

Has the single market project in europe been a success?

[Parts of the World](#), [European Union](#)



Abstract

The establishment of the EU's single market was intended to create jobs and enhance prosperity. Since it was established in 1992, significant benefits have been made to the EU's internal market and a lot of opportunities have been created. Despite this, many problems continue to exist and further changes are necessary if the objectives of the EU are to be fully realised (European Commission, 2012: 1).

Introduction

The idea behind the European Union's (EU) single market was to treat the EU as one territory so that the free movement of people, goods, money and services could be achieved (Europa, 2012: 1). The single market was established by the EU to enhance competition and trade through a system of standardised laws that apply to all Member States (Barnard, 2002: 1). This improves efficiency and gives individuals more choice when it comes to providing and attaining goods and services. The overall quality of the goods and services is increased, which is economically beneficial. The Single European Act was enacted in 1986 to establish a single market and has since been considered one of the EU's greatest achievements (Europa, 2012: 1). This led to the abolishment of internal border controls between EU countries in 1993 and is now accessible to millions of people across 27 Member States. Restrictions to trade have been removed and individuals now receive better standards of living. EU law comprises of treaties and legislative provisions, such as Directives and Regulations that aim to secure the free movement of

goods, services, people, and capital. Despite this, Member States are still responsible for social welfare and taxation, yet the EU influences the policies of Member States (Europa, 2012: 1). The single market has been successful in allowing people and businesses to move freely within the European Economic Area (EEA) and has therefore transformed the way individuals live, work and travel (Mayes and Hart, 1994: 177). The progress that has been made towards the development of the EU's single market will be identified in this study in order to determine the extent to which it has been a success.

Barriers to the free movement of goods, services, people and capital

The single market was intended to remove any barriers that restrict the free movement of goods, services, people and capital. A number of different policies have therefore been implemented that seek to remove any free movement restrictions (Mayes and Hart, 1994: 5). This has significantly impacted many organisations and industries within the internal market. However, unless EU policies are conformed to by all Member States it is unlikely that greater freedom will be attained within the EU. This is often at the expense of widely accepted practices; however this is considered necessary in achieving harmonisation. It therefore seems to be important that any barriers to trade are removed and that actions likely to impact sustainable development are eradicated. Article 101 of the Treaty on the Functioning of the European Union (TFEU) (ex Article 81 EC) provides that; “all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention,

restriction or distortion of competition within the internal market” shall be strictly prohibited. Any limitations that are placed upon the freedom to trade should therefore be prohibited so as to allow for the freedom of movement to be attained. Whether this is easy to establish in practice, is a debatable subject because although substantial improvements have been made in the 20 year history of the EU, it is clear that many obstacles still need to be overcome in guaranteeing a free market (Alam, 2007: 153).

Single Market and Competition

The establishment of the single market within the EU provides greater opportunities to businesses by providing them with access to the world’s largest trading bloc (Gov, 2013: 1). This enhances economic activity whilst also creating healthy competition through the stimulation of business and innovation. This leads to growth and job creation as export and trade will be increased (Gov, 2013: 1). Not only does this have a beneficial impact upon the economy but it also increases productivity. Consumers also benefit from a single market as competition often leads to reduced costs for products and services. This was identified by Euromove when it was pointed out that competition is one of the main driving forces of an advanced modern economy as it “ gives the consumer choice, it puts downward pressure on prices, it rewards innovation and it helps to create jobs (2009: 1).

Nevertheless, in order to prevent unfairness and ensure that the single market is a level playing field, the EU has introduced various rules and principles that seek to create fair competition. Such principles impose a number of burdens upon businesses within the EU, although this is

considered necessary in the proper functioning of the internal market. It was evidenced by Shuibhne that the establishment of the internal market created a different focus of competition law in terms of addressing the barriers to integration created by state intervention in the market and the problems that occurred as a result of the liberalisation processes of the 1990's" (Shuibhne, 2006: 88).

Whilst the legislative framework is now developed, on-going improvements continue to be made so that rules and regulations are being properly enforced and so that businesses and consumers understand the rules that exist within the internal market. This has been happening since the internal market was first established, so as to maintain an effective operation of the single market. Some of the improvements have included; improving and enforcing single market rules, reducing the regulatory burden imposed upon businesses, and the liberalisation of certain areas including; public procurement, public services and utilities (DTI, 2002: 1). In spite of these improvements, there are still many underlying weaknesses that exist in the single market which seems to suggest that it may not be as successful as originally anticipated in the internal market strategy. Some of these weaknesses have arisen as a result of; failures by Member States to implement some of the Directives (Kennedy, 2011: 108), a lack of co-operation that exists between Member States, or because of inadequate enforcement (Kennedy, 2011: 108). In 1999 the internal market strategy was put forward by the European Commission which set out the aims and objectives of the establishment of the internal market. Various measures

were incorporated into this strategy which sought to guarantee the proper functioning of the single market. This strategy has since been reviewed on an annual basis, though it cannot be said that the internal market is complete. Therefore, despite the fact that many obstacles have already been removed by the EU, new challenges are continually being dealt with.

It has been said that companies within the EU should take full advantage of the single market model since the free movement of capital, goods, services and labour would be realised more easily. Tax issues arising from cross-border mergers and acquisitions would effectively be minimised through economic integration. This was identified by Ilzkovitz et al; “ the Internal Market is a powerful instrument to promote economic integration and to increase competition within the EU and it has been the source of large macro-economic benefits” (2007: 271). Arguably, it seems as though the main objective of the Single Market is to allow competition to be obtained through the ability to trade freely within the EU. In accordance with this, it would therefore be beneficial if EU Companies took full advantage of this market so as to avoid many issues that arise from various issues including the taxation issues that result from Merger and Acquisitions (M&A) deals. Hence M&A deals are structured in a way that results in harsh tax liabilities and since an asset-based deal will “ typically expose the seller to two levels of taxation, corporate and personal and a stock-based transaction can be unattractive to a buyer given the tax treatment of fixed asset values” (QFinance, 2010: 1). If a company only conducts business within the single market, then they will not be exposed to such harsh tax liabilities. This

encourages competition which is imperative for the advancement of the economy.

However, because there are certain restrictions that exist within the single market, companies often find it difficult to expand their business in the internal market. Thus, as argued by the European Commission; “ national tax systems in the EU differ so much that it can be complicated and expensive for companies to expand in the single market” (European Commission, 2011: 1). Because of these problems, a number of proposals were put forward by the Commission to eliminate these absurdities including the introduction of a single set of tax rules, also known as a Common Consolidated Corporate Tax Base (CCCTB). This would make it a lot easier and cheaper for companies to do business within the EU and as identified by Goodall; “ every year the CCCTB will save businesses across the EU ^700 million in reduced compliance costs, and ^1. 3 billion through consolidation” (2011: 53). The current problems that emerge from companies entering into M&A dealings would be removed and harsh tax liabilities would be avoided. Long term administrative improvements would also be made for those companies operating in multiple member states (Drysdale, 2007: 66), which is welcoming for those companies wishing to save on taxation. The freedom of movement will be likely to be obtained more easily by the implementation of a CCCTB. This will certainly encourage competition within the single market and more companies would most likely enter into M&A deals as a result.

Conversely, not all agree that the CCCTB is effective, however, and as a result of this many Member States have refused to support its

implementation. It is felt that a CCCTB would be a “ de facto infringement of their tax sovereignty should such a Directive be written into law” (Ernst and Young, 2011: 40). This provides an example of how Member States will not implement every Directive that exists under EU and signifies how greater co-operation is needed. In spite of this, there are many drawbacks that exist within a CCCTB and it is questionable whether the tax advantages of a CCCTB outweigh the drawbacks that would arise if it was implemented. In addition, it was confirmed by the Secretary to the Treasury, Justice Greening, that the draft directive to introduce a CCCTB does not comply with the principles of subsidiarity and proportionality (Cave, 2011: 87). Furthermore, it is also unlikely that the government will agree to a proposal that might threaten or limit the UK’s ability to shape its own tax policy (Cave, 2011: 87). In view of these assertions, it cannot be said that a CCCTB should be incorporated since it appears to be out of step with the principle of subsidiarity. This principle aimed to ensure that the EU only acted in instances where the proposed action could not be achieved by individual countries. Effectively, although there are many benefits of a CCCTB, there are also a significant amount of drawbacks that transpire and it seems as though the government ought to ensure that a CCCTB, if implemented, does not undermine competition, whilst also ensuring that extensive opportunities for tax avoidance are not created. It is arguable whether this can be achieved and it seems as though extra demands will in fact be placed upon corporate tax departments.

Taxation

Articles 25-31 and 39-60 of the Treaty on the Functioning of the European Union (TFEU) lay down the fundamental freedoms that are relevant to tax law and thus facilitate free movement of goods, services, persons and capital within the European Economic Area (EEA). Accordingly, as argued by Sypris, the changes made by the implementation of the TFEU; “ influence the internal market case law of the Court of Justice, which represents a significant threat to national labour laws and practices” (2008; 219). The ECJ held in *Gschwind v Finanzamt Aachen-Aubenstadt* (Case C-391/97) [1999] ECR I-5451, [2001] STC 331, ECJ that direct taxation is a matter which “ falls within the competence of Member States,” however, that competence must be exercised in accordance with EU law (Lee, 2010: 1473). This demonstrates how Member States no longer have complete control of their own laws and that the fundamental freedoms, enshrined under the TFEU, must also be taken into consideration. As noted by Lee; “ ever since the treaties first came into force, the fundamental freedoms have been interpreted broadly, so as to strike down domestic legal rules incompatible with an internal market” (2010: 1474). This is also exemplified under Article 26 which states that; “ the Union shall adopt measures with the aim of establishing or ensuring the functioning of the internal market, in accordance with the relevant provisions of the Treaties.” Since the laws of all Member States must guarantee compliance with Treaty provisions, tax law will be affected.

The ECJ’s decision in *Cadbury Schweppes v Commissioners of the Inland Revenue* Case C-196/04 [2006] 3 WLR 890 shows how EU law affects UK tax

law. Here, it was held that the broad interpretation of the Controlled Foreign Companies (CFC) provisions were incompatible with EU law because of the restrictions that were being placed upon freedom of establishment under Article 56 of the TFEU (ex Article 49 EC). It was noted by the ECJ that “hindrance to freedom can only be justified on the ground of counteraction of tax avoidance if the legislation in question is specifically designed to exclude from a tax advantage wholly artificial arrangements aimed at circumventing national law.” Subsequent to this decision, significant amendments were made to the CFC rules under Schedule 16 of the Finance Act 2009 in order to ensure that EU law was being fully complied with. The Acceptable Distribution Policy (ADP) exemption was abolished and changes to the Income and Corporation Taxes Act 1988 (ICTA) were made by introducing a new section 751AA. This illustrates the importance of the single market and exemplified how UK tax law will be affected by the provisions contained in the EU. The same rules will also apply in relation to the other Member States, though not all agree that this is appropriate. Instead, it is argued that abuses of national law can be effectuated as a result of EU law provisions and that the legislation in question must not be used as a blanket method of justifying abuses such as tax avoidance” (Wellens, 2009: 1). In view of this, it is manifest that national courts are required to undertake a case by case approach when considering individual situations.

Various harmonisation measures have been implemented by the EU to facilitate the integration into the single market, including; the merger directive, the parent/subsidiary directive and the interest and royalties

directive. The Merger Directive was designed to facilitate mergers across European borders so that it would be easier for companies to engage in dealings, whilst also reducing the tax burden. This was intended to establish common rules governing the cross-border merger of companies within the EEA" (Cain, 2007: 2). It cannot be said that tax harmonisation has been created by the Directive (Bell, 2004: 1), which is again due to the reluctance of Member States to implement the Directive. Unless co-operation exists, the Directive cannot be fully utilised and tax harmonisation cannot be achieved. The Parent/Subsidiary Directive was designed to " grant cross-border transactions the same favourable treatment as is provided for equivalent purely domestic transactions" (Tiley, 2008: 34) and was to be applied to parent and subsidiary companies of Member States. Akin to the Merger Directive, the harmonisation of taxes was intended yet this does not appear to have been achieved as harmonisation is still lacking. Nevertheless, because companies within Member States are still being taxed on income that has been derived from substantial interests, the Directive is not being fully implemented which may be " contrary to the free movement of capital and freedom of establishment, as well as the Parent-Subsidiary Directive, because such income is as a rule exempt from taxation if derived by local parent companies" (Morgan, 2010: 18). Therefore, the extent to which these Directives are being utilised is debatable. The Interest and Royalties Directive intended to eliminate withholding tax obstacles in the area of cross-border interest and royalty payments within a group of companies (HM Revenue and Customs, 2003: 1). Under this Directive companies are subjected to a reduced tax liability if their members dealt with each other

within the EU. Nevertheless, because no single tax has been created it is questionable whether these Directives are in fact sufficient.

Conclusion

The establishment of the EU's single market has brought about significant benefits for EU Member States. A large number of jobs have been created and the opportunities for individuals within the internal market have significantly increased. Regardless of this, the extent to which the objectives of the single market have been attained remains uncertain in light of the obstacles that transpire. It is often difficult to determine whether a free market is truly being achieved since there is a great deal of conflict that now exists. This can be seen in relation to the provisions contained in Article 101, which restrain the free flow of goods. This is clearly contrary the free movement provisions and the courts have been faced with much difficulty over the years as a result of this. In addition, there are many inherent difficulties that arise for companies who wish to enter the internal market and although the implementation of a Common Consolidated Corporate Tax Base (CCCTB) has been proposed, it has been said that this would create even more difficulties. Nevertheless, because taxation comes into conflict with the free movement provisions because of the fact that Member States no longer have complete control of their own laws, it seems as though a CCCTB would be beneficial. Because of these obstacles, it is thereby questionable whether the single market has been as successful as one would have hoped.

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