

# From the Board

## A More Coherent Project

In the midst of manifold crises affecting Europe and the world that are often presented as ever so many final chapters for the European Union, the EU project continues. Refugees are amassing in detention centres and arriving at shores, whilst others are sent back under a deal with an accession country under an increasingly authoritarian president; the six-year Euro Area sovereign debt crisis showed signs of re-igniting on the performance of Greece in respect of its economic adjustment programme (the conditionality for financial assistance); the crisis in neighbouring Ukraine is far from over, its Association Agreement with the EU threatened by the votes of less than two-thirds of the 32% of voters turning out in a consultative referendum in a State representing 3.5% of the EU electorate; the terrorist threat by IS and other groups, and the States' countermeasures, are ever-present in daily life; and the Union faces secession with the upcoming Brexit/Bremain referendum, which is presented as possibly leading to its ultimate dissolution while other States may find the exit alluring, or may wish to copy the blackmail that could result in an even more special relationship for the UK. And, yet, the EU project continues.

Taking examples from a random selection of five largely unconnected areas, we see continuity below the surface of media attention. In each of these areas, public consultations took place and, yet, the EU level of government is seen as ever more remote from the day-to-day life of its citizens and small- and medium-sized companies (SMEs). Therefore, more coherence for the project seems required.<sup>1</sup> More coherence may increase the success of diverse projects by linking them or the ideas used to tackle the issues, and may bridge differences between academic or national approaches. But, first a look at recent developments in the EU *acquis*.

Concerning the *single market*, the centrepiece of the European integration project, efforts are underway to bring it closer to the citizens and to a higher degree of reality in daily life, with the Commission exploring its upgrade in a digital world.<sup>2</sup> The results of

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<sup>1</sup> As are: a robust explanation and defence of EU policies by State governments and agencies instrumental in their adoption and, in time, strong executive powers at federal level instead of continued reliance on Member State implementation which may be lacking, deficient or reluctantly given instead of wholeheartedly executed.

<sup>2</sup> Communication from the Commission, *Upgrading the Single Market: More Opportunities for People and Business* 550 final (Brussels, 28 Oct. 2015, available at <http://ec.europa.eu/DocsRoom/documents/14007?locale=en>).

public consultations have just been released<sup>3</sup> while initiatives are under way to stop ‘geo-blocking’<sup>4</sup> and to allow consumers to buy, and pay for, goods and services at single-market level instead of confined to national markets that a sector inquiry for competition law enforcement has found economic operators continue to shield off for their own profit and to the detriment of the end-user.<sup>5</sup> Sometimes far too modest, as when the Commission, not daring to walk in the footsteps of the European Banking Authority,<sup>6</sup> proposes to simply ‘monitor the development of the sector and the effectiveness, and degree of convergence of, national regulatory frameworks’<sup>7</sup> in the area of crowdfunding, a promising by-pass for bank funding. Yet, even when modest, steps are made in the further realization of the single market.

A first inventory of progress towards *Capital Markets Union* (CMU) is just out,<sup>8</sup> with the Commission proposing to elaborate upon the many initiatives it has promised in the CMU plan.<sup>9</sup> CMU should enable Europe’s SMEs to bypass the banking sector and fund themselves on capital markets, which requires a host of regulatory changes from investor protection to bankruptcy rules.

In the area of banking itself, even with the proposal for a third leg of the *banking union* project – a European Deposit Insurance Scheme<sup>10</sup> – stalled, the adoption of acts

<sup>3</sup> *Commission Publishes Results of Two Public Consultations under Digital Single Market Strategy* (4 May 2016, available at <https://ec.europa.eu/digital-single-market/en/news/commission-publishes-results-two-public-consultations-under-digital-single-market-strategy>). These consultations concerned revision of rules on cable and satellites, the end of roaming charges.

<sup>4</sup> A legislative proposal is announced for the first half of 2016 in the Commission’s Digital Market Strategy.

<sup>5</sup> Press release, *Antitrust: E-Commerce Sector Inquiry Finds Geo-Blocking is Widespread throughout EU* (Brussels, 18 Mar. 2016, available at [http://europa.eu/rapid/press-release\\_IP-16-922\\_en.htm](http://europa.eu/rapid/press-release_IP-16-922_en.htm)).

<sup>6</sup> See *Opinion of the European Banking Authority on Lending-based Crowdfunding* (EBA/Op/2015/03, 26 Feb. 2015, available at [https://www.eba.europa.eu/documents/10180/983359/EBA-Op-2015-03+\(EBA+Opinion+on+lending+based+Crowdfunding\).pdf](https://www.eba.europa.eu/documents/10180/983359/EBA-Op-2015-03+(EBA+Opinion+on+lending+based+Crowdfunding).pdf)).

<sup>7</sup> ‘( . . . ) there is no strong case for EU level policy intervention at this juncture’, Commission Staff Working Document, *Crowdfunding in the EU Capital Markets Union* 154 final (Brussels, 3 May 2016, available at [http://ec.europa.eu/finance/general-policy/docs/crowdfunding/160428-crowdfunding-study\\_en.pdf](http://ec.europa.eu/finance/general-policy/docs/crowdfunding/160428-crowdfunding-study_en.pdf)).

<sup>8</sup> Commission Staff Working Document, *Capital Markets Union: First Status Report* 147 final (Brussels, 25 Apr. 2016, available at [http://ec.europa.eu/finance/capital-markets-union/docs/cmu-first-status-report\\_en.pdf](http://ec.europa.eu/finance/capital-markets-union/docs/cmu-first-status-report_en.pdf)).

<sup>9</sup> Communication from the Commission, *Action Plan on Building a Capital Markets Union* 468 final (Brussels, 30 Sept. 2015) (available at [http://ec.europa.eu/finance/capital-markets-union/docs/building-cmu-action-plan\\_en.pdf](http://ec.europa.eu/finance/capital-markets-union/docs/building-cmu-action-plan_en.pdf)).

<sup>10</sup> Proposal for Regulation of the European Parliament and of the Council amending Regulation (EU) 806/2014 in order to establish a European Deposit Insurance Scheme, COM/2015/0586 final – 2015/0270 (COD) (available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52015PC0586>).

limiting options and discretions still allowed under the ‘Single’ Rulebook for Europe’s banking market<sup>11</sup> shows that progress is underway, even if slowly so. The ‘singleness’, and therefore rigour, of the banking rulebook are thereby enhanced.

Three major pieces of legislation on *personal data protection* have just reached the Official Journal.<sup>12</sup> The legal acts may be limited in effect where it really counts (the balance between data protection and the fight against terrorism),<sup>13</sup> and restraints in handing over data to third countries (notably, ‘passenger name records’ to the USA)<sup>14</sup> may be considered insufficient but the 150 pages of legal acts show that the EU project continues to operate in difficult areas in times of multiple crises. And even while acknowledging the wider context, where the Union expresses the conviction that ‘[t]he processing of personal data should be designed to serve mankind’.<sup>15</sup>

The field of *competition law* enforcement has always developed autonomously, relatively untouched by the hiccups in European integration. After dealing effectively with the massive state aid, notably to the financial sector,<sup>16</sup> during the Great Financial Crisis and the Euro Area debt crisis, and imposing fines totalling EUR 1.8 billion for anti-competitive behaviour in the financial sector in recent years, the Commission latterly sent a statement of objections to Google on the alleged abuse of

<sup>11</sup> On which the ECB adopted a legal act and guidance. Regulation (EU) 2016/445 of the European Central Bank of 14 Mar. 2016 on the exercise of options and discretions available in Union law (ECB/2016/4), OJ L 78/60, 24 Mar. 2016, sets forth how the ECB will exercise, in respect of significant institutions it supervises, the general options and discretions that competent authorities are allowed under the Single Rulebook. *The ECB Guide on Options and Discretions Available in Union Law* (available at [https://www.bankingsupervision.europa.eu/legalframework/publiccons/pdf/reporting/ecb\\_guide\\_options\\_discretions.en.pdf](https://www.bankingsupervision.europa.eu/legalframework/publiccons/pdf/reporting/ecb_guide_options_discretions.en.pdf)), gives guidance to the Joint Supervisory Teams on how to use discretion on a case-by-case basis.

<sup>12</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ L 119/1, 4 May 2016; Directive (EU) 2016/680 of the European Parliament and of the Council of 27 Apr. 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA, OJ L 119/89, 4 May 2016.

Directive (EU) 2016/681 of the European Parliament and of the Council of 27 Apr. 2016 on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime, OJ L 119/132, 4 May 2016.

<sup>13</sup> Also, the exclusion of applicability ‘to activities which fall outside the scope of Union law, such as activities concerning national security’, and the EU’s Common Foreign and Security Policy (CFSP), limits the effects of the new General Data Protection Regulation.

<sup>14</sup> See, notably, the PNR Directive and the provisions on transfer of data to third countries and international organizations that may even be possible when their rules are not considered equivalent by the Commission.

<sup>15</sup> Recital 4 of the preamble to the General Data Protection Regulation.

<sup>16</sup> For the Commission’s currently applicable state-aid guidance, see its ‘*Banking Communication*’, OJ C 216/1, 30 July 2013.

its dominant position in internet searches by imposing restrictions on certain mobile devices.<sup>17</sup>

The point of these recent developments is that they actually took place, not whether the policies they enshrine are correct, or please this author or the reader. They are proof of continuity, in diverse fields, in spite of the prevailing crisis mood. The main issue is about the ‘real effect on the ground’<sup>18</sup> of these acts or proposed actions. This is exactly where more coherence is needed.

What seems to be insufficiently available, considering the popular backlash against the EU project, is ‘vertical coherence’: more alignment seems in order between the EU level of government and the actual experience ‘on the ground’, so that what is decided, legislated and regulated at EU level accords with situations and afflictions of citizens and companies, notably SMEs. It is here that the EU project is tested and found wanting. Where borders close<sup>19</sup> and opportunities are stifled, expectations are disappointed and citizens can be expected to get angry or, worse, sceptical and cynical.

Horizontal coherence is also called for: between fields of operation (energy, competitiveness, economic policy stance, and so on), between areas of expertise (looking beyond the dominant currents in economic thinking and taking a more inclusive look at complex matters, also based on other academic disciplines), and between Member States. Best practices comparisons could be engaged in not only by Member States’ civil servants but, also, by their civil society and citizens, thus enabling a deeper understanding of how matters are dealt with elsewhere in Europe. Even neighbouring States are too often ignorant of the approach taken in respect of exactly the same issue just across the border.

There are no specific prescriptions for the vertical and horizontal coherence called for. No amount of public consultations among the stakeholders in specific fields, however necessary, can replace the need for it. A broader perspective seems in order so that it may include innovative processes of collective learning such as the U

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<sup>17</sup> Press release, *Commission Sends Statement of Objections to Google on Android Operating System and Applications* (Brussels, 20 Apr. 2016, available at [http://europa.eu/rapid/press-release\\_IP-16-1492\\_en.htm](http://europa.eu/rapid/press-release_IP-16-1492_en.htm)).

<sup>18</sup> Quote from the Commission’s CMU First Status Report of 25 Apr. 2016: ‘The Commission is committed to taking steps that can have a real effect on the ground as soon as possible.’

<sup>19</sup> Acknowledging that, the backlash against the EU project, and globalization, lead many citizens to choose closed borders.

Process.<sup>20</sup> Bringing together people and staff from different business areas, cultural and linguistic backgrounds will provide fertile ground for new ideas,<sup>21</sup> and inspiration.<sup>22</sup>

*RS, Europe Day  
9 May 2016*

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<sup>20</sup> Otto Scharmer, *Theory U: Leading from the Future as it Emerges* (MIT 2008); Peter Senge, Joe Jaworski, Betty Sue Flowers, & Otto Scharmer, *Presence: Human Purpose and the Field of the Future* (2004).

<sup>21</sup> Bearing in mind Albert Einstein's exhortation to move to a different mode of thinking: 'We cannot solve our problems with the same thinking we used when we created them.'

<sup>22</sup> Always remembering that other matters are also indispensable for the European project to continue and flourish, notably the robust clarification and defence by national politicians of EU policies once adopted, the development of executive powers at the federal level to overcome national inertia or obstruction, and a focus on the cultural dimension of the integration of Europe.