

BETTER GOVERNANCE OF THE SINGLE MARKET - EUROPEAN WAY TO OVERCOME THE ECONOMIC CRISIS

Inga Kawka *

ABSTRACT

The European Single Market is an area without internal frontiers which ensures a free movement of goods, persons, services and capital. The freedoms of the internal market should guarantee Europe economic growth, social progress and competitiveness. Therefore, a well-functioning Single Market is the best way to fight the economic crisis in the EU. Unfortunately, there are still many barriers that hinder its proper functioning. The article outlines the steps which have been taken by the EU institutions, in particular the European Commission, to overcome these barriers. The removal of the barriers should be achieved through better governance of the Single Market which assumes partnership and cooperation between all single-market participants.

Key words: crisis, governance, European single market, European Union law

ABSTRACT

Jednolity rynek europejski stanowi obszar bez granic wewnętrznych, w ramach którego zapewniony jest swobodny przepływ towarów, osób, usług i kapitału. Swobody rynku wewnętrznego mają zapewnić Europie wzrost gospodarczy, postęp społeczny i konkurencyjność. Dlatego też w pełni funkcjonalny jednolity rynek jest najlepszym sposobem walki z kryzysem gospodarczym w UE. Nadal istnieje jednak wiele barier dla jego funkcjonowania. W artykule opisano kroki podjęte przez instytucje UE, w szczególności Komisję Europejską, w celu zniesienia tych barier. Ich likwidacja powinna zostać osiągnięta poprzez lepsze zarządzanie jednolitym rynkiem, które zakłada partnerstwo i współpracę pomiędzy wszystkimi jego uczestnikami.

Słowa kluczowe: kryzys, rządzenie, jednolity rynek europejski, prawo Unii Europejskiej

* Inga Kawka, Ph.D., Pedagogical University in Krakow, Institute of Political Science, Chair of Law and Administrative Science, ul. Podchorążych 2/234, 30-084 Kraków, ip@ap.krakow.pl, tel. (+48) 12 662 62 11, fax (+48) 12 637 22 43.

1. SOLUTION OF RISKS AND CRISES IN ECONOMIC ENVIRONMENT

1.1. RISK MANAGEMENT AND MAINTAINING PERFORMANCE AND COMPETITIVENESS OF ENTERPRISES

1. European Single Market

The core of European integration is the single market which ensures a free movement of goods, persons, services and capital between the member states. The single market economy is based on the principle that all limitations on the transfer of production and capital factors should be removed from the EU customs territory. The desire to create an economic sphere without any internal barriers is one of basic aims of the EU, which is enumerated in article 3 of the TUE [1]. The European Union freedoms facilitate economic growth, competitiveness, they make it possible to allocate resources effectively, and they enable market participants to achieve scale benefits and to lower costs [2]. The realisation of the assumptions of Europe's single market is in accordance with the remaining EU aims. According to article 3 of the TUE, the European Union "shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment." The realisation of Europe's single market philosophy constitutes a basic means of grappling with the crisis together with the reforms which focus on the coordination of the EU economic and fiscal policies [3]; moreover, the Single Market ensures Europe's economic security.

2. Barriers to the functioning of the Single Market

In the year 2012 Europe's Single Market celebrates its twentieth birthday. Unfortunately, we can still observe glaring discrepancies between the theoretical assumptions and the principles which were formulated by the EU primary and secondary law, and the real problems of the people who act as economic operators on the EU territory. The documents which were published by the European Commission [4] and the declaration which ended the Single Market Forum in Krakow on 2-4 October 2011 show the most frequently encountered barriers to the free movement of goods, persons, services and capital. For example, as far as the freedom of establishment is concerned, professionals have difficulties getting their qualifications recognised in another Member State, businesses are discouraged from participating in foreign public procurement, burdensome rules and procedures prevent entrepreneurs and investors from doing business in another country. The problems described above result, among other things, from the fact that EU citizens do not have enough information on their rights and EU directives have not been implemented or they have been implemented inappropriately by EU member states.

3. Better Governance of the Single Market

In order to remove the limitations on the functioning of the internal market, the European Commission adopted on 13 April 2011 the Single Market Act [5]. The Act was introduced on the basis of the European Parliament resolutions [6] as well as the conclusions of the Council [7]. In the above-mentioned announcement the European

Commission identified twelve priority fields: access to finance for SMEs, mobility for citizens, intellectual property rights, consumer empowerment, services, networks, digital single market, social entrepreneurship, taxation, social cohesion, business environment, public procurement. According to the Commission, the steps which have been taken “will provide a coherent political response to the gaps in the Single Market by presenting a model for sustainable, smart and inclusive growth in the framework of the Europe 2020 Strategy” [8]. In the light of the Single Market Act [9] success can be achieved not only by a means of legislative activity in the above-mentioned twelve fields, but also through strengthened governance of the Single Market.

The concept of “governance” appears in literature on administration management [10] and is connected with a concrete model of management. This model differs from the bureaucratic one as well as from the new public management. A characteristic feature of the bureaucratic model is a hierarchical submission of many units to the headquarters and taking action on the basis of fixed procedures. The new public management is a model in which market rules play a significant role. The activities of equal subjects focus on the results, and the rules of conduct, which have proved to be most competitive are accepted as binding. However, in the case of governance, the basis is a network whose subjects act as business partners with the intention of building social order [11].

Analyses of “governance” can also be found in legal literature and that concerning political science. The theory of governance was developed by R. Rhodes[12]. According to his definition “governance” refers to non-hierarchical, self-organising networks that operate between both state and private institutions. The networks operate on the basis of constant interaction which relies on the rules which had been agreed upon earlier, and its participants are characterised by a considerable independence of the state [13]. “Governance” is also defined as “one of the many possible ways of coordinating complex and mutually dependent actions or activities. The coordination consists in “reflective self-organisation”. A good example of reflective self-organisation could be an agreement on how complex problems should be solved or horizontal networks which make a comprehensive division of work possible[14]. “In literature there is a clear division into coordinated activities which are a result of imperative control – government - and governance, which has a broader meaning and covers “governmental institutions, but also informal, nongovernmental mechanisms, within which individuals and organisations satisfy their needs”[15]. In literature the notion of “governance” also appears in the context of “changes in the law, rules, methods and the measures of the European Union, institutional structures or decision-making processes which lead to an alternative and innovative way of conducting EU politics and implementing EU law”[16]. The new way of governing aims at creating less-detailed and more flexible regulations and it enables EU member states to conduct EU politics without the hierarchical, imposed from the outside formula.

The concept of “governance” was accepted to describe various processes which do not rely on traditional, formal, legal instruments; “governance” also means getting other subjects than the state organs involved in the decision-making process. Governance can be characterised as a movement away from the prescriptive and

supervisory approach to the “regulatory” one whose main features are: smaller hierarchisation and prescriptiveness as well as the rules of partnership and flexibility. Governance means primarily an ability to take together binding decisions following the rules of partnership [17].

The above-mentioned features of governance can be found in the premises on which the European Single Market is based on. It can be deduced from the Single Market Act that in order to make the Single Market work effectively certain conditions must be fulfilled: a better dialogue with civil society as a whole and close partnership with the various market participants [18]. A good example of such activity is the Single Market Forum where the Forum participants discussed the problems connected with the functioning of the European Union economic freedoms. In accordance with the Krakow Declaration [19]“Single Market Forum gathered together European businesses, social partners, nongovernmental organisations, think tanks, journalists, national Parliaments, European institutions and public authorities at various levels of government (central, regional and local)”.

The concept of better governance was developed in a document entitled *Making the Single Market deliver. Annual governance check-up 2011*[20]. The European Commission enumerates in this document all stages of the governance cycle: the monitoring of proper and timely implementation of the EU law by the EU member states, informing EU citizens about their laws, simplification and acceleration of administrative procedures, the strengthening of cooperation between proper administrative organs of the member states, the solving of the problems which arise from contravention of entitlements guaranteed by the EU law, the assessment of a concrete situation, the acceptance of new regulations, and the repealing or simplification of the existing regulations.

One of the examples of implementing new methods of governing is SOLVIT – an informal way of settling disputes between EU citizens and administration as far as cross-border (where the EU law applies) issues, which focus on the internal market are concerned. SOLVIT is a network of a state’s centres, which connected with the database, and which is managed by the European Commission [21]. SOLVIT’s work consists in the cooperation between the centres and the state’s administration, which according to an individual has violated the EU law. Without having to fulfill any preliminary conditions, an applicant can contact, in his/her mother tongue, his/her Home Centre about the administrative problem he/she is concerned about. The Home Centre will make a preliminary judgment of the problem in question and will decide whether the problem should be solved using other means, and whether the problem lies within the competence of SOLVIT. The Home Centre decides then whether the issue is cross-border, whether the rules of the Single Market apply to it, and whether this is a dispute between an individual and a state’s public administration organ. If the motion fulfills the requirements, the Home Center sends it to the centre in the state where the EU law has been violated (Lead Center). SOLVIT centres cooperate with one another as well as with the state’s administrative organ and they try to come up with a solution to the problem. The applicant is informed by the Home’s SOLVIT Centre whether any progress has been made in solving the problem and whether any solution has been found. The final solution is not binding either to the state’s administration or to the applicant [22]. Nonetheless, the resolution rate within the SOLVIT network remains

very high; in 2009 it was at 86% [23]. A state's administration operates then in accordance with SOLVIT recommendations. This results from fact that the solution to a particular case is worked out by the centers in cooperation with the public authority which issued the decision incompatible with EU law. It is of importance as well that SOLVIT centres constitute a part of a state's government administration, usually of the highest level. For example, in Poland the SOLVIT disputes are resolved by the Department of European Matters, The Ministry of Economy.

4. Conclusion

The European Union Policy on the Single Market partly moves away from the traditional, formal, legal instruments, and it puts more emphasis on new ways of governing. The new ways of governing increase the efficiency of the European Single Market mainly by widening the scope of satisfactory solutions; a good example could be the informal way of resolving disputes within SOLVIT. It should be underlined here that the forms of governing which are based on cooperation between various subjects and also those less formalised cannot replace traditional, binding European Union primary and secondary law. The new ways of governing have only an accessory character and they cannot replace a proper implementation of the European Union legislation into a given national legal system as well as its proper enforcement in formal procedures by courts and administrative organs of the EU member states.

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Ing. Alexander Kelíšek, PhD.