and large passed; the deadline of 1992 was for the most part met. The single market was created in a workable form, and further advances could be built on this success.

Unfortunately, the single market paradigm was never fully stable. Despite its theoretical attractiveness, it did not really satisfy many of the key stakeholders. First, from the business perspective the approach was less than perfect. While mutual recognition was fine in theory, in practice, its application left a lot to be desired. National authorities were still left as guardians of market access, and could deny mutual recognition on the basis of the derogations written in the Treaty, such as the needs of public policy, or on the basis of exceptions developed in the case law, such as consumer or environmental protection. In other words, an attempt by a company to penetrate the market of another country was often frustrated by insistence of the host state officials that local rules be obeyed because the rules of the home country did not in their view sufficiently protect non-economic interests. Whether such a requirement was lawful depended on the proportionality of the host country rule. This was very difficult to predict in advance and could only be tested in costly and lengthy litigation. As a result, for a company it would often be easier just to follow the local rule than to rely on European rights.¹⁸

For national governments, the single market model created at least two types of difficulty. The national publics expect states to protect them from environmental degradation, substandard products and so on. If there is a problem, for example a food scandal, the national government may get blamed. Yet those governments have now given up their ability to control fully products that are sold in their country. They might end up bearing the responsibility for things that they cannot affect. Further, the kind of competition the single market model entails may be branded unfair. National companies on the losing end might blame their lack of success on the various 'unfair' regulatory advantages that foreign competitors enjoy, such as lower standards or wages, and demand protection. Under European law such protection is likely to be illegal. This could leave the national decision-makers between the rock of domestic public opinion that expects the government to protect local companies and the hard place of EU rules that outlaw it.

For organized interest groups, such as trade unions or environmental groups, the principle of mutual recognition at the heart of the single market represented a threat. The principle potentially allows regulatory competition to take place. This could undermine the labour or environmental standards that the groups were committed to. Even if fierce regulatory competition failed to start, the balance of power between organized interest groups and industry was altered. The industry was

¹⁷ See J Pelkmans, 'The new approach to technical harmonization and standardization' (1987) 25 JCMS 249.

¹⁸ J Pelkmans, 'Mutual recognition in goods: on promises and disillusion' (2007) 14 JEPP 699, at 708-711. The EU has put forward various initiatives to improve the functioning of mutual recognition, in particular European Parliament and Council Regulation (EC) 764/2008 laying down procedures relating to the application of certain national technical rules to products lawfully marketed in another Member State [2008] OJ L218/21.

provided with the ability to threaten relocation in the absence of domestic reforms. In other words, the industry could tell the government or trade unions that without changes, such as greater labour market flexibility, future investment decisions would be directed at other parts of the EU.¹⁹

For the advocates of further integration the single market was insufficient. It was a construct of logic and economic advantage. It lacked emotional pull; it did not instill euro-patriotism in citizens. In the words of Jacques Delors, the President of the Commission during the single market project, 'It is difficult to fall in love with the single market.' In fact, quite the opposite: some of the bitterest resistance the European project has encountered has been due to attempts to extend the single market.

In this context, the enlargement of the Union is a significant factor. The expansions of 2004 and thereafter brought into the EU a large number of countries that were at quite a different level of economic development from the existing Member States. This created political problems. An attempt to enhance the effectiveness of the single market in the services sector by the adoption of a Directive with a country-of-origin principle met fierce resistance, and resulted in the watering down of the Directive. Judgments of the European Court of Justice on the kinds of actions trade unions could take to oppose competition from the new Member States entered into political discussion for example in the context of the Irish referenda on the Lisbon Treaty, just as the threat of Polish plumbers 'stealing' the jobs of French plumbers had been invoked in debates on the Constitutional Treaty in France. In the UK, the free movement of workers and services was called into question when local workers demonstrated against the use of labour from other Member States at the Lindsey oil refinery.²⁰ Behind these phenomena was the economic insecurity that heightened competition created, in particular when the labour cost differences between some of the new and old Member States were very substantial. Further, the single market with its mutual recognition requires mutual trust, and with enlargement that trust was at least temporarily undermined.²¹

The pressures described above have had an impact on legal developments. As mentioned, the attempt to liberalize services markets in one fell swoop using the country-of-origin principle was abandoned.²² The Commission has in certain areas moved away from the idea of divergent but coordinated national systems and instead returned to an approach based on more complete harmonization of rules.²³ The Commission has also contributed to uniformity at the level of implementation by working quietly to shift away from directives that need to be transposed by

¹⁹ See generally C Barnard, 'Social dumping and the race to the bottom: some lessons for the European Union from Delaware?' (2000) 25 ELRev 57.

²⁰ C Barnard, "'British Jobs for British Workers": The Lindsey Oil Refinery Dispute and the Future of Local Labour Clauses in an Integrated EU Market' (2009) 38 ILJ 245.

²¹ For an empirical assessment, see J Delhey, 'Do enlargements make the European Union less cohesive? An analysis of mutual trust between EU nationalities' (2007) 45 JCMS 253.

²² K Nicolaïdis and SK Schmidt, 'Mutual recognition "on trial": the long road to services liberalization' (2007) 14 JEPP 717.

²³ European Commission Green Paper on the Review of the Consumer Acquis (2006) COM 744 final. See generally S Weatherill, 'Maximum versus minimum harmonization: choosing between unity and diversity in the search for the soul of the internal market' in N Nic Shuibhne and LW Gormley, *From Single Market to Economic Union: Essays in Memory of John A Usher* (Oxford: Oxford University Press, 2012).

Member States to regulations that do not.²⁴ There have been attempts to emphasize social Europe and non-economic issues to appease disgruntled citizens, rather than leaving the matters for regulatory competition. This was expressed forcefully in the report for the Commission on the re-launch of the single market by Professor Monti. He advocated the creation of a stronger single market but also noted the need to build consensus to support it as 'today the single market... is seen by many Europeans... with suspicion, fear and sometimes open hostility.'²⁵ It also finds an expression in the Lisbon Treaty, which commits the EU to the goal of a 'social market economy' and, in a gesture full of symbolism, relegates the EU's commitment to undistorted competition from the first Articles of the Treaty to a Protocol. In other words, some of the single market paradigm's basic features have been checked or challenged.

3. Economic union?

It is possible that we are now witnessing another paradigm shift for the internal market. The weakened, unstable single market paradigm may be giving way to an economic union paradigm. The proximate cause for this is the need to ensure the success of the single currency, euro, which has been battered by the financial crisis that begun in 2007.

The internal market and the economic and monetary union complement each other, as was already recognized in the Commission's slogan 'one market, one money'. In fact, a single currency only makes sense in the context of an internal market. A decision to adopt a single currency is always an exercise in balancing its benefits against its costs, and a well-functioning internal market increases the former and reduces the latter. The benefits of a single currency in terms of lower transaction costs, greater transparency, and the elimination of exchange rate risk are only felt if there is trade and investment, and a single currency can in turn be expected to provide a further boost for them. The problem with a single currency is that it reduces flexibility: an individual Member State can no longer respond to economic developments by changing interest rates or the value of its currency. However, a well-functioning internal market may reduce the need for independent action by Member States if it brings with it an alignment of business cycles.²⁶ If every Member State experiences booms and busts simultaneously, a centralized monetary policy will work well. Further, in the literature on optimum currency areas, labour mobility has been identified as one of the key factors for a successful currency union.²⁷ If one Member State is experiencing fast growth while another is suffering a slowdown, the workers may move from the latter to the former. This compensates for the loss of independence in interest and exchange rate setting. The problem for Europe is that free movement of workers remains largely words on paper, with only a small percentage of EU nationals taking advantage of their right to move to another country for employment. More broadly, a well-functioning internal market allows the real exchange rate channel to work. What this means is that a country whose economy is overheating due to low real

²⁴ According to Internal Market Scoreboards, as of 1 October 2012, there were 1420 single market directives and 1769 regulations in force. This contrasts with 1490 directives and only 275 regulations in 2001. See J Pelkmans and A Correia de Brito, *Enforcement in the EU Single Market* (Brussels: CEPS, 2012) at 107.

²⁵ M Monti, 'A new strategy for the single market: at the service of Europe's economy and society' 9 May 2010.

²⁶ JA Frankel and AK Rose, 'The endogeneity of the optimum currency area criteria' (1998) 108 *The Economic Journal* 1009.

²⁷ RA Mundell, 'A theory of optimum currency areas' (1961) 51 *The American Economic Review* 657.

interest rates, which result from a centrally set nominal interest rate and a high level of inflation, is automatically cooled down. Due to the high inflation, its goods and services become more expensive so its export sector suffers. The weakening export sector stabilizes the system. By contrast, in a country that is experiencing a slowdown due to an excessively high real interest rate, which results from a centrally set nominal interest rate coupled with low inflation, the export sector is going to accelerate. The low inflation will make its goods and services cheaper, and its export performance will be boosted. This again stabilizes the system automatically. The problem for the EU is that weaknesses in the internal market, which for example still covers services only partially, have meant that the real exchange rate channel has not operated with sufficient force to counteract localized overheating and bubbles.²⁸ It is no accident that serious proposals for dealing with the eurocrisis tend to call for the strengthening of the internal market.²⁹

Moreover, it can be questioned how well the basic idea of a competitive single market model, and the current EMU more broadly, where each Member State is responsible for its own economic policies and then competes with others fits with the reality of the single currency. The crisis has shown that Eurozone countries are highly interconnected. When a number of countries allowed their labour costs and other elements of competitiveness to deteriorate disastrously, this proved to be a problem for the entire eurozone; ultimately the stronger countries and the European institutions could not let the weaker ones drown but needed to come forward with various rescue mechanisms. Further, within the eurozone, problems of one country can rapidly infect other states. If there are question marks over the health of the banks of one country, markets quickly become worried about the financial institutions of the other countries as well; if the ability of one Member State to stay within the euro is questioned, the markets quickly start to worry about the other countries. In other words, it is in the interest of all euro states to ensure that every euro state is economically healthy. It is not simply a matter of each state looking after its own performance and competing with the others.³⁰

Finally, the crisis has shown the need for profound changes in the field of financial services, one of the most important sectors of modern economies. First, the crisis has led to a re-fragmentation of the single financial market, as companies have repatriated some of their activities, often at the behest of national supervisors. This means that some of the most tangible gains of the internal market have been lost. It also means that the conditions of competition for non-financial firms have diverged, as the availability and cost of capital may vary dramatically between countries. Further, the monetary policy decisions of the European Central Bank have lost some of their effectiveness, as for example the cutting of interest rates may not result in a lower cost of finance on the ground. More broadly, the financial crisis has exposed the unhealthy relationship between many Member States and their banks. When individual banks have got into trouble, their home states have had to rescue them. This has increased their national debt and made investors doubt the solvency of countries such as Ireland and Spain. This has further weakened national banks, which often have

²⁸ The dominance of real interest rate channel over the real exchange rate channel has been described well in H Enderlein et al, *Completing the Euro: A Road Map towards Fiscal Union in Europe - Report of the 'Tommaso Padoa-Schioppa Group'* (Notre Europe, 2012).

²⁹ See eg H Van Rompuy et al, 'Towards a Genuine Economic and Monetary Union' available at http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/134069.pdf at 10.

³⁰ For a succinct review of the issues, see Communication from the Commission, 'A blueprint for a deep and genuine economic and monetary union: launching a European debate' (2012) COM 777 final.

large holdings of their government's bonds. In other words, national banking and fiscal problems have fed into each other. In sum, the single market model where banks and financial service providers were largely regulated, supervised, and ultimately supported by their home countries but operated on a pan-European scale has proven unsustainable.³¹

The move away from the single market paradigm can be seen graphically precisely in the case of financial regulation. This was a sector where the principle of home country control at one time reigned supreme. Every Member State regulated its own financial institutions, which then traded in the whole EU using the single passport that the home country had provided them. The new financial services and banking rules that have been adopted since the financial crisis have abandoned the idea of home country control and moved to a centralized approach with a single rulebook rather than a number of competing and mutually recognized national rules.³²

It is thus possible that through a process of spillback the 'remorseless logic' of monetary integration requires an internal market fit for an economic union³³ – a market that works better and is more uniform and centralized than the one contemplated under the single market paradigm. If so, an acute dilemma emerges. How to manage the relationship between those Member States that have signed-up to the euro, and those that have not? Again, we have already got a small taste of this in the context of the planned EU banking union. The UK, a country with an opt-out from euro and not participating in the banking union, has been deeply concerned about the possibility that in practice the euro countries would impose their view on the future shape of the internal market on the whole EU. A solution for this concern was found in the shape of a complex new decision making mechanism that seeks to safeguard the interests of the outs.³⁴ However, similar concerns are likely to emerge elsewhere.³⁵

To conclude, the nature of market integration has changed in the course of the development of European integration. In the beginning, what was contemplated was a common market that would balance freedom and fairness, and where the political institutions would play the leading role in creating the common market through harmonization. This did not work. The institutions proved unequal to the task. Instead, the Court seized the initiative in cooperation with the Commission and with the eventual support of the Member States. The result was a single market that was based less on harmonization and a level playing field and more on home country control and competition. However, it may be that we are now once again witnessing a shift in the internal market paradigm. The tensions inherent in the single market and the need to support the economic and monetary union may be pushing economic integration in a new, more centralized direction.

³¹ Ibid.

³² For critical overviews, see M Andenas and IHY Chiu, 'Financial stability and legal integration in financial regulation' (2013) 38 ELRev 335 and N Moloney, 'EU financial market regulation after the global financial crisis: "more Europe" or more risks?' (2010) 47 CMLRev 1317.

³³ See further on the relationship between 'microeconomic and macroeconomic constitutions' K Tuori and K Tuori, *Eurozone Crisis: A Constitutional Analysis* (Cambridge: Cambridge University Press, 2014).

³⁴ A Barker, 'Eurozone agrees common bank supervisor' Financial Times, 13 December 2012.

³⁵ See generally on the limits of market integration in the context of different models of capitalism J Snell, 'Varieties of capitalism and the limits of European economic integration' (2010-11) 13 CYELS 415.