

An analysis of the transposition of the acquis communautaire on the Single Market in the European Union —

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Abstract

The article focuses on a very limited, though highly significant, aspect in the analyses that can be made regarding the regulation, development, and performance of the European Union's Single Market. The article's analysis is primarily based on the findings and data from the European Union's reports on the annual performance of the Single Market. The article attempts to briefly highlight several indicators of the progress in the alignment of legislation concerning the Single Market, such as the transposition deficit of directives, the conformity deficit of directives, and delays in the alignment of directives.

Keywords: *European Union, Single Market, acquis communautaire, directive, regulation, scoreboard, directive deficit, directive conformity*

Introduction

“The Internal Market has been an extraordinary force for economic and social good, but much of its potential is being wasted: it’s like driving a Ferrari in second gear.”

Former Commissioner Mr. Frederik Bolkestein,
March 7, 2003 (EC, 2003)

The Single Market was initially conceived as a free trade area without tariff or non-tariff barriers between its members. However, to this day and likely in the future, it will develop into much more than that. Today, the European Union has successfully become the largest integrated single market area in the world, while remaining one of the most outward-oriented. However, the Single Market is much more than a legal framework or a market: it is a zone of freedom, progress, opportunity, growth, shared prosperity, sustainability, and a tool for geopolitical projection (EC, 2023).

In 2023, the 30th anniversary of the creation of the Single Market was celebrated, but it did not receive the attention it deserved since the European Union is not yet fully a “single market” (Pelkmans, 2024). Nevertheless, it should first be noted that, according to estimates, thanks to the removal of trade tariffs, the reduction of non-tariff barriers, and the opening of state economies, the Single Market has increased the EU’s GDP by an average of 8-9% in the long term (Veld, 2019). However, it is recognized that the possibilities and needs for greater unification are essential. Strengthening the Single Market is highly necessary, especially as this market faces many shortcomings and barriers (more than is commonly thought), various taboos, and persistent distortions.

For this reason, the need for implementing a medium-term program has long been raised, led by the European Council and actively carried out by the European Commission and the European Parliament, to boost the EU economy. Joint efforts are required to enforce existing rules, remove barriers, and explore areas for further integration of the Single Market.

Work in this direction is expected to bring direct and substantial benefits. The potential benefits are significant, with estimates suggesting that removing barriers at the member state level for the Single Market for goods and services alone could add €713 billion to the economy by the end of 2029 (EC, 2023). Perhaps even more if greater momentum is generated through the stimulation of startups and increased investment in research and development.

Citizens and businesses can fully benefit from the Single Market only when EU rules are correctly implemented. Ensuring the proper daily enforcement of Single Market rules is a collective responsibility of the Commission and Member States. In particular, the correct implementation of regulations depends on the work of national authorities to give them full effect. Accurate and timely transposition of EU law is critically important to ensure that Single Market legislation achieves its intended effects.

Methodology

The transposition of directives is the process by which EU directives, which set the objectives that member states must achieve, are incorporated into the national legislation of each member state. The so-called directive deficit arises when a country fails to do this within the prescribed deadline. The European Commission monitors the performance of member states in implementing Single Market rules, which is measured and reported regularly through the “Single Market Scoreboard” report.

The “Single Market Scoreboard” was first introduced by the European Commission in 1997, aiming to assess the performance of member states regarding the four freedoms that constitute the Single Market: the free movement of goods, capital, services, and labor/people. Since then, annual reports have been published, providing insights into the performance and integration of the EU’s Single Market. From 2014 to today, the countries evaluated include the 31 members of the European Union and the European Economic Area Agreement.

The report serves as a tool for monitoring and reporting on the functioning of the Single Market in the European Union, offering an overview of how well EU countries are implementing Single Market rules and highlighting areas where improvements are necessary. The report is divided into key sections evaluating the overall performance of the Single Market: enforcement tools, the business conditions framework, and competitiveness. The legal framework enforcement section, is divided into six indicators. This constitutes a summary of the methodology in recent years, as changes have been made since its inception. These changes have not been major, but in any case, the methodology has not maintained historical consistency.

The article focuses on a narrow yet significant aspect of analyzing the regulation, development, and performance of the Single Market of the European Union. The analysis is primarily based on the findings and data from the EU’s annual reports on the performance of the Single Market. The article aims to provide a summary of several indicators related to the progress of legal alignment with the Single Market, focusing on three key indicators: the transposition deficit of directives, the compliance deficit with directives, and delays in the alignment of directives.

Although the continuous monitoring of overall legal harmonization specifically for the Single Market is a major concern for member states, this progress also holds value for candidate countries such as Albania. Firstly, it provides a perspective on the commitments and obligations that Albania will need to address in the future. Additionally, and perhaps of even greater interest, the annual challenges faced by member states in aligning legislation serve as a guide for our country’s engagement in the process of aligning its legislation with the *acquis communautaire*.

Transposition progress

Based on the status outlined in the 1997 report, progress over nearly three decades has been substantial. However, issues remain evident and ongoing for all member states, and occasionally instances of regression in performance are noted. Below is a summary of the main findings on three indicators from the annual reports of the “Single Market Scoreboard” since its inception in 1997.

The summary table is constructed as an aggregation of information from the “Single Market Scoreboard” over the 27 years it has been published. The information summarized in this table by the author is based on these reports and, due to changes in the methodology of preparing the “Scoreboard,” some data limitations or adjustments are acknowledged.

To provide an analysis of the formal aspects of the transposition of EU legislation into member states’ national legislations, the information below focuses on three of the six indicators analyzed by the “Scoreboard,” as follows:

- Average transposition deficit across all countries;
- Average compliance deficit;
- Average delay in transposition.

TABLE 1. Summary of the Historical Reporting of the Single Market Scoreboard

Year of report publication	Total of the directives in force	Total of the regulations in force	Average transposition deficit across all EU countries	Average compliance deficit	The average delay in transposition
2023	1,001	6,492	- 0.7%	-1.2%	18.3 months
2022	997	5,669	- 1.6%	-1.3%	12.6 months
2021	1,027	5,409	- 1.0%	-1.3%	7.4 months
2020	1,011	5,009	- 0.6%	-1.4%	11.5 months
2019	1,014	4,527	- 0.7%	-1.2%	8.4 months
2018	1,038	4,100	- 0.9%	-0.8%	8.7 months

2017	1,019	3,619	- 1.5%	-0.6%	6.7 months
2016	1,099	3,175	- 0.7%	-0.7%	10.1 months
2015	1,115	2,953	- 0.7%	-0.7%	7.4 months
2014	1,221	2,521	- 0.7%	-0.7%	9.2 months
2013*	1,367	1,914	- 0.6%	-0.7%	8 months
2012	1,393	1,613	- 0.9%	-0.6%	9.6 months
2011	1,525	1,347	-1.2%	-0.8%	7.9 months
2010	1,486	999	-0.9%	-0.8%	7.1 months
2009	1,606	897	-0.7%	-1.8%	9.8 months
2008	1,687	820	-1.0%	No reference	9.5 months
2007**	1,628	679	-1.2%	No reference	7.9 months
2006	1,620	570	-1.9%	No reference	9.2 months
2005	1,604	514	-1.9%	No reference	11.5 months
2004***	1,596	No reference	-2.2%	No reference	12 months
2003	1,579	No reference	-2.3%	No reference	11 months
2002	1,475	324	-2.1%	No reference	9 months
2001	1,490	275	-2.0%	No reference	12 months
2000	1,459	No reference	-3.0%	No reference	10 months
1999	1,441	No reference	-3.6%	No reference	11 months
1998	1,365	No reference	-3.9%	No reference	10 months
1997	1,346	No reference	-6.3%	No reference	10 months

* In 2013, Croatia joined the European Union as a new member state.

** In 2007, two new countries joined the European Union: Bulgaria and Romania.

*** In 2004, ten new countries joined the European Union: Malta, Poland, Slovenia, Slovakia, Cyprus, the Czech Republic, Latvia, Lithuania, Estonia, and Hungary.

Acquis Communautaire for the Single Market

“*Acquis communautaire*” is a French term referring to the cumulative body (legal framework) or collection of laws of the European Union, encompassing objectives, core rules, policies, and, in particular, primary and secondary legislation, as well as judicial case law. This includes all treaties, regulations, and directives adopted by European institutions, as well as decisions made by the European Court of Justice. In other words, all these elements constitute and shape the legal order of the European Union.

The “*acquis*” is dynamic because it continuously evolves with the development of the Community, and it is fundamental because all Member States are required to adhere to the “*acquis communautaire*.” The goals outlined in the EU treaties are achieved through various forms of legal acts, some of which are binding while

others are not, and some apply across all EU countries while others apply only to specific ones. Among the entirety, and the most important, are:

- (1) **Regulations** – A “regulation” is a binding legislative act. It must be applied in its entirety across the entire EU. For example, when the EU regulation on ending roaming charges within the EU expired in 2022, the European Parliament and Council adopted a new regulation to improve the clarity of the previous regulation and ensure that a unified approach to roaming charges would be in place for another ten years.
- (2) **Directives** – A “directive” is a legislative act that sets out an objective that EU countries must achieve. However, it is up to each country to create its own laws on how to reach these objectives. An example is the EU directive on single-use plastics, which aims to reduce the environmental impact of certain single-use plastics by, for instance, reducing or even banning the use of single-use plastic items like plates, straws, and beverage cups.
- (3) **Decisions** – A “decision” is binding on those to whom it is addressed and applies directly, such as to a specific EU member state or a particular company. For example, the Council issued a decision allowing Croatia to adopt the euro on January 1, 2023. This decision pertained only to that country.
- (4) **Recommendations** – A “recommendation” is not binding and allows institutions to express their opinions and suggest a course of action without imposing any legal obligations on those to whom it is addressed. For example, when the Commission issued a recommendation for media service providers in EU countries to improve transparency of ownership and protect their editorial independence, it had no legal consequences.
- (5) **Opinions** – An “opinion” is a tool that allows institutions to make a non-binding statement, meaning it does not impose any legal obligations on those to whom it is addressed. It can be issued by key EU institutions (such as the Commission, the Council, or the Parliament), the Committee of the Regions, and the European Economic and Social Committee. During the legislative process, committees provide opinions from their specific regional or economic and social perspectives. For example, the European Economic and Social Committee issued an opinion on the Commission’s strategy for small and medium-sized enterprises under the Next Generation EU program.

Firstly, referring to the above table, it is observed that in terms of quantity, the number of directives has been decreasing over nearly three decades and has stabilized at a nearly static level in recent years. From 1,346 directives in

1997, there are now 1,001 directives for the Single Market. Quantitatively, this represents a reduction of about 25% compared to the number of directives three decades ago.

On the other hand, there is a continuous increase in the number of regulations, which has grown nearly 30-fold in comparison. From about 200-300 regulations in force at the beginning of the Single Market, there are now approximately 6,000 regulations. More specifically, by 2012, there was a noticeable “shift” in volume, with the number of regulations surpassing the number of directives and continuing to increase to this day.

To analyze the changes in the number of directives and regulations within the Single Market, several aspects can be considered. These aspects are naturally related to the nature of the acts in question and are crucial for the functioning of the regulatory process of the Single Market.

Directives are legal acts that require member states to achieve a specific result but allow them the freedom to determine how to reach that result. They often require national transposition to come into effect. In contrast, regulations are legal acts that are binding and directly applicable in all member states without the need for further transposition. They are frequently used to create a uniform framework and ensure immediate implementation at the EU level.

The increase in the number of regulations may indicate an effort to improve the implementation of EU legislation. By using regulations, the EU can ensure more uniform and prompt application of laws. If member states face difficulties in the timely transposition of directives, shifting to regulations can help reduce issues related to non-compliance and delays. Directives often require more time to be transposed into national laws, while regulations are immediately applicable, thus facilitating quicker achievement of policy objectives.

On the other hand, it is acknowledged that drafting regulations may require more coordination and effort at the EU level to ensure they are suitable for all member states. However, the regulatory volume materialized in regulations can help build a more integrated and cohesive Single Market at the EU level.

In summary, the change in the number of directives and regulations within the Single Market reflects efforts to improve implementation and ensure more uniform and prompt application of laws across the EU. Analyzing this change involves examining the efficiency and impact of this policy at the EU level and within the member states.

Transposition deficit

“Transposition Deficit” summarizes the gap between the number of Single Market directives adopted by the EU and the number of directives that

have been transposed by each Member State. At the outset of measuring the transposition deficit, there was a significant number of untransposed directives, and at that time, all member states were not performing well in meeting their obligations.

The 1997 report, which was the first Scoreboard report, highlighted that at least 359 Single Market directives had not been transposed by all member states. In other words, at least one country had not implemented any of these provisions. Four years after the creation of the Single Market, over 25% of the Single Market directives were not transposed into the legislation of the 15 member states at that time (Scoreboard, 1997). Overall, the percentage of non-transposition varied from a low of 3% in Denmark to 10% in Austria.

Even on a sectoral level, it was evident that the level of non-transposition was not uniform across all sectors. For example, the highest level of non-implementation was particularly high in the transport sector, where 60% of directives were not transposed across all member states. This was followed by public procurement at 55.6% and intellectual and industrial property at 50%.

However, within a few years, there was a noticeable improvement in the progress of directive transposition. By the 2004 report, the average non-transposition rate of directives had decreased to -2.2%, down from -6.9% reported in 1997. Moreover, the number of completely untransposed directives across all member states had halved, from 359 directives in 1997 to 134 in 2004, representing 9% of all directives (Scoreboard, 2004). This represented a much more positive picture within a short period compared to the initial state of the Single Market's functioning.

According to the objectives set by the European Council, initially defined in March 2001, the target for the transposition deficit was set at below -1.5%. This target was later revised to -1% in March 2007 (EC, 2007), and by 2010, three years after the European Council set this target, the average transposition deficit reached below -1%. In 2011, the target was set to less than -0.5%, which remains the target today (EC, 2011). Since 2011, this target has never been achieved, and the average transposition deficit for Single Market directives has not fallen to below -0.5%.

In recent years, according to the data presented above, the average transposition deficit for Single Market directives has consistently stayed below 1%. Over the past decade, the performance in reducing the deficit has been more positive compared to previous years.

Nevertheless, the current target of 0.5% remains unmet, not only as an average across all countries but also individually, as many countries do not perform up to this target (EUROSTAT, 2007). In 2023, only five member states achieved the agreed target (EUROSTAT, 2023). Throughout the last decade, the average transposition performance has mostly remained below a -1% deficit. This contrasts with the previous decade, during which the deficit consistently exceeded -1%.

The table and the data above illustrate the challenges faced by member states in dealing with the transposition process. Although these difficulties have diminished over the years, the challenge remains visible.

Transposition Deficit and Interconnections

It is interesting to highlight the comparison of progress before and after the accession of 10 additional countries to the European Union in 2004. The same reasoning can be extended to 2007, with the accession of Bulgaria and Romania. For understandable reasons, the expectation was that these countries would face difficulties in keeping pace with the alignment process of other member states, thereby adding a burden to the average transposition deficit of the Single Market directives. This reasoning is legitimate when considering countries with widely recognized difficulties in law enforcement, but it also falls within the stereotyping of the “Global South.” In fact, the latter proved to be more accurate regarding the transposition expectations of these countries. (Börzel, 2000) This reality gained major attention in the 2010 report by Mario Monti to the President of the European Commission, which called for a new strategy for the Single Market. (Monti, 2010)

Comparing the performance of member states up to that point with the 2004 Single Market scoreboard, we see that the champions in reducing the transposition deficit were almost all the new member states. These countries performed better over time in transposing Internal Market directives than the older EU member states, despite having to adopt the entire *acquis* within a short period. (Scoreboard, 2005)

Within this perspective and of particular interest for Albania, a key finding emerges regarding the transposition progress within the new member states of 2004 and 2007. Analyses indicate that the more a new member state was economically integrated with the Common Market, the stronger its political commitment was to align its policies with EU law even before accession. Additionally, the more developed its administrative capacities were, the better its performance in transposing EU law. The significant impact of pre-accession transposition history on post-accession transposition performance also reveals the dependent relationship between pre- and post-accession behavior. (Knill & Tosun, 2009)

Delays in transposition

One of the key topics analyzed in the annual “Single Market Scoreboard” report is the calculation of delays by member states in adopting directives beyond the specified deadline. Historically, the average delay in adopting Single Market directives beyond the deadline was lowest in 2011, with an average of 5.1 months,

and highest in 2023, with 18.3 months. Notably, in 2022 and 2023, for the first time in the history of these calculations, the average delay in adoption exceeded one year beyond the deadline across all member states.

For the year 2023, Slovenia had the best performance with a delay of 9.7 months, while Greece had the worst performance with a delay of 40.6 months. Additionally, in 2023, four countries surpassed the target set in 2002, which aimed to prevent the adoption of directives more than 24 months past the deadline (EU CO, 2002).

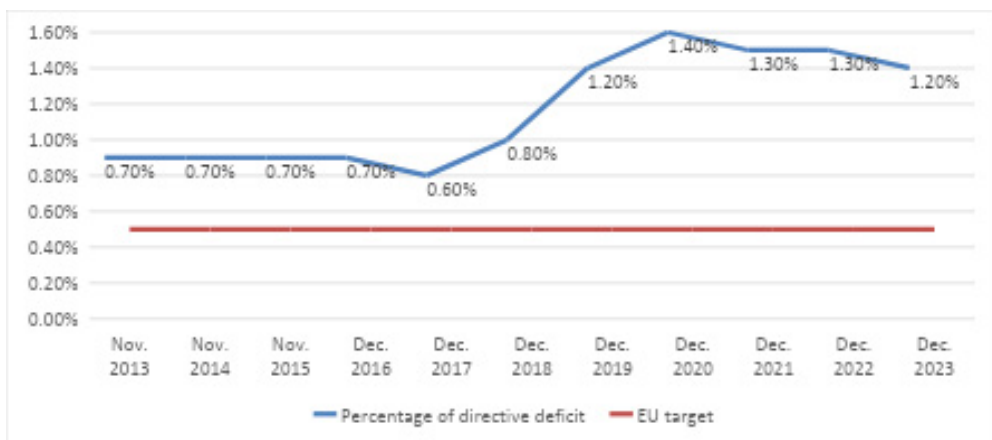
Countries that have consistently shown delays in adoption beyond the deadline include Italy, Spain, and Greece. Conversely, countries that have historically recorded low average delays in adoption beyond the deadline include the Netherlands, Sweden, and Luxembourg.

Conformity deficit

The compliance deficit or conformity deficit measures the number of transposed directives for which the Commission has initiated procedures for incorrect transposition. It is expressed as a percentage of the number of internal market directives reported to the Commission as “transposed” or “not requiring further implementation measures.” Only the Court of Justice can make a final determination on whether a directive has been correctly transposed.

According to the target set by the European Commission in 2011, the compliance deficit should not exceed -0.5% (CE, 2011). This target has never been achieved collectively by all EU member states. In fact, in the last four years, the average compliance deficit for all member states has exceeded -1%, with a continuous increase, reaching a record -1.4% during this period.

FIGURE 1. Summary of the Historical Conformity Deficit of Directives

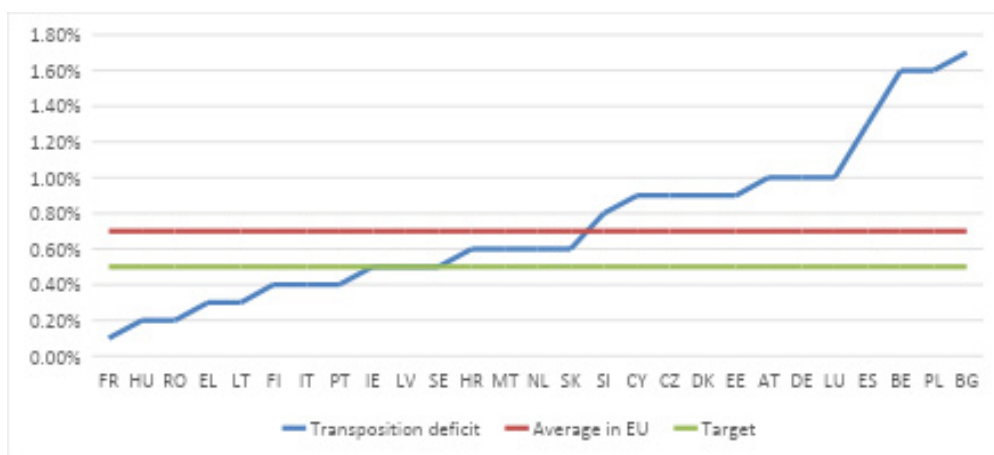


For the year 2023, it is found that 15 countries exceed the -1% threshold of the conformity deficit, with four of them surpassing the -1.5% threshold: Bulgaria, Czech Republic, Hungary, and Denmark.

The current state of transposition

The annual report for 2023 considers all transposition notifications made up to December 5, 2023, for Single Market directives that had a transposition deadline of November 30, 2023, or earlier. As of that date, it is reported that there were **1,001 directives** and **6,492 regulations** in force to ensure the functioning of the Single Market (Scoreboard, 2023).

FIGURE 2. Status of Directives Transposition Deficit for 2023



In analyzing the 2023 data, it is evident that only four countries have exceeded the -1% deficit threshold: Spain, Belgium, Portugal, and Bulgaria. Meanwhile, four countries are at the -1% level, and eight countries are below the -0.5% deficit, including France, Hungary, Romania, and Greece. At the extremes of performance, France is positioned at the top with a deficit of -0.1%, having only one directive not transposed, while Bulgaria is at the bottom with a deficit of -1.7%, with 17 directives not transposed.

The Scoreboard, in a more detailed analysis, distinguishes between sectors in need of alignment, including competition, connectivity/media, digital society, consumers, energy (including consumption), environment, financial information, enterprise law, free movement of people, EU citizenship, social policies, taxation, transport, and others. For 2023, the sector with the highest number of non-transposed directives from member states is the transport sector, while the sector where almost all countries are in harmony with directives is the competition sector.

Additionally, specific countries should be considered to understand the process as a whole. One such example is Belgium, which, according to the 2023 report, recorded a transposition deficit of over -1%. This can be considered a significant achievement when compared to the problematic performance the country has experienced over the past 10 years. Notably, Belgium set a negative record in 2021 with a deficit of -2.1%.

Furthermore, if we examine the performance for 2024, which will be reported by the Scoreboard in 2025, we see a very positive achievement. With a deficit of -0.7% achieved in June of this year, Belgium has reached the most positive result in this decade. This not only places it below the -1% threshold set by the European Union but is also considered an achievement in the context of the EU Council Presidency (FMB, 2024).

The case of Belgium, the administrative hub of the European Union, highlights the nature of the legislative alignment process. While there are historical champions of alignment, such as the Netherlands, Denmark, and Finland, which consistently perform well in the “Single Market Scoreboard,” these countries usually show strong results in transposing EU directives into national legislation and maintaining high levels of compliance with EU regulations. Their high performance is usually attributed to their efficient administrative systems and strong commitment to EU integration.

Conclusions

Aside from the positive or negative conclusions that may arise from the analysis of the “Single Market Scoreboard” and monitoring reports as a whole, the reality extends beyond a quantitative and objective approach. Specifically, it is reported that the Commission continues to receive a significant number of complaints regarding the imperfect functioning of the Single Market.

The Directorate-General for Internal Market, Industry, Entrepreneurship, and SMEs (DG GROW) is the Commission’s department responsible for supporting an open, uninterrupted, and sustainable Single Market with open borders and the free flow of goods and services. Most recently, in 2022, DG GROW reported receiving nearly 200 complaints for assessment. These numbers indicate that the Internal Market is still far from being a reality for many citizens or businesses within the European Union. Many of these complaints pertain to specific cases of poor implementation and are therefore usually not subject to enforcement by the Commission (CE, 2023).

However, the number of these complaints highlights issues that deserve more attention to ensure that the so-called “second leg” of the EU enforcement framework operates effectively. There is a need for a more active role by national

authorities and courts in ensuring the accurate application and enforcement of EU rules. Often, individuals and businesses face insurmountable barriers and high costs when trying to assert their rights derived from EU law in national courts (CE, 2023).

Another valuable finding, particularly relevant for countries in negotiation processes and one of the most significant comments from the “Single Market Scoreboard” reports, concerns the report on administrative and political performance. Since the 2000 report, it is noted that *“Three years after the initial launch of the Scoreboard, it became clear that administrations can achieve a significant reduction in the ‘implementation deficit’ of the Internal Market legislation only if intensive administrative activity is accompanied by high-level political support.”* (Scoreboard, 2000) This political support from the governments of member states must also take into account the opposite effect, which is often observed in the alignment of legislation. The harmonization of national legislations should be wary of the risk of overregulation or “gold plating.” (Lausberg, Otero-Iglesias, 2024)

In relation to the primary objective of this study, the alignment process, analyzed as a mechanical process through quantitative data, also reveals the presence of challenges. Despite ongoing progress, where the regulatory burden has shifted from directives to regulations, the transposition of directives still faces difficulties. Furthermore, the EU has been engaged in the “standardization” of the Single Market, yet this process remains without a universally accepted “North Star.” Referring to the Monti Report, we find a meaningful comment in this context: *“The Common Market, the Single Market, the Internal Market: the changes in name over the years reflect the dual phenomena of deepening and enriching the great European market.”* (EC, 2010).

In this regard, various authors—diametrically opposed to the current trend—recommend, among other things, the immediate abandonment of the Commission’s approach to harmonized European standards. In other words, what is being called for is a reassessment that promotes a more “flexible” regulatory framework, one that supports market dynamics and improves conditions for EU startups, thereby enhancing dynamism within the Single Market (Pelkmans, 2024).

In the same spirit, Enrico Letta’s 2024 report recommends that “instead of seeking new primary legislation, the focus should be on improving the incorporation of these principles into secondary legislation at the European level and ensuring their effective transposition at the national, regional, and local levels.” (Letta, 2024) Some authors go even further, proposing that in areas where harmonization is difficult to achieve, the principle of “mutual recognition” should be reinstated. (Lausberg, Otero-Iglesias, 2024)

Naturally, this discussion extends beyond the narrow scope of this article and, moreover, requires an analysis that is difficult to exhaust within a single article.

The value of this discussion lies in its implications, which stem from the findings derived from the history of harmonization as reflected in the aggregation of information from the scoreboards.

If, until today, the legal framework of the Single Market has been primarily based on regulations, this has been done to facilitate harmonization—yet challenges related to the transposition capacity of member states persist. A departure from this approach, for the legitimate reasons highlighted above, raises questions about the “absorptive” capacity of member states when faced with an *acquis* structured around directives.

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