

A grayscale photograph of a traditional European building with a tiled roof and a balcony, serving as the background for the title text.

Internal Market 3.0 – Opportunities & Challenges in Unsettling Times

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Set-up of the lecture

- I. Introduction & context
- II. The legal framework of the internal market
- III. The internal market & the green transition
- IV. The internal market & the digital transition
- V. Rethinking the foundations of EU internal market law



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I. Introduction & Context



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Library of water
Roni Horn, Stykkisholmur, Iceland





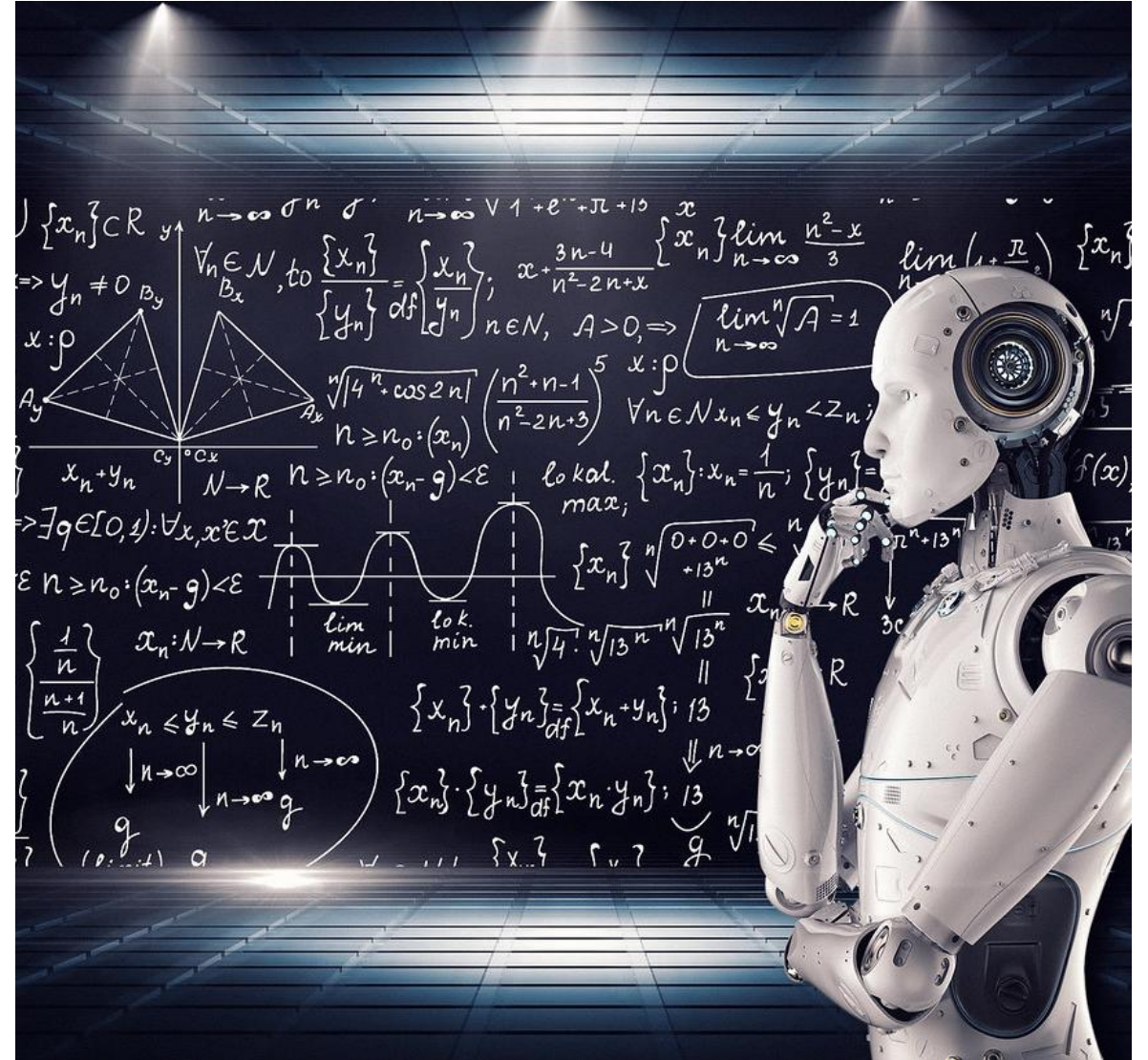
Pliny the Elder (AD 23-79) about the abuse of the earth in Naturalis Historia:

“[...] so that our minds may rise [...] to contemplate when the centuries of exhaustion of the earth will have reached its limits and to what depths our greed will penetrate.”





Disruptive and rapid digital & technological innovations





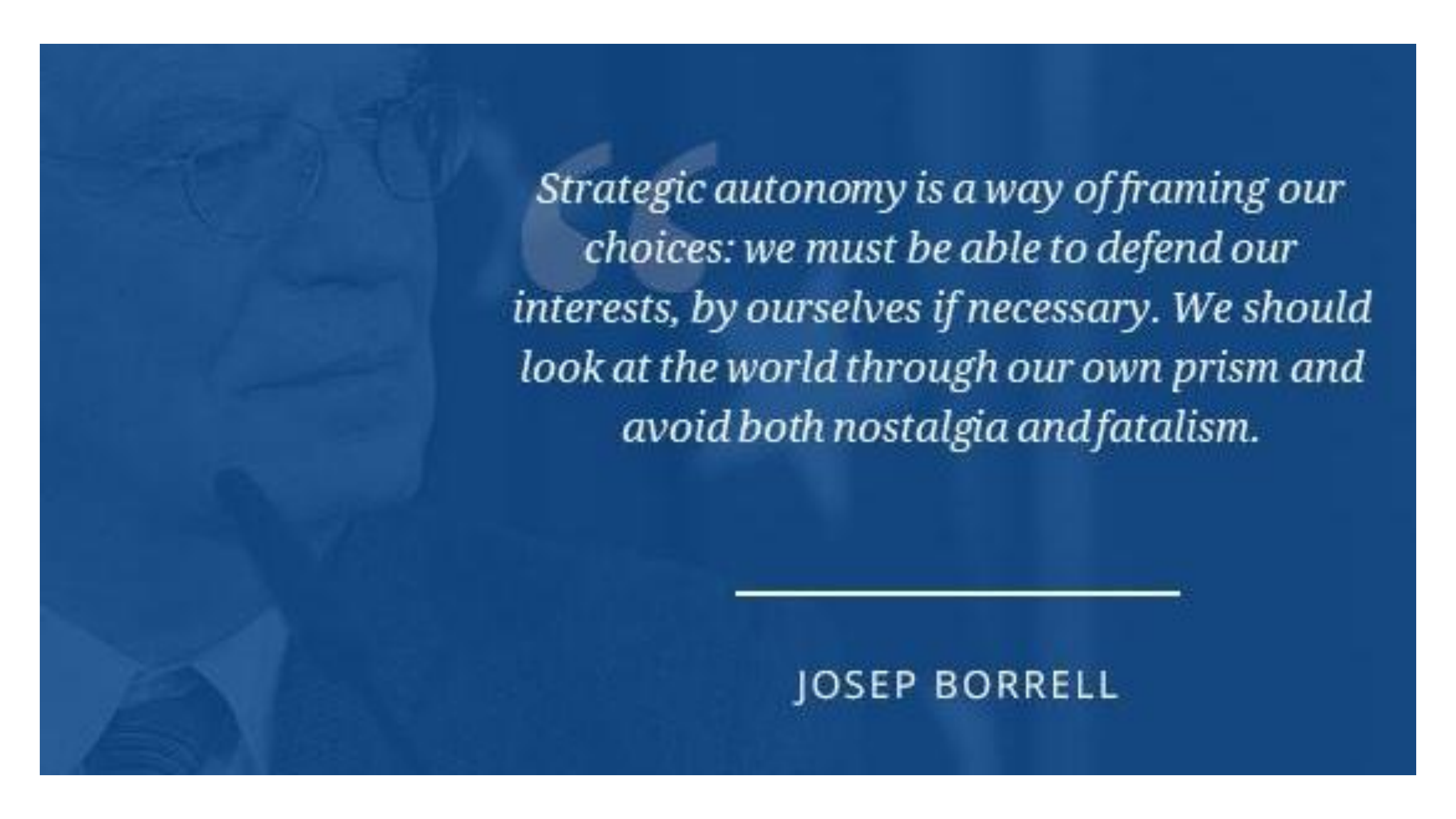
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*Blurring lines
between commercial
and public spaces*



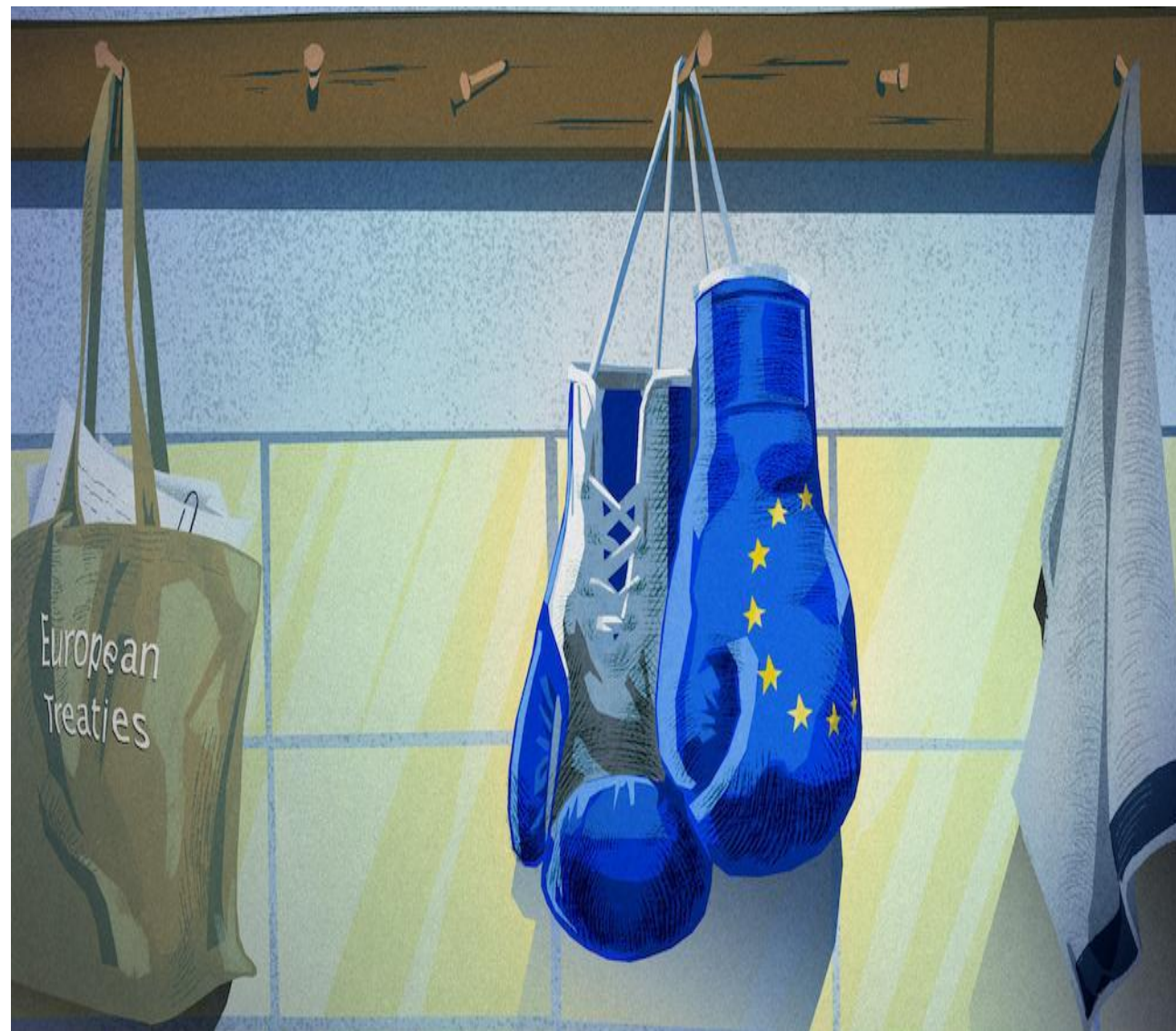
A digital globe with a network overlay, featuring a green star icon in the top left corner. The globe is set against a dark blue background with a starry pattern and a wavy blue line in the top right corner.

TOWARDS
**A GREEN &
DIGITAL
FUTURE**



Strategic autonomy is a way of framing our choices: we must be able to defend our interests, by ourselves if necessary. We should look at the world through our own prism and avoid both nostalgia and fatalism.

JOSEP BORRELL





II. The legal framework of the Internal Market

The beginning: the dominant “project”

From the establishment of the EEC in 1958 to the entry into force of the Maastricht Treaty and the establishment of the EU in 1993, the Internal Market was undoubtedly the most dominant “project”

According to the Court in Case C-15/81, *Gaston Schul*, para. 33

“The concept of common market [...] involves the elimination of all obstacles to intra-Community trade in order to merge the national market into a single market bringing about conditions as close as possible to those of a genuine internal market.”



Today: the central organisational principle of the Treaties

*“The internal market with its fundamental freedoms not only constitutes the **historical legal cornerstone** of the Treaties and their central organisational principle, but has also, since the outset of the integration process, been characterised by its dynamism. It is one of the stated aims of the Union... and stands prominently in the FEU Treaty in Title I of Part Three. Legally defined since the Single European Act as ‘an area in which the free movement of goods, persons, services and capital is ensured [...]’,... it aims to provide for a free flow of products and factors of production within the Union, against the background of the economic concept of comparative advantage...”*

[Opinion AG Szpunar in Joined Cases C-360/15 and C-31/16 *X and Visser* (2017) para 1]

*“The internal market, which constitutes – depending on one’s perspective – the means or the end of the process of European integration, is so fundamental to the Union’s legal order that it is taken as a given and constitutes no less than **the central organisational principle of the Treaties.**”*

[Opinion AG Szpunar in Case C-16/18 *Dobersberger* (2019), para 21]

But: complex, contested and a heterogenous concept

Article 26(2) TFEU: silent as to how the internal market should be shaped, the intensity of EU regulation, and the relationship between national and European public interests

The creation of the Internal Market is an inherently “*dynamic process*”, which is seen as in need for constant effort, vigilance and updating

Has been labelled as **ambiguous** and as leaving considerable space for political and economic choices on the EU’s legislative strategies and the level of intensity of the regulation of its space





Weatherill (2012) “In this sense ‘1992’ was merely a milestone: the internal market is a process not an event.”

Integration through law –
*negative & positive
integration*

EU internal market law

Three pillars

Four Freedoms

e.g. Artt. 34, 49, 56 TFEU

Public authorities – sometimes
private actors
Public/private interests

Competition rules

e.g. Artt. 101 & 102 TFEU

Private actors – private
(competition) interests
Public (non-competition)
interests?

Legislative harmonisation

e.g. legal basis: Art. 114 TFEU

Directives and/or Regulations
Economic & non-economic interests;
fundamental rights



III. The Internal Market & the green transition

Hypothesis: pre-Lisbon Internal market orthodoxy - out of track?

Limited consideration of fundamental/human rights context

Economic rationale: focus on growth and wealth – insufficiently taking into account new economic thinking

Non-market, public interests only as exceptions to the dominant economic prohibitions through “justifications”

Thereby in principle always secondary in character and to be understood strictly

Many new aims of the EU, such as the social market economy

Legislative strategy taken often less sensitive to local autonomy and diversity



Steppingstones...

Thus, need to reconsider...

... as to whether Internal Market law, given the current Treaty context, could be developed further into a much more proactive, strategic instrument to attain crucial “green” objectives for the sake of giving enhanced effect to a “green transition”.

[See e.g. related discussion by *Advocate General Villalón* in his Opinion in Case C–515/08 *dos Santos Palhota and Others* (2010), paras 51–53]



Potential & constraints for realising a green internal market (a)

Treaty → contradictory aims

Article 3(3) TEU

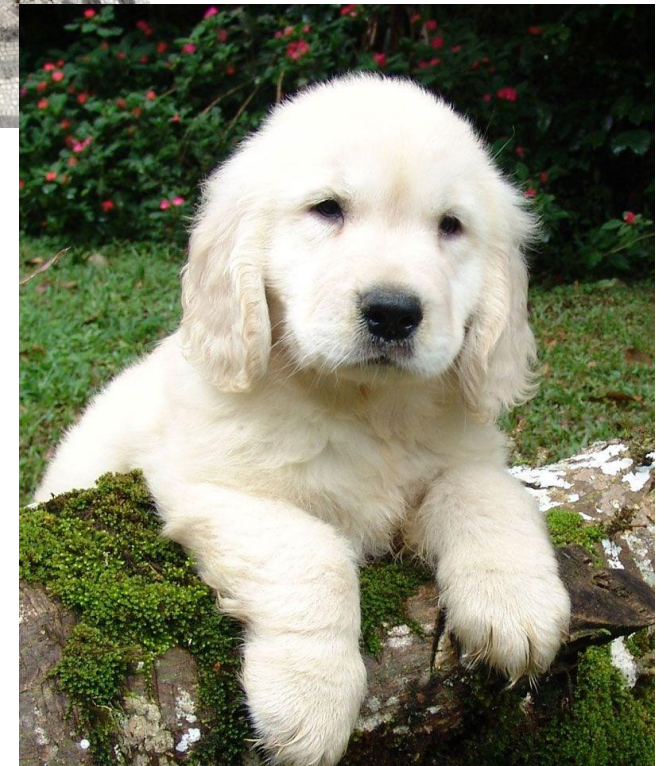
Sustainable development, social market economy, based on economic growth

Article 39 TFEU

Increasing productivity, stabilizing markets, reasonable prizes for consumers

Artikel 11 TFEU

“Environmental protection requirements shall be integrated into [...] Union policies.”



Legal potential & constraints for realising a green internal market (b)

Is the current normative framework on the EU internal market sufficiently broad and powerful?

Free movement law: key principles of *non-discrimination & market access*, and sufficiently broad exceptions?

EU competition law: room for non-economic interests, including sustainability

EU legislative harmonisation: market bias, as legislation is based on Article 114 TFEU?



Allegorie van de handel
Gillis Mostaert, ca. 1550 - 1600



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IV. The Internal Market & the digital transition

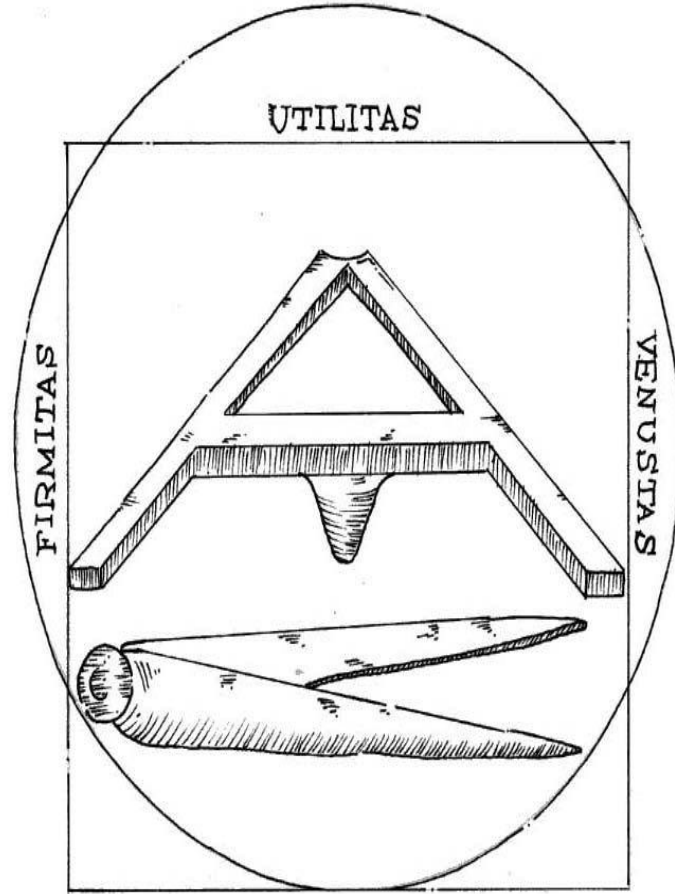
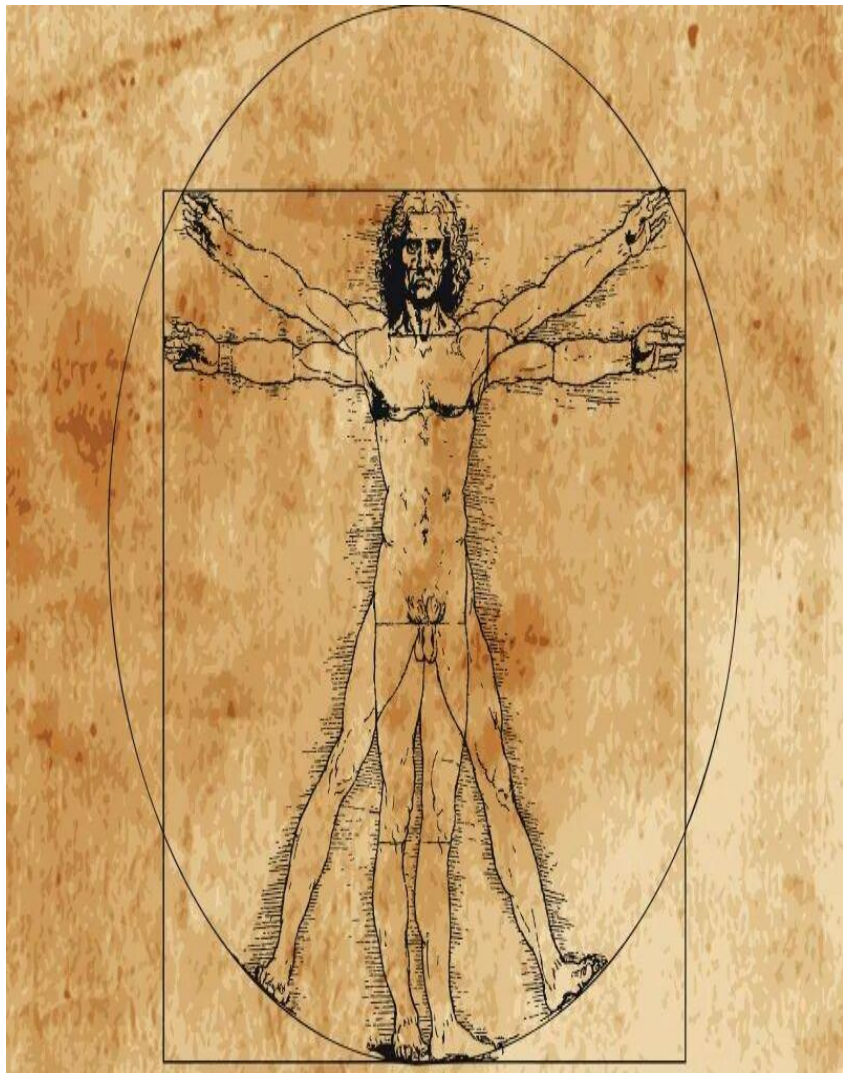
"The Digital Single Market is about allowing the freedoms of Europe's single market to enter the digital age."



Specific features of the EU's DSM

- **In the beginning:** no all-encompassing public economic law approach
- Major role of (powerful) private actors
- Blurring lines between market & non-market impacts
- The importance of data, data sharing & information
- Rate of technological change & response of the law





*Are the foundational legal principles underlying the EU Internal Market sufficiently **robust** in the face of digitalization, and rapid and disruptive technological developments?*

Four Freedoms

Blurring lines between goods, services, self-employed & workers

Fading distinction between public & private interests

The growing importance of fundamental rights vis-à-vis the four freedoms

Four freedoms, fundamental rights & private actors: horizontal direct effect



EU legislative harmonisation

Regulations rather than directives

Article 114 TFEU as legal basis, also to regulate (limitedly) fundamental rights

- E.g. AI Act, Digital Services Act, European Media Freedom Act

Preventive harmonization to tackle *future* obstacles to trade

- The internal market as an ‘empowering concept’
- Requirements/obligations for private parties



Erasmus of Rotterdam, portret by Hans Holbein the Younger, 1523

Thierry **Breton**, Former Commissioner for the Internal Market:

“The EU is the world's largest democratic single market. Media companies play a vital role but are confronted with falling revenues, threats to media freedom and pluralism, the emergence of very large online platforms, and a patchwork of different national rules. The European Media Freedom Act provides common safeguards at EU level to guarantee a plurality of voices and that our media are able to operate without any interference, be it private or public. A new European watchdog will promote the effective application of these new media freedom rules and screen media concentrations so they do not hamper plurality.”

*V. Rethinking the foundations of EU Internal
Market law ... after (more than) 30 years*

From its ('neo' -) liberal roots to a more mission-oriented internal market...

The internal market as an empowering, strategic instrument to attain non-market objectives...

- ✓ Endorsed by the pivotal and dynamic role of Article 114 TFEU

...which fits into the changed geo-political, and societal context...

- ✓ Or the quest for strategic autonomy, making the market more resilient, particularly after the multiple crises the EU is facing

...but is it all new?

Spaak Report (1956) "The purpose of a common market must be the creation of a large area with a common economic policy, so that a powerful unit of production is formed and continuous expansion is made possible, [...]"



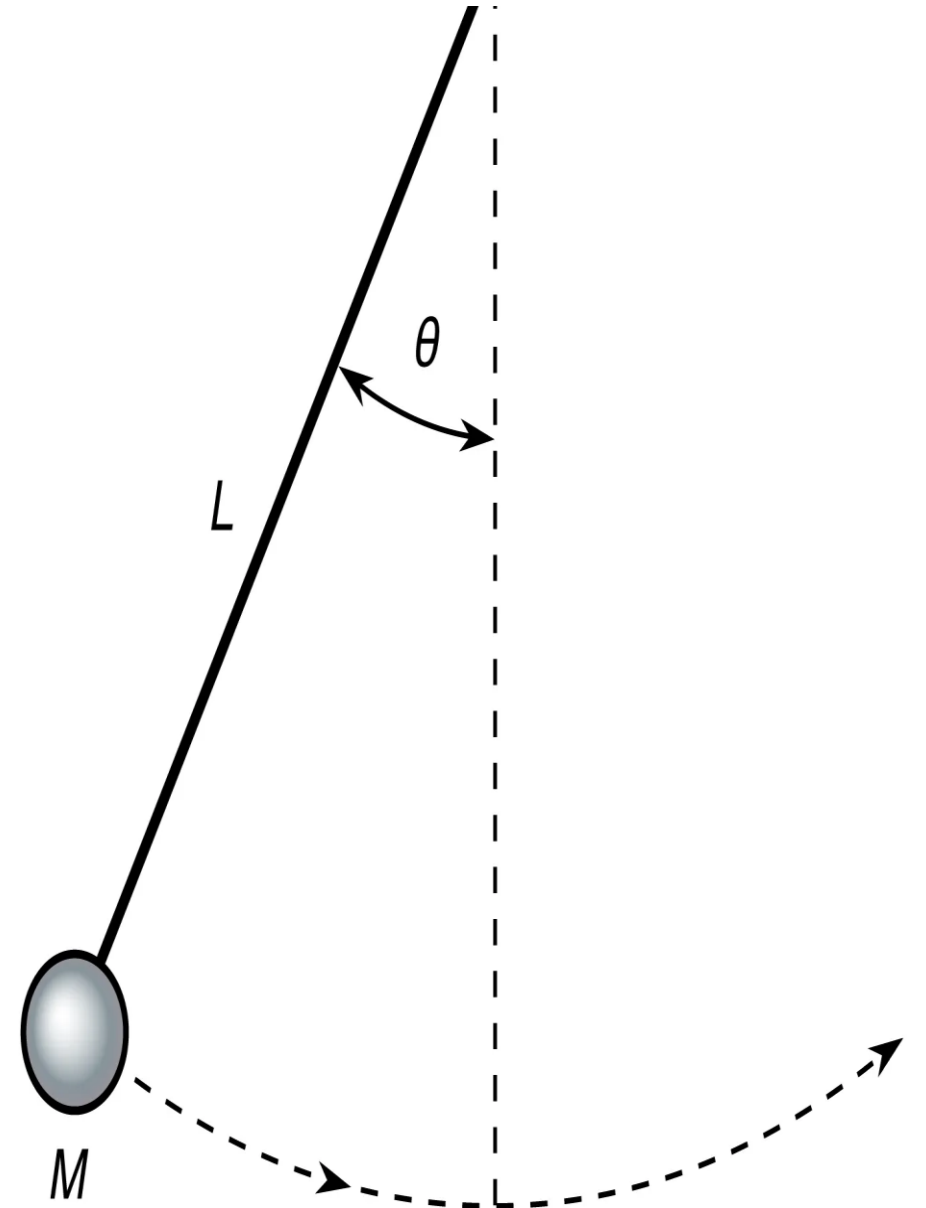
... and to reconfiguration, more competitiveness & protection

Letta & Draghi reports (2024)

COM(2025) 500 final – The Single Market: our European home market in an uncertain world

Addressing 10 ‘terrible’ barriers

More focus on simplification, deregulation, digitalization (Digital product passport), protection of consumers and enforcement



BUT...

...despite the assumption that the IM legal framework (to a more & lesser extent) supports economic growth → persistent barriers to trade & free movement remain

AND...

...how might the EU legal framework facilitate the development of a resilient, sustainable, and inclusive Internal Market?

<https://www.uu.nl/en/research/sustainability/gallery/project-gallery/signature-projects/reimagining-constitutional-ecology>



Re-conceptualisation of the market (a)

Tinkering with the overarching
principles of public economic
law...

Freedom

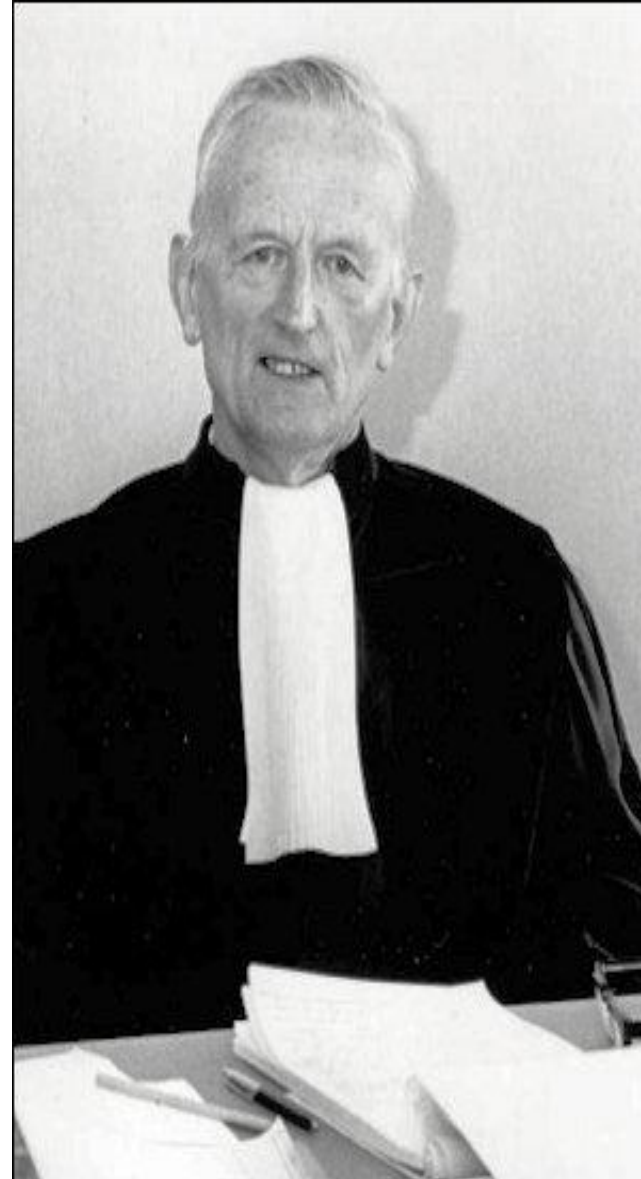
*Reflected in the Treaty rules on free
movement*

Equality

*Present in Treaty rules on free movement &
competition law*

Solidarity

*Particularly reflected in EU legislative
harmonisation, but not only...*



Re-conceptualisation of the market (b)

...Colouring them with e.g. sustainability, justice, ecological responsibility, propriety, honesty

Freedom

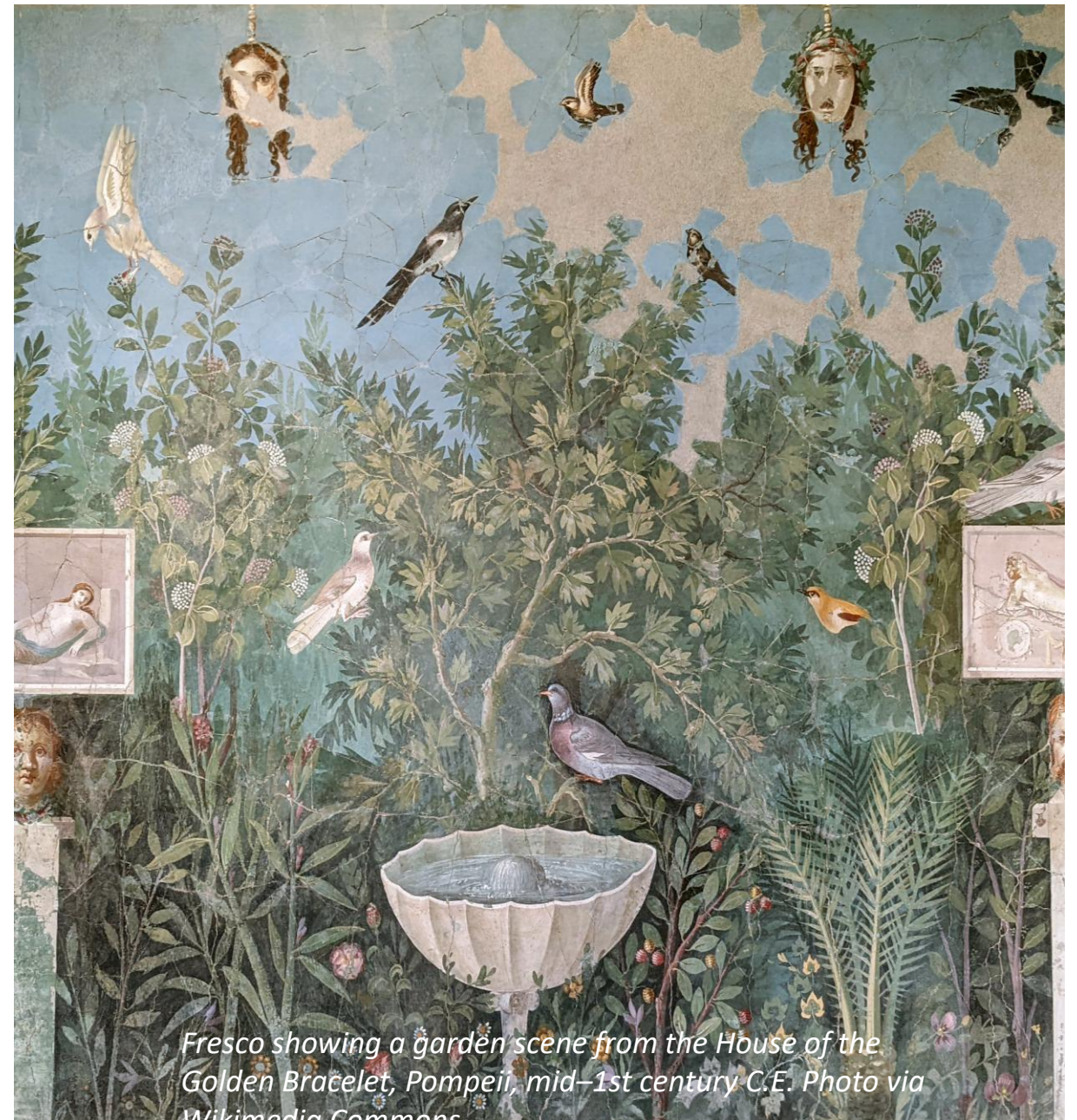
- ✓ Right to **fair, sustainable** movement
- ✓ Greening of fundamental rights

Equality

- ✓ Principle of equality *for sustainable and healthy products*
- ✓ Developing new markets for sustainable products & services

Solidarity

- ✓ **Very important to shape the circular IM**
- ✓ Mandatory but flexible laws
- ✓ Collective benefits recognized under competition law
- ✓ Procedural aspects: access to the courts



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Thank you for your attention!