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Natolin

MORE SINGLE MARKET? **between capability and legitimacy**

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Introduction & purpose

Intro

Single Market (=SM) is once again a top priority for the EU. Embedded in a wider strategy (whether EU2020 or otherwise), the SM is the only serious option to return to market-driven growth the EU level can deliver. With all the focus on the euro and on struggling new Member States emerging from the crisis, the better working of markets at a European level helped by flanking EU and Member States' policies seems the obvious way out.

But is it ? How can the EU do this? What are the constraints, whether economic, political or technical ? What prospects can one discern nowadays ?

Introduction & purpose (2)

Purpose

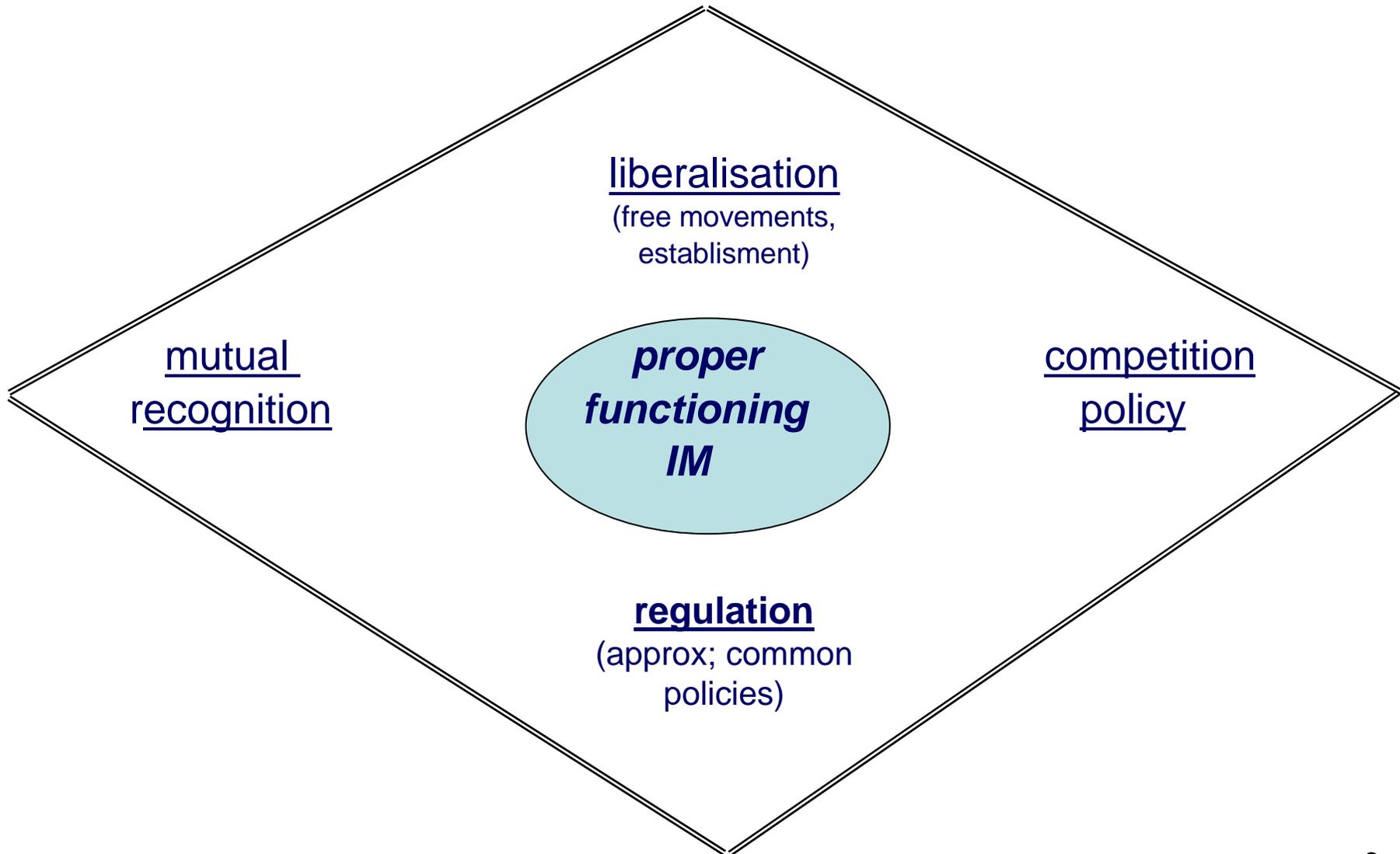
The Single Market is and remains the hard core of EU economic integration, hence, the very basis for renewed growth. The presentation aims to explore the rationales for and opposition to “more SM”, identifies the achievements to date and the Monti strategy for another “reculer pour mieux sauter” , and sets out and assesses briefly the COM approach.

MORE SINGLE MARKET

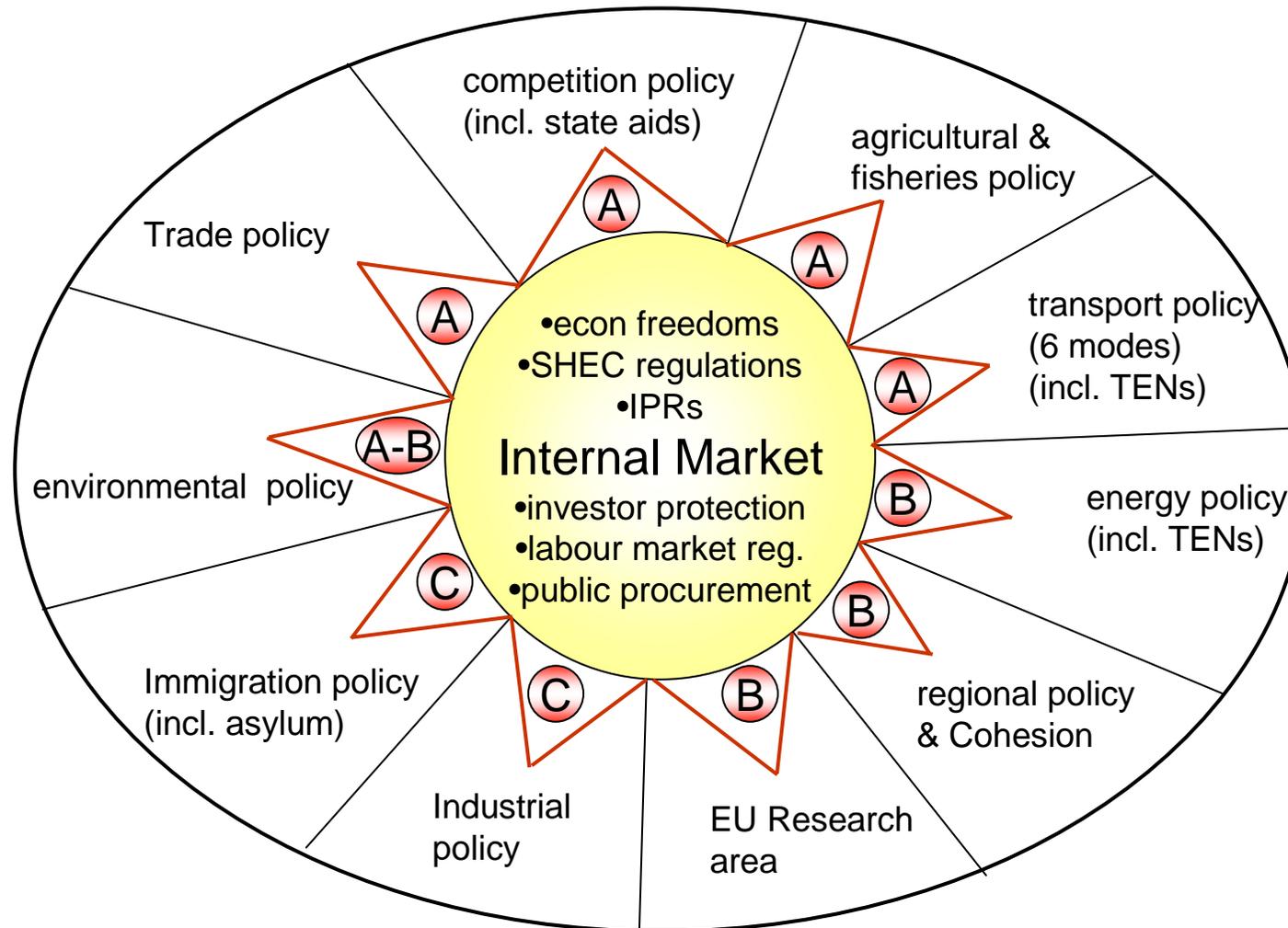
what does it mean ?

- measured against benchmark (a 'complete' or fully-fledged SM), more SM could mean
- (1) **AD-HOC** >> widening of scope and deepening (greater binding, fewer derogations / exceptions) of the current SM acquis
- (2) **SOUND BUT NARROW SM** >> SM acquis as the '*internal market diamond*' (see further), so much more than the five freedoms
- (3) **STRATEGIC** >> "*more SM*" is to (*better*) *serve socio-economic objectives* of the Union, leveraged by a broad strategy

Internal Market Diamond



Wider SM with Common Policies



A = critical for IM

A-B = critical for IM, but partly not at EU level

B = important for IM, yet, has other powerful drivers, too

C = (currently) of minor important for IM

MORE SINGLE MARKET

moving definitions or EU policy targets ?

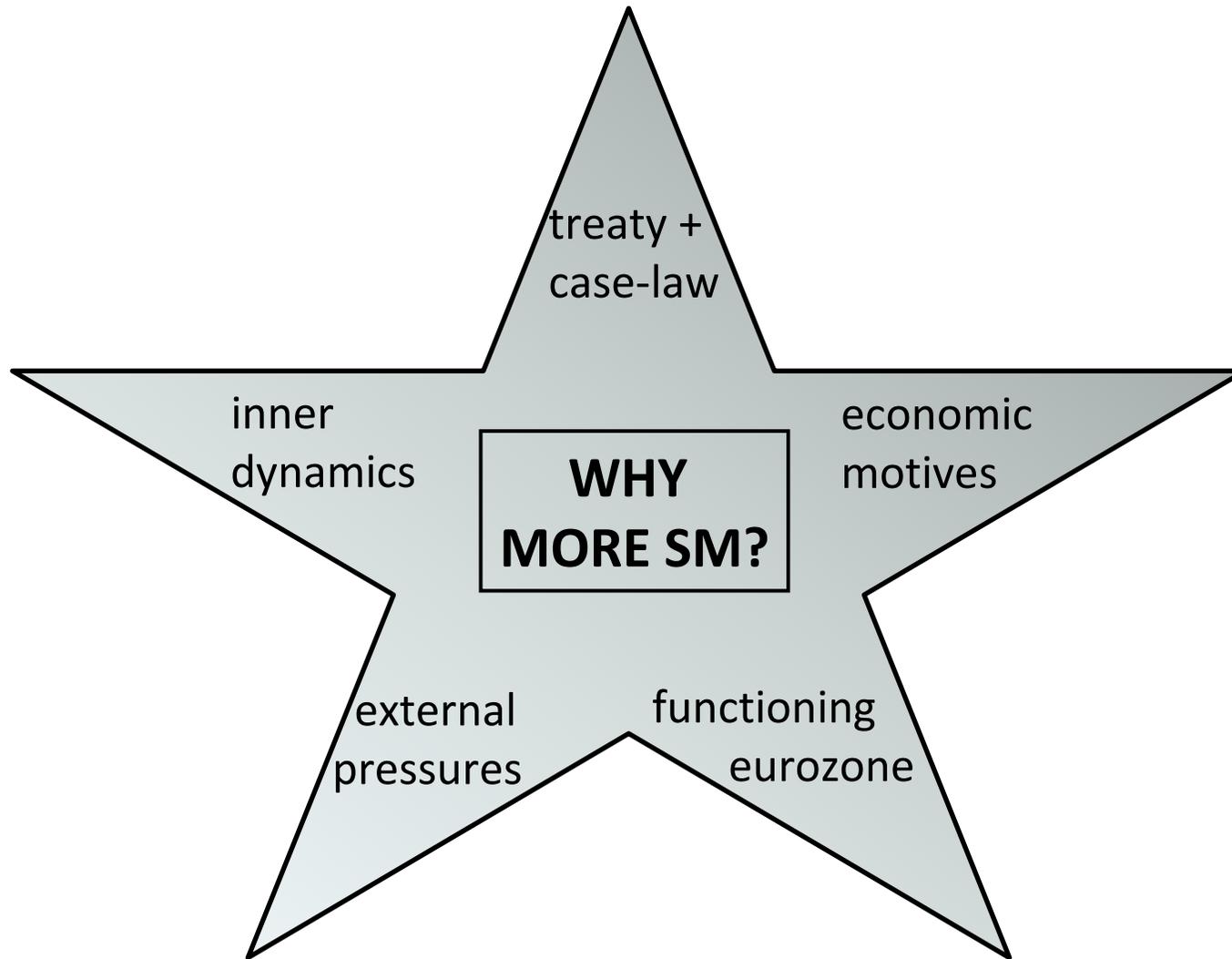
- the Rome treaty never defined the ‘common market’ but
- the Single Act has done so, now art. 26/2 TFEU
[> no internal frontiers ; freedoms ensured !]
- as a ‘mother principle’, it is (purposefully ?) fuzzy
- “persons”, not ‘workers/labour’ ; nothing on IPRs (codified technology flows) ; too vague/loose on services given that art.s 56 – 62, TFEU have not altered substantively (and these are far too weak)

MORE SINGLE MARKET

is 'completion' feasible & sensible ?

- suitable for EU would be : a practical economic concept as a more ambitious benchmark than art. 26 TFEU
- “***establishment & proper functioning of the IM for 5 markets : goods, services, capital, labour and codified technology***”
- it is clear, inclusive and insists on ‘proper’ [functioning] (absent in art. 26) >> gives it economic meaning !
- pursuing this concept is **sensible** as a handmaiden for socio-economic treaty objectives
- going for ‘completion’ in an absolute sense is **neither feasible nor useful** ; there will always be pockets of fragmentation or new issues to be resolved ; also, the marginal political or other costs of ‘completion’ rise quickly

WHY MORE SM?



WHY MORE SINGLE MARKET?

5 drivers, with partial overlap:

i. treaty motives and CJEU case law

- from art. 3/3, EU, it appears that the SM is the 'super workhorse' of the EU : it serves four major objectives, conditioned by four formidable policy constraints
- essentially, it is still about economic growth (as in Rome), but with a host of conditionalities and add-ons, which all matter !
- CJEU case law exhibits many 'balancing' rulings which weaken the restraints of art. 26/2, TFEU, for services, labour and IPRs, but its limits are in sight
- unless EU legislator acts firmly (or treaty is changed)

WHY MORE SINGLE MARKET? (2)

ii. Economic motives

- analytically, micro-, meso- and macro growth benefits can be derived and estimated/ simulated ; second-order dynamics are speculative (e.g. entrepreneurship ; innovation ; new – green ? – markets) ; key are services and services/ goods markets linkages
- for ‘double [growth] dividend’, domestic reforms in these areas are required ; is not necessarily SM

iii. Prerequisite for (proper functioning of) eurozone

- without (serious) EU budget and without exchange rate instrument, eurozone’s ‘economic union’ requires (the 5) markets to adjust flexibly ; one can prove empirically that shock adjustment will be faster and less costly, with less inflation pressure (allows ECB to accommodate reforms)

WHY MORE SINGLE MARKET? (3)

iv. External pressures

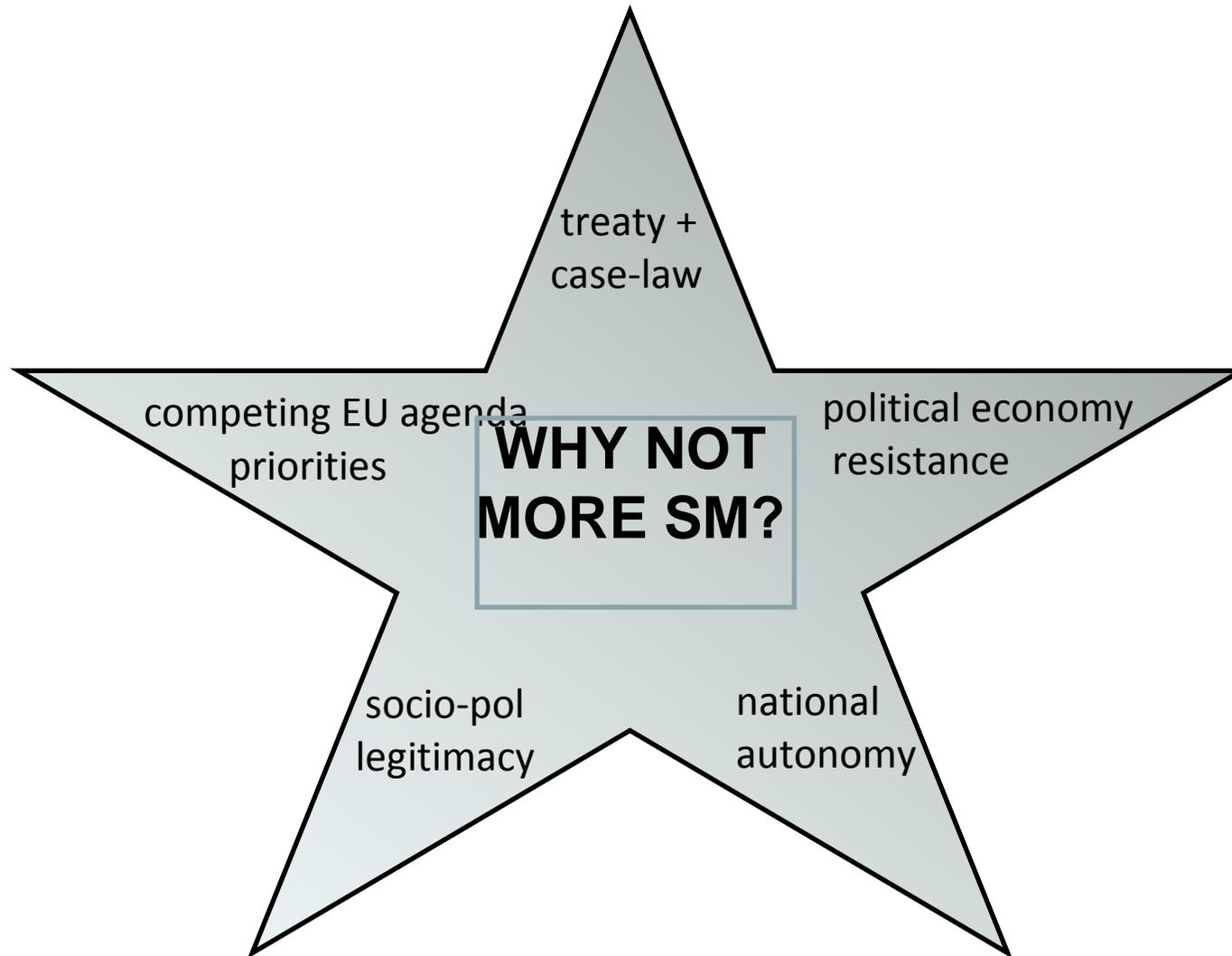
- globalisation (trade competitiveness & attractiveness of location/hubs) while creating a dynamic business / innovative environment for new activities
- EU is party to many treaties, prompting 'invisible' pressures to adapt the SM

WHY MORE SINGLE MARKET? (4)

v. “Inner dynamics”

- without any claim of an integration-theory, there are numerous marginal and less marginal forms of ‘creeping integration’ in SM affairs every year
- call them ‘neo-functionalism’, or a variant of the bicycle theory, or path dependencies, or hysteresis, or resolving MLG inconsistencies, plus urgent responses to new markets

WHY NOT MORE SM?



WHY NOT MORE SM?

i. treaty motives and CJEU case law

- vetoes on SM issues have not been removed entirely ; still on labour, linked to welfare states, and patents,
- the EU patent saga (since 1962 !) combines motives ii. and iii. (see further) in a total disregard of the EU public interest [possible, due to extreme asymmetries of info, recently coated by language symbolism of a few countries]; so far, no treaty change could move this to QMV, although all EU leaders say they want far more innovation in the SM (sic)
- labour vetoes may qualify under a subsidiarity test but can (and are) still misused in blocking progress
- case law in services runs up against severe limits without the origin principle in dir. 2006/123

WHY NOT MORE SM? (2)

i. treaty motives and CJEU case law (cont'd)

- going for specific services regulation is not a panacea ; examples >> cross-border health care services draft directive (2 ½ yrs now, hardly beyond CJEU) or the extreme fragmentation in the SM for audit services
- the Meroni doctrine (prohibiting EU regulatory agencies for e.g. network industries) is a major (though not the only) reason why an internal market for network services does not exist (and may not easily come into being) ; EU lawyers become increasingly critical of the rigidity of this doctrine ; the COM is suspected to play a game here, since hiding behind Meroni in stopping powerful independent agencies from coming into being also sustains a strong COM position

WHY NOT MORE SM? (3)

ii. classic political-economy resistance

- vetoes or not, classic resistance by vested interests, blending cleverly private and public interests arguments, can be found everywhere
- the conduct of patent lawyers, labour unions, crafts, professionals and other service providers merits much more analytical attention by integration scholars

WHY NOT MORE SM ? (4)

- ‘*creeping integration*’ over time may wittle away the bluntest resistance via recurrent EU regulation, now helped (one hopes) by EU regulatory impact assessment (examples : 2008 goods package ; MIFID dir.; network industries ; employment agencies dir)
- but *consumer protection* (given that contract law is national) is just as much a problematic example, with its illusory insistence on ‘maximum harmonisation’; in retail finance, consumer protection seems to be misused by the supply side to keep competition local

WHY NOT MORE SM? (5)

iii. National autonomy

- Member States have insisted on enumerating the (shared and exclusive) competences of the EU in the Lisbon treaty [but in a messy way, since item (a) in art. 4/2 TFEU (the internal market) overlaps with 8 other aspects mentioned]
- but MS still have four motives **not** to want “more SM” at times, even for shared powers
- to wit : (1) “red lines” (such as tax) as unnegotiable positions ; (2) regulatory discretion ; (3) protecting national agencies/regulators/supervisors ; (4) assuring certainty about the exact boundaries of ‘national’ powers such as education, health, media, social housing, etc. and the line between SGIs and SGEIs
- besides the interaction with motive ii. (political economy, local interests) and with iv. (socio-political legitimacy)

WHY NOT MORE SM ? (6)

iv. Socio-political legitimacy

- the 'permissive consensus' has greatly weakened and (EU or SM) legitimacy questions have become paramount
- probably due to the confluence of many sensitive 'new' issue areas at the same time between 2000 and 2010 [two Eastern enlargements with low-wage countries, also requiring EU funding ; the EU constitution & the Lisbon treaty, with their confusing referendum debates; permanent reform efforts (markets & welfare state) ; disciplines in the eurozone ; upheavals about services dir + REACH ; Turkey looming ; anxieties about globalisation in an open Europe and about asylum seekers]

WHY NOT MORE SM ? (7)

iv. Socio-political legitimacy (cont'd)

- citizens, social partners (but esp. labour unions) and consumers disgruntled [; how much SM for them ? why no digital SM for citizens/consumers despite 15 yrs of telecom SM ? why can patient rights for cross-border health care (confirmed by the CJEU) not be EU-regulated ? ; Laval and Ruefert CJEU cases brought home a need for balancing between workers from the East of the SM (free movement) and from the West (respect for local social traditions, even when closing the local labour market totally?); where is the borderline between (non-economic) SGIs and the SM, again causing anxiety with providers of social services ?]
- national politicians (and not only eurosceptics) smell short-run political gains from EU bashing, amplifying fears whilst SM is rarely presented carefully

WHY NOT MORE SM ? (8)

iv. Socio-political legitimacy (cont'd)

- loss of 'permissive consensus' overplayed by academics; was not so great ! ; remember, vetoes and trenchwars in Council were normal, the acquis could be lousy or damaging or half-baked ; taboos remained
- nowadays, EU far stronger : many vetoes gone, EP powerful, RIAs discipline law making and show all options ; decisions are taken in sensitive domains
- with hindsight, the permissive consensus was so easy b/c of loopholes and strong MS powers – given QMV and 'more SM', we now harvest more politicisation, a good thing most of the time

WHY NOT MORE SM ? (9)

iv. Socio-political legitimacy (cont'd)

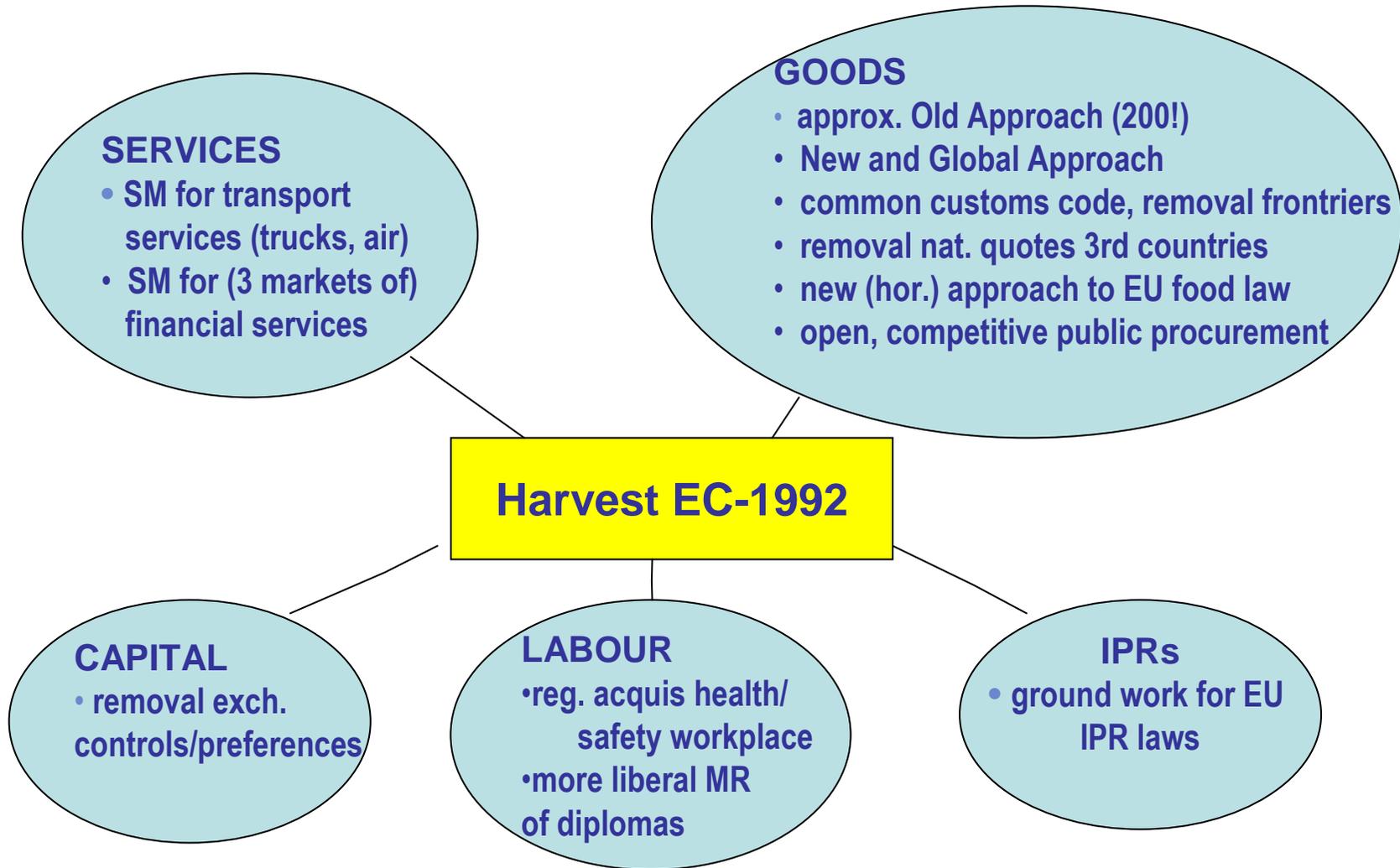
- “the” social dimension affects legitimacy but is unsolvable b/c the EU cannot (legally) conduct social policy much more than it does now – the Convention, WP no. 11 confirmed that it was ‘just right’
- also, ‘the’ social dimension of the SM is far richer than is known (esp. the minimum “floor” in labour market regulation)
- note, too, that those asking for more social dimension are precisely those always having insisted on the primacy of national welfare states and the autonomy of national social protection
- nonetheless, there is no denying that ‘more SM’ requires socio-political legitimacy, and this constrains EU actors ; one effect of the crisis has been some degree of rebalancing, due to a ‘rediscovery’ of the merits of the SM by politicians and citizens

WHY NOT MORE SM ? (10)

v. Competing EU agenda priorities

- more SM, except via ‘creeping integration’, is a very demanding strategy with many DGs involved
- EU agenda has many pressures for (other) priorities e.g. urgency of exit from the crisis, new powers under Lisbon, further enlargement, climate strategy. EU2020 goes even further with 7 flagships
- note that ‘going by the piece’ (as done since EC-1992) is easier politically and yields results ; however, it lacks coherence, avoids the harder barriers, neglects SM fatigue and creates a huge communication problem [who remembers the Nov. 2007 SM Review ?]
- more SM is far from a ‘done deal’ for political leaders

WHAT EC-1992 ACCOMPLISHED



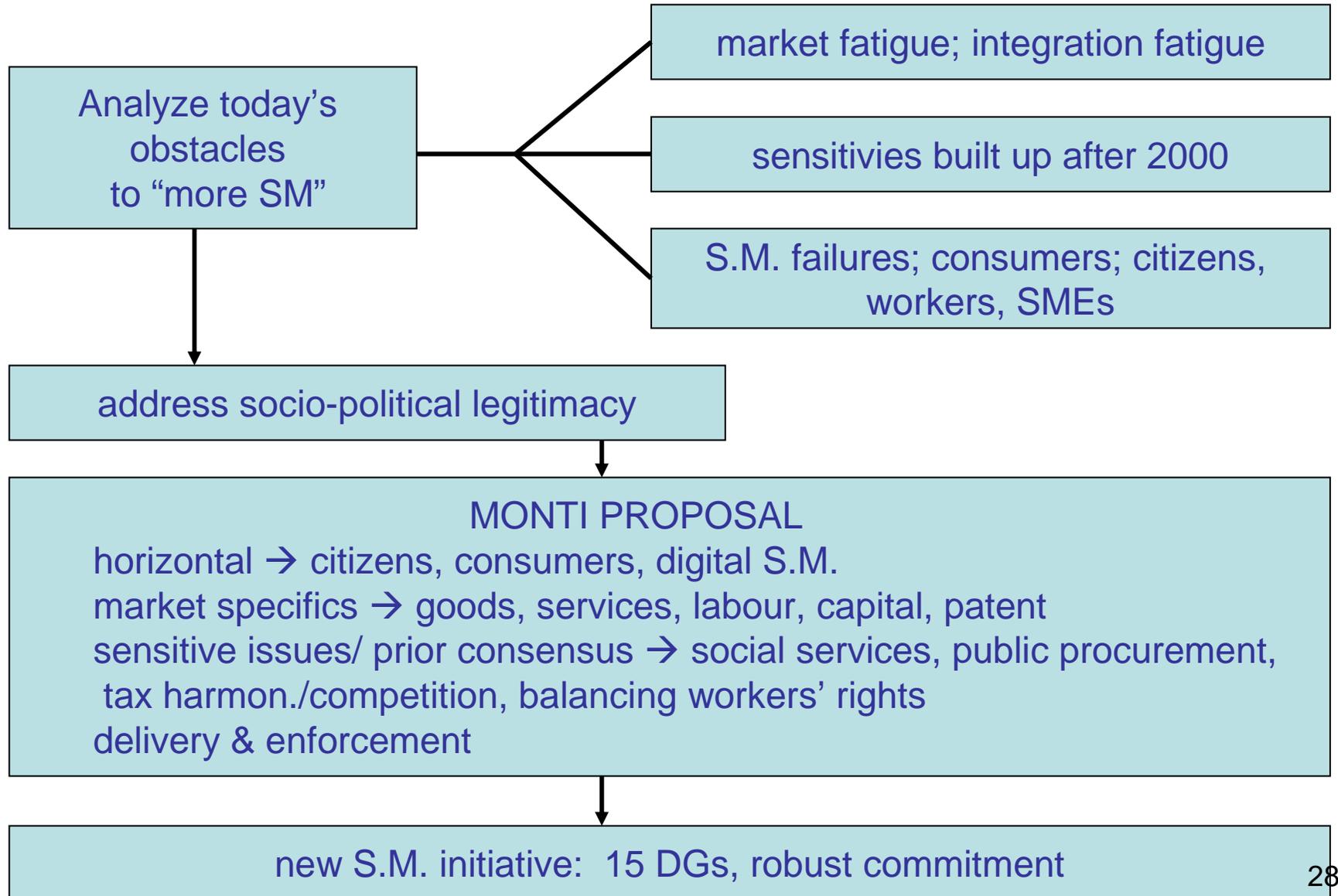
NOTES: (i) CJEU case law promoted M.R.; (2) preventing new barriers in SM via 83/189; (3) merger control '89; (3) network industries not in White Paper (exc. broadcasting); began early 1990s

SM harvest 1993-2010

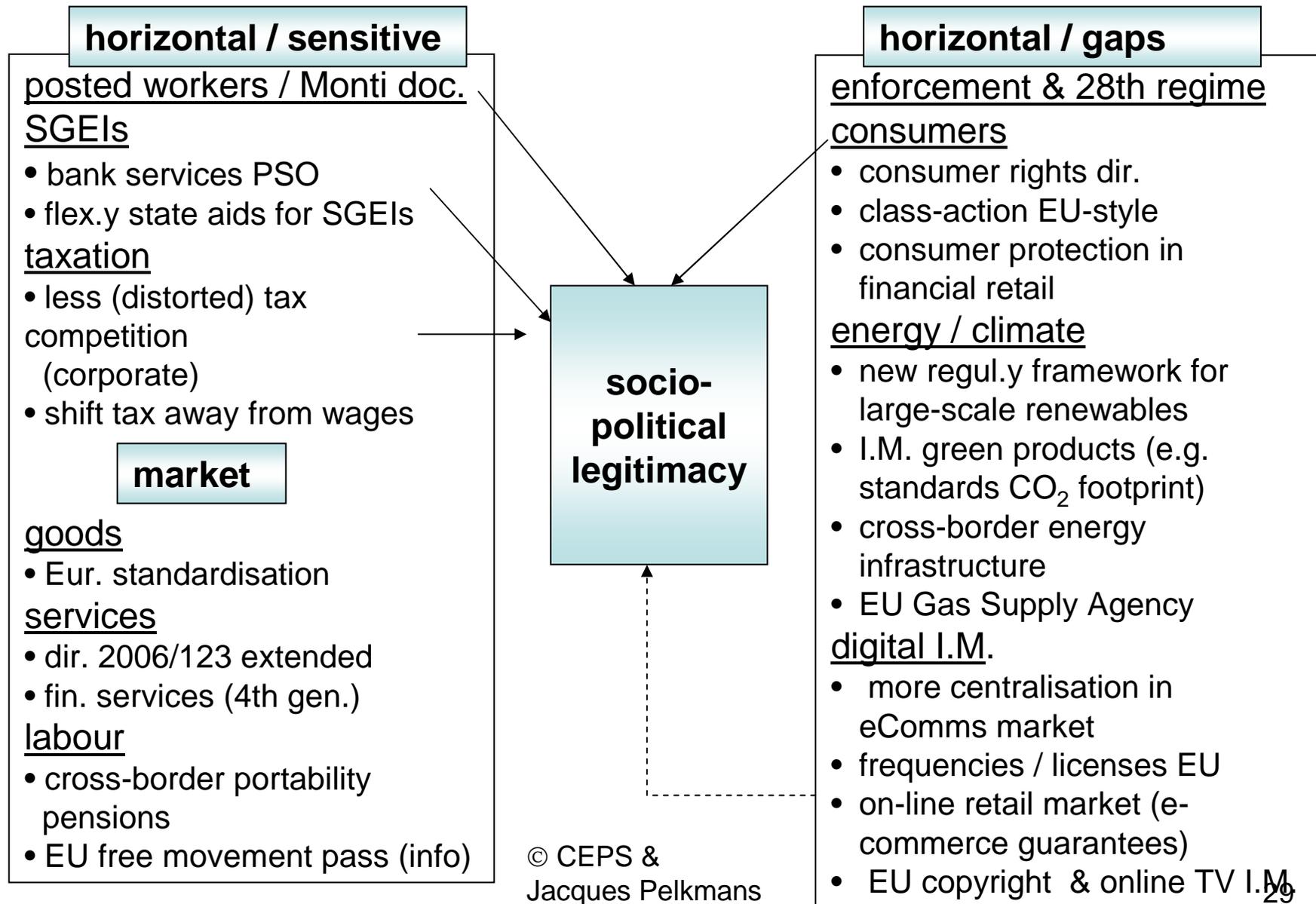
<p style="text-align: center;">SERVICES</p> <ul style="list-style-type: none"> • 3rd generation EU regulation financial services (FSAP) • 4th generation (id.) [since 2008] • opening up of 6 network industries (in stages) • EU Agencies (Safety, Air, Maritime, Rail; Air Traffic) • horizontal services dir. 2006/123 	<p>(selective)</p>	<p style="text-align: center;">GOODS</p> <ul style="list-style-type: none"> • 2008 Goods Package (+ MR) • REACH (chemicals) • adaptation Old Approach (+ simplif.n food specific dir.) • EU Medicinal, Chemical, Food Agencies • EU emission trading system & climate policy • prudent liberalisation of EU SM in defence goods
<p>More Single Market</p>		
<p style="text-align: center;">LABOUR</p> <ul style="list-style-type: none"> • MR for professionals • minimum labour market reg; + 300 sectoral agreements Social Dialogue 	<p style="text-align: center;">CAPITAL</p> <ul style="list-style-type: none"> • stock exchanges; more competitive and standardised cross-border securities trade 	<p style="text-align: center;">IPRs</p> <ul style="list-style-type: none"> • EU trademarks regulation and EU Agency • other EU IPR (copyright, design)

NOTES: 1. modernisation of EU competition policy 2. RIAs (since 2003) and Better Regulation
3. better inter-MS horizontal/adm. cooperation

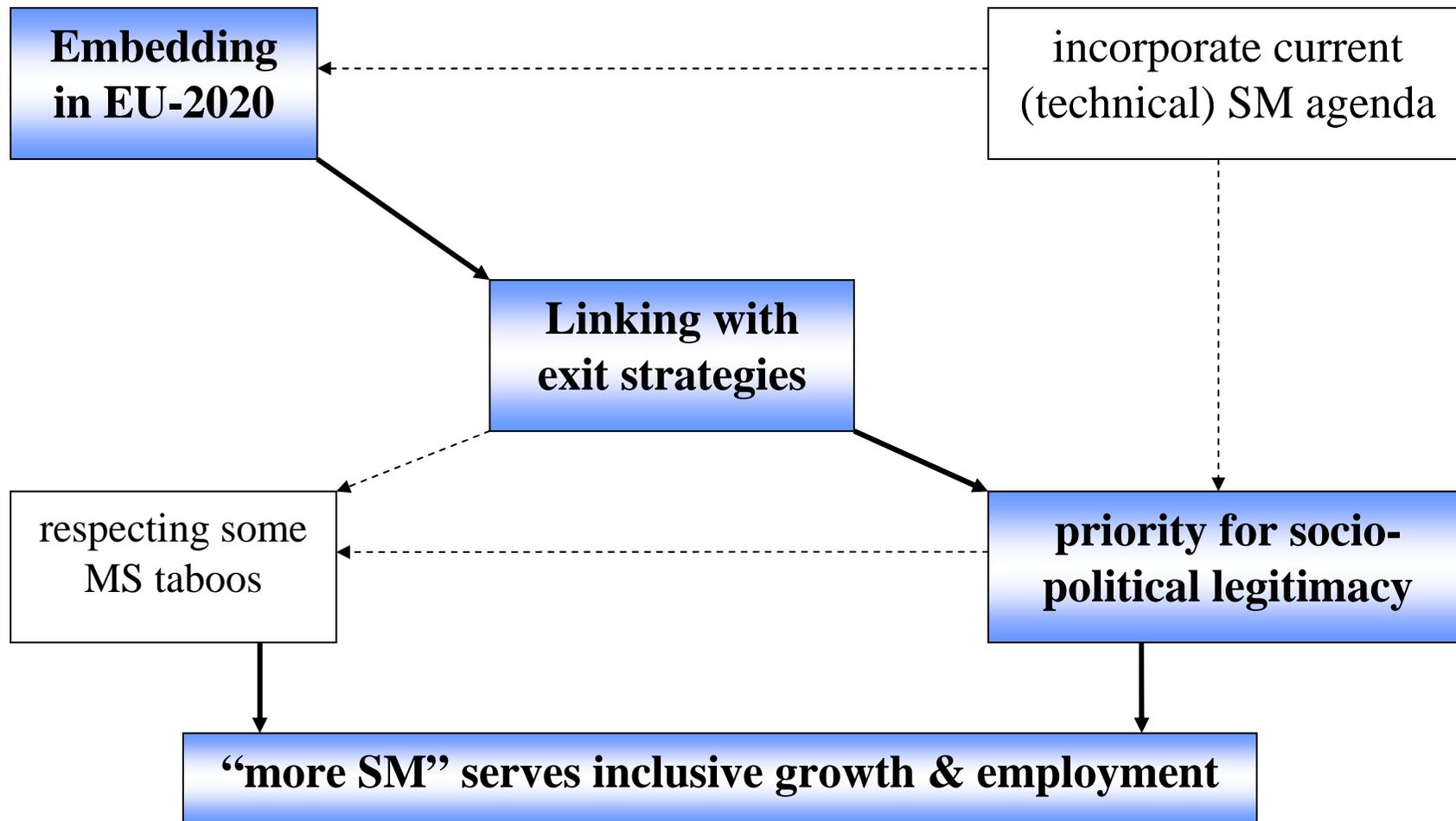
MONTI 2010: STRATEGY & SUBSTANCE



Monti's I.M. Strategy



TOWARDS A NEW SM STRATEGY



Prelude to Single Market Act

two features blocking SM's priority in 2010

- (1) crisis unwilling to go away in eurozone
 - absorbs political energy due to its centralizing logic, resisted by MS
- (2) EU2020 as another Lisbon, but this time more a mix of EU and MS powers

Both seem to ignore the primacy of the SM,
or, lipservice paid at best

EU2020 links & strategic coherence

FLAGSHIPS

- i. innovation Union
- ii. Youth on the move
- iii. Digital Agenda (May)
- iv. Resource-efficient EU
- v. EU industrial policy
- vi. New skills & jobs
- vii. EU against poverty / social exclusion

Strategies and the SM

- i. strategy Oct. 10 (**key**)
- ii. (cross-b.) edu (flanking)
- iii. Digital SM/ citizen (**key**)
- iv. low-carbon + TENs (**key**)
- v. strategy paper Oct (**key**)
- vi. Agenda Nov. (flanking)
- vii. - -

plus

- >> new CAP paper (Oct)
- >> citizens rights SM (Oct)
- >> EU budget review (Nov)
- >> EU cohesion paper/report (N.)
- >> Energy 2020 (Nov)

Linking with exit strategies

- tighter fiscal policies have to balance urgency and prudence
- abolition of (financial) state aids critical, more bank write-offs
- yet, is all about cyclical growth
- ‘more S.M.’ is about longer term growth of productivity, adjustment needed for that, new opportunities/innovation
- the two are complements, ***both indispensable***
- a third leg > ‘more S.M.’ best in tandem with domestic reforms in services and labour markets,
- these reforms are NOT anti-social, shown by socio-economic performance of M.S. having introduced such reforms,

priority: socio-political legitimacy

- address expectations of EU citizens for a 'single regulatory space'
- mobile citizens (can) incur high costs of excessive fragmentation [family law, wills, successions, documents, small claims, insolvencies, nasty aftermath of 500 000 cross-border accidents, cars]
- consumer protection a horizontal 'must'
- EU model of collective redress, accelerate opening up of retail banking, Digital S.M.

priority: socio-political legitimacy (2)

- mobile workers still too much a “residual”
- S.M. ought to protect intra-EU mobile workers (social dimension) first and not first domestic workers
- 2009 package helps (but frontier workers ?) ; portability [extra] pensions + health ?
- local workers perceive “the” social dimension of S.M. as too weak if wages/jobs endangered by inflows of mobile workers, posted or not
- in fact, host c.c. protects them, even too much for genuine “free” movement (host c.c. collapses in 4 EU countries without min. wages, why not simply enact such min. wages ?) >> Polish plumber never existed, never could exist !!! >> how to restore workers’ trust in S.M. ?

Respecting Member States' taboos ?

- taboo's have political roots (dysfunctional for SM)
- still, principles of conferral, subsidiarity and legal border cases do matter for taboo's
- sentiments of "sovereignty" [ex. corporate tax (base) ; is a veto not enough ?? ; a common corp. tax base greatly reduces distortions, so makes economic sense]
- symbolic, dysfunctional cultural politics [ex. EU patent !]
- conferral or interpretation of a border issue ? [ex. Meroni doctrine on Agencies ; do we really want a S.M. for network industries ?]

Towards a Single Market Act

1. Sustainable, equitable growth for business

[EU patent, digital copyright, anti-piracy; mutual evaluation in (bus.) services, e-commerce & consumers, Eur. standards, more integrated EU transport, HighLevel Group on bus. services, energy effic. plan ; SME access to capital + less red tape for SMEs ; smart priv. investment & EU-wide venture capital, public procur. flexibility & services concessions ; common corporate tax base, new VAT & e-signatures ; extra-EU regulatory strategy]

Towards a Single Market Act (2)

2. Europeans at the heart of the S.M.

[once again SGIs, funding transport infra, energy infra up to 2030+ new EU instrument, effic. use of spectrum ; posted workers & right to strike, pension funds & rights for EU mobile workers ; more effect. recognition of prof. qualifications, Youth Move card, EU Skills passport; social innovation, EU-wide cooperatives; EU market surveillance (2008 Goods package ?), access to basic bank services, SM for mortgages, lingering tax obstacles for citizens, passengers' rights]

Towards a single Market Act (3)

3. Good governance of Single market

[re-invigoration of Nov. 2007 SM package]

[apply Mut. Eval. in services to other areas, widen IMI, alternative dispute resolution & coll. redress (class action) consumers, enforcement partnership with MS and SOLVIT, one-stop-shop citizens for EU info and (still) more consultation with civil society]

CONCLUSION

- “More S.M.” is not about “completion” but about **economic and e.g. citizens’ integration gains**, i.e. core EU objectives
- BUT... SM Act hindered by taboo’s in services and in labour markets, limiting its economic ‘boost’ where it matters most
- AND... some ideas are not new, might run into opposition, the huge funding needs not linked to ‘exit strategy’ (except ‘project bonds’), coherence with EU2020 and e.g. EU budget is an ‘open question’
- given the eurozone crisis, van Rompuy obsessed with macro and getting MS to act European fiscally >>> this leads to a kind of “high vs. low politics” in economic integration : **SM is not low politics**