

The Monti report -a remedy to Internal Market fatigue?

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Renowned ex-Competition Commissioner Prof. Mario Monti has presented his long-awaited report “A new strategy for the Single Market” on 9 May 2010, responding to European Commission President José Manuel Barroso’s request.

The 107-page document (in EN, also available in DE, FR and IT) seeks to remedy what Monti calls a “market fatigue”, having made the single market less popular than ever while Europe needed it more than ever. Since other important European problems like enlargement and the necessary adjustments in institutional and lawmaking issues have been resolved with the entering into force of the Lisbon Treaty in December 2009, the time had come to re-address the single market which was still far from being completed. Monti asks Europe’s citizens, enterprises and governments for more openness towards competition. Competition, by improving Europe’s competitiveness, is the only way out of the economic crisis, according to Monti.

A widened perspective to enable new trade-offs

A core point in Monti’s recommendations is widening European policies also in areas like tax in order to achieve better trade-offs between different groups of Member States that pursue different interests: While the continental European social market economies should become more open towards competition, the Anglo-Saxon countries should refrain from blocking social issues and show more openness to tax coordination (excluding tax harmonisation). Greater tax coordination and a reduction of tax competition would be the concession the Central and Eastern European countries have to make, getting less barriers and improved infrastructure in return. The Nordic countries finally served as a good example how high tax rates and competitiveness were not in contradiction.

The disillusioning reality in cross-border services

Cross-border services and the cross-border movement of workers is hindered by a multitude of tax disadvantages and administrative procedures, apart from non-legal reasons like language and family. Monti states that immigration into the EU has been on a much higher level than work-related migration between Member States.

The implementation of the Services Directive (2006/123/EC) should be pursued as a priority by Member States. The “points of single contact”, designed for the completion of procedures and formalities for cross-border service providers, should in the longer term become “comprehensive e-government centres”, covering also matters like taxation which is at present expressly excluded from the Directive. Another innovative approach to be used for future directives was the idea of mutual evaluation, a peer review in which Member States analyse whether the other Member States are properly implementing the Directive.

Regarding the recognition of professional qualifications, Monti underlines the necessity of a review of the Directive 2005/36/EC, pointing out that out of 800 regulated professions, only 7 were automatically recognised by that Directive. It is worth noting that the Lisbon Treaty facilitates European legislation in this field: Under the Nice Treaty, the principles governing access to professions could only be changed unanimously in the Council (ex-Art.47 (2)). In the TFEU, there is no such provision, meaning that qualified majority voting now applies in this area. However, Monti admits that it would be easier to introduce automatic recognition of professional qualifications for “new” emerging professions rather than for existing qualifications.

Monti called on the Member States to remove tax obstacles to cross-border work. It could not entirely be left to the European Court of Justice to take care of this.

Taxation – Disburden the workers, tax the polluters!

Concerning the work currently undertaken in taxation, Monti supports the facilitation of cross-border VAT relief and electronic invoicing, the extension of the Savings Directive to cover loopholes and the introduction of a binding dispute settlement mechanism for double taxation. Clear criticism is expressed regarding the standstill of negotiations on the proposal on the VAT treatment of postal services.

Monti describes how tax competition has served as an incentive for Member States to tax less mobile tax basis such as work income and social contributions to the advantage of mobile tax basis such as capital, having repercussions on the fairness of tax systems and making labour more expensive. While Monti stresses that corporate tax rates were not more than one aspect in investment decisions, political tax coordination of governments and practical cooperation of tax authorities could remedy this dilemma to some extent.

Regarding future tax projects, Monti considers that the concept of at CCCTB (common consolidated corporate tax base) is mature to move forward, meaning a proposal by the Commission. For consumption taxes, Monti recommends a more coordinated policy with a view to raising these taxes. Environmental taxation finally would allow consolidation of the Member States’ budgets while relieving the tax burden on labour. For the regular debate of tax issues, Monti suggests the creation of a Tax Policy Group consisting of the Commission and ministerial staff from the Member States.

Less regulation through more regulations

Presently, most of the internal market rules are directives, a tool that gives Member States the possibility to adopt measures in the context of their legal traditions and leaves them some discretion on how to reach the prescribed aim but that bears the risk of non-implementation and the introduction of additional requirements through the Member States (so-called “gold-plating”), complicating compliance for cross-border enterprises. For this reason, directly binding regulations should be considered as a preferred legislative instruments for harmonisation, notably in areas where harmonisation would start from scratch.

An interesting idea is referred to as “the 28th regime”, meaning opt-in rules in certain areas that do not replace but complement the 27 existing national sets of rules. Individuals or companies that are very

active cross-border could choose to be subject to this “28th regime”, leaving local individuals and enterprises the possibility to stick to their domestic rules. Although the “28th regime” would not be imposed on Member States, it would remain a reference point and could lead to gradual harmonisation. One existing example for this concept was the European Company Statute.

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