EUROPEAN POLICY CENTRE

POLICY BRIEF

February 2010

Barnier and the 'vision thing': reinvigorating the Single Market

By Fabian Zuleeg

BACKGROUND

Following the European Parliament's vote this week confirming the new Commission, 'Barroso II' can finally get down to work.

Despite some controversy over the appointment of a Frenchman to the Internal Market and Services portfolio, Michel Barnier was never one of the Commissioners-designate in doubt. But he is taking up his portfolio at a difficult time, amid considerable economic upheaval and tension between '*dirigisme*' and liberalisation. The Single Market also needs new momentum, requiring strong leadership from M. Barnier and a concerted effort across Commission portfolios.

A risky business

The impact of the economic and financial crisis on the Single Market has been profound: financial markets need to be reformed and the health of the Single Market in the wake of unprecedented stimulus packages needs to be examined.

The eye of the storm of the crisis was the financial sector. Much of the problem arose from financial institutions around the world chasing higher and higher profit margins by taking excessive risks through ever more complex financial innovations. When things went wrong, it almost brought down the global financial system and governments and central banks had to step in, injecting huge amounts of capital. Calls for financial market reform were thus inevitable, aiming to curb excessive risk-taking and the perceived greed of bankers.

At EU level, activities centred on supervision and regulation. The recommendations contained in the de Larosière Report, initiated by the Commission, were broadly endorsed by President José Manuel Barroso. A key plank of the reforms will be a new system of supervision, built around the new European Systemic Risk Board, but there are also a range of other proposals, including increased capital requirements for financial institutions, regulations for credit rating agencies, and new rules for hedge funds and private equity. This ambitious agenda for reform will need to be driven at EU level by the Single Market Commissioner.

The damage done to the Internal Market for financial services and the free movement of capital also needs to be repaired. While government intervention was crucial to avoid meltdown, the absence of a European institution with the means or competences to intervene meant that responses were delivered on a country-by-country basis, only loosely coordinated and checked at the European level.

As a result, a number of cross-border mergers which had created pan-European banks were reversed and many banks were supported by Member States directly or indirectly (for example, through different levels of guarantees), with some even effectively nationalised.

A functioning Single Market for financial services is essential: most EU countries do not have a large-enough market to create sufficient competition between financial institutions. Restoring a level playing field by controlling state aid, and ensuring that public involvement does not lead to domestic banks or their clients being favoured, is a priority, alongside establishing a framework for dealing with the impact of future financial crises on pan-European financial institutions.

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A stimulus too far?

These issues do not only arise in the financial sector. Aiming to prevent an even steeper deterioration of the real economy, governments injected fiscal stimuli of unprecedented proportions. Debt-financed money was pumped into European economies to encourage demand, support firms, stem job losses, and invest in infrastructure and technology. Unfortunately, given the distribution of competences and instruments, again the vast majority of the response was at Member-State level, within the loose framework of a European 'toolkit' – the European Economic Recovery Plan.

While the Member State measures were scrutinised at the European level to ensure their compatibility with Single Market rules, in reality there was little time to do a thorough job, especially in light of the sheer scale of the response. In many cases, the consequences were not easily identifiable *a priori*: for example, measures to protect jobs can end up also subsidising firms, distorting the Single Market.

There was certainly some protectionist rhetoric and some governments explicitly aimed to maintain jobs only at home. Paris used subsidies to national car makers to demand the preservation of French jobs. While it had to back down after a storm of protest, the message had still reached the companies: domestic job protection was the new political priority. A similar situation arose in Germany with the proposed support for Opel, which was only resolved when General Motors decided not to sell the car maker after all.

To what extent government actions have distorted the Single Market, and what long-term consequences this will have, is difficult to say. This is one of the key reasons why President Barroso has appointed Mario Monti, a former Internal Market Commissioner, to assess the state of the Single Market and report back with recommendations for the future.

The resulting new initiatives, for example in the area of public procurement or state aid, will need to be taken forward by Commissioner Barnier, together with his competition counterpart Joaquím Almunia.

STATE OF PLAY

Without the crisis, many would have questioned whether there was enough to occupy the Internal Market Commissioner. Now he will certainly have his hands full.

A better world?

This is quite a turnaround from the pre-crisis scenario. After considerable debate at the beginning of the new millennium, the Single Market portfolio had quietened down.

The last major legislative initiative in this policy area dates back to 2006, when the Services Directive was passed, with an end-2009 deadline for implementation. The liberalisation of trade in services had been hotly debated and sparked large-scale public demonstrations, with some even blaming the Directive's predecessor (the so-called "Bolkestein Directive") for the rejection of the EU's Constitutional Treaty in the French referendum.

In light of these difficulties – a marked change from the general enthusiasm for the 1992 programme which united Europeans to deliver this *Grand Projet* – there was little appetite for further action. The Single Market had, rightly or wrongly, become a focal point for the tension between economic liberalisation and social protection, making it increasingly difficult to achieve meaningful consensus at EU level.

All that remained

Without the crisis, the Internal Market Commissioner's focus would have been on the more mundane task of implementation, as well as tying up loose ends in some of the network industries and those left by European Court of Justice rulings relating to free movement of people and the freedom of establishment.

While not very glamorous, this would still have been an important job. Ensuring that the Services Directive is fully implemented remains a priority. After the initial bedding-in period, a thorough evaluation of its impact will help to deliver a forward-looking agenda. This evaluation should focus on determining whether it has brought about a step change in EU cross-border services trade, and reviewing remaining gaps in areas such as consumer protection.

But this agenda would hardly have made this a key portfolio where the personality and nationality of the Commissioner-Designate mattered so much.

A new brush and an old hand?

With financial services' reform now high on the agenda due to the crisis, the Internal Market portfolio suddenly takes on a new significance. When M. Barnier was designated as its Commissioner, a number of voices – especially in the UK – expressed concern that a French tendency towards *dirigisme* would lead to over-regulation of financial services, eroding the City of London's global competitive advantage.

This was exacerbated by French President Nicolas Sarkozy's claim that M. Barnier's appointment was "a victory for France and a loss for Britain". Not only did this reinforce British fears of a French regulatory agenda, but it also created the impression that M. Barnier would do France's bidding – a clear clash with the requirement for Commissioners to be independent of their home country.

To alleviate the former, President Barroso aggravated the latter. Parachuting in Jonathan Faull to become M. Barnier's Director-General was interpreted by many as an attempt to counter French influence with a senior British civil servant. It not only made it necessary to move the current Deputy Director-General David Wright, a very competent Briton, but also created the unfortunate impression that President Barroso was balancing nationalities against each other – hardly a recipe for effective working relations or enhancing the Commission's credibility, even if it managed to assuage British fears somewhat.

British fears

But the caricature of M. Barnier by some British media also missed a crucial point: the world has changed since the start of the financial crisis. Given the deep distrust of much of the financial sector, there is no longer a debate over whether or not to introduce stronger regulation. Legislators around the world will legislate and a certain amount of *dirigisme* is needed to restore trust. The key question is whether the right balance can be achieved.

In any case, M. Barnier has done much to alleviate British fears. As expected, he conducted himself competently in the European Parliament hearing, drawing on his long experience as a French Minister and European Commissioner for regional policy. He stressed that he was well aware of his independent role, disavowing any special treatment for France. He also acknowledged the need for efficient financial sector regulation which does not create excessive constraints, and even quoted Adam Smith – a clear nod to the UK. While still not overly-enthusiastic, the UK and most of the financial sector itself seemed to conclude that they can work with M. Barnier – unless his actions prove otherwise.

PROSPECTS

So the Commissioner appears to have bought himself some time, not only to get to grips with an unfamiliar portfolio, but also to start building the relationships he will need to deliver his priorities. This will include clearly demonstrating to President Barroso that he is willing to deliver European priorities, working closely with other Commissioners.

He will need to build strong internal working relationships, especially an effective partnership with Jonathan Faull, and with the Parliament and Member States – first and foremost with the UK as, without British cooperation, financial regulation and supervision is likely to get bogged down.

Even with the right groundwork in place, M. Barnier has a mammoth task ahead of him. Dealing with the financial sector could be a portfolio in its own right – one of the options considered for the new Commission. The risk is that safeguarding the Single Market and ensuring implementation of the Services Directive will be marginalised, as might an effective review of Single Market delivery. But these policies are too important to be sidelined – the EU's long-term economic future depends on them.

Barnier's agenda

So far, in most areas, M. Barnier seems to be on the right track. The Single Market priorities outlined above marry (more or less) with what the Commissioner highlighted in his parliamentary hearing. His priorities include reinforcing the Single Market – both reviewing and safeguarding it – while adding a clear social dimension and noting that business and individuals need support in times of crisis. He also highlighted implementation of the Services Directive and picked up the pre-determined agenda of financial services reform.

But his final priority covers a completely different field: modernising and reinforcing the EU's intellectual property rights' system. This is a task explicitly identified by President Barroso in his pre-hearing letter to M. Barnier, and has been taken up by the Commissioner with some emphasis: "I am in favour of an exhaustive and consistent framework for copyright law which will enable us to meet new challenges such as digitalisation," with the focus very much on protection – a point he reinforced during the hearing.

Points of departure

Few commentators have examined this part of M. Barnier's agenda closely. There are two main issues here.

Firstly, the focus should not be purely on protection, but also on modernisation. A future intellectual property regime (IPR) must put more emphasis on the exploitation of property rights, for the benefit of (first and foremost) consumers, right-holders and businesses that use intellectual property to develop new products and services.

A harmonised pan-European system which is innovation-friendly and enables consumers to easily access goods and services based on intellectual property across borders is at the heart of Europe's aspirations for renewed economic growth through innovation, a point which is not sufficiently reflected in M. Barnier's agenda. This might well cause some friction with President Barroso, who focused on IPR as a tool to foster innovation in his political guidelines.

But there is an even more important point: the sole focus on IPR indicates a lack of ambition in developing the future Single Market. In addition to specific issues which M. Barnier has been addressing, President Barroso's letter tasked the Commissioner with "giving a new momentum to the Single Market". So far, M. Barnier's agenda has not risen to this challenge.

The future Single Market

Preparing the Single Market for the future knowledge economy is crucial to deliver the ambitions now being formulated in the EU2020 strategy. At EU level, the Single Market is key to deliver positive outcomes such as growth, jobs, investment and a sustainable long-term exit strategy from the crisis.

To realise these benefits, new policy initiatives are required, be it in creating the framework for providing the necessary infrastructure such as broadband, the review and harmonisation of data protection and consumer protection rights, or dealing with the issues arising from the digitalisation of economic activity.

It also entails achieving a new political consensus across the EU, bringing together different stakeholders with a history of opposing views. The crisis has underlined that the future Single Market has to deliver a variety of objectives, not only including tangible benefits for businesses but also contributing to sustainable development, delivering social and environmental benefits as well as clearly benefiting consumers.

This requires an approach which is not simply about liberalisation, but also about providing a legal framework which ensures that common rules are adhered to and the Single Market delivers for all stakeholders – in fact, it needs a degree of *dirigisme*.

But it also requires leadership and commitment. The Barroso II Commission needs to elevate the development of a future Single Market, not only in term of ambitious content but also in political emphasis, building on the crucial role given to this issue in the President's political priorities.

For a start, it should be a key delivery mechanism underpinning the EU2020 strategy. The Commission should also 'headline' the new Single Market, through the formation of a group of Commissioners, including M. Barnier but also others such as Digital Agenda Commissioner Nellie Kroes and Mr Almunia, and led by President Barroso. A future-oriented Single Market could be the *Grand Projet* of Barroso II and its legacy.

You cannot fall in love with the Single Market, but...

Admittedly, this would make M. Barnier's job even more difficult. But given his background, he would be well-placed to deliver on this agenda. He could be the bridge between different interests – as well as a 'critical friend' – providing a vision which combines *dirigisme* with the delivery of concrete economic outcomes through the development of the Single Market.

It would also be an opportunity for him to develop a strong European profile, potentially establishing himself as a leading figure in European integration by using economic processes to deliver political integration – not unlike other famous French pro-European leaders of the past.

Maybe, as former Commission President Jacques Delors put it, you cannot fall in love with the Single Market, and maybe it is not a subject which will excite citizens or the media. But a reinvigorated Single Market which delivers jobs and growth, innovation, consumer, social and environmental benefits – the foundations of European citizens' future well-being in the global knowledge economy – would be a worthy project.

If, in the process, M. Barnier also furthers European integration and unites Europeans once more around a common purpose, it would be a worthwhile agenda indeed.

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The EPC is currently carrying out a project analysing the cost of failing to achieve a Digital Single Market and considering the future agenda for Single Market policy.

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