

# INFORMATION

I N T E R I O R M A R K E T

A NEW APPROACH TO THE APPROXIMATION OF LEGISLATION

59/74

The Commission has adopted a new approach in its efforts to reconcile the often conflicting legislation of the Community's nine Member states.

Mr. F.O. Gundelach, the Danish member of the Commission, in a major speech to the European Parliament in February 1974, explained, in reply to a parliamentary question, what this new approach was.

The following is the text of his speech.

"To what extent does the Commission feel that approximation of legislation should be used to improve the free flow of goods and services within a single internal market ?"

The essence of the answer is : To the extent that such approximation is an indispensable necessity for the maintenance and development of a free market for goods and only when this objective cannot be attained through other means. Approximation or harmonization is not sought for the mere sake of harmonization.

Before I elaborate further, I should like to emphasize the importance of the free movement of goods within the Community. It is desirable that the consumer has the widest possible choice of goods and that the manufacturers are faced with competition and inspiration from goods coming from other Member states. The freedom of movement means that production facilities can be established where they can be utilised most advantageously. This goal will not be reached by creating uniform products.

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All Member states have, for good reasons, adopted regulations for the protection of public health and the environment and the protection of the population. On many occasions, one country has taken an initiative in a certain area before other countries. This has resulted in different measures in different countries with the result that the production in each country is adapted to different regulations. Thus, it is not the rules in themselves but the difference in the rules that constitutes the barriers to trade. Trade has been hampered because a manufacturer has had to comply with different regulations, depending on the country to which he wishes to export. Let me emphasize that the Community supports measures taken with the purposes just mentioned ; however, the Community also wants these measures to be taken in such a way that they do not constitute a barrier to trade. In a number of fields, for instance environment, the Community has elaborated or is in the process of elaborating proposals for common measures. To the extent the efforts to develop and maintain the free internal market can support the implementation of these proposals, they naturally ought to do so.

The programme, the main element of which is the elimination of technical barriers to trade has erroneously been called a programme for "harmonization" of legislation. The process has little to do what public opinion does understand by harmonization. As I have already mentioned it is not the policy of this Commission to harmonize merely for the sake of harmonization. This would be to compel the Member states to change their legislation merely in order to have uniformity to comply with a concept of integration for which the only basis is ideology. It is not the Commission's policy to enforce a grey uniformity on people, a uniformity for which they have expressed no desire and for which there is no basis in the Treaties. It is not the policy of this Commission to propose approximation of legislation except in cases where practical experience shows that it is necessary to avoid or to eliminate important barriers for the free movement of goods or services at the same time taking into consideration public health, environment and protection of consumers.

In those cases where the Commission must insist on proposing approximation of legislation it tries to find a method that implies a minimum of approximation - or in other words : the most flexible method - and the method which leaves the greatest choice to consumers.

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In political circles and in public opinion the main interest in the field of the so-called harmonization has centred around processed food. This is understandable, because it is in this area that we find most of the unreasonable protective measures, and it is in this area that public opinion can most easily evaluate the extent of the Commission's proposals.

However, I should like to point out that the Commission in the spring of 1973 withdrew the major part of its proposals in this field not only to take the situation in the new Member states into consideration but also to find a new form that to a greater extent corresponds to the general criteria on which the policy of the Commission is now based.

In December 1973, the Council of Ministers adopted a programme for the elimination of technical barriers to trade ; at first glance, it might appear that the programme only contains a number of new deadlines but a closer study of the programme will show that the new deadlines are the result of the Commission's decision to tackle the existing problems in a new way.

The main trend in the previous proposals has been that they were based on the concept of total harmonization, whereas in the future they will to the extent possible be based on optional harmonization or other methods.

The methods employed in order to develop a free market are :

- that the Member states accept goods which comply with other Member states' regulations ; in this case, no Community considerations demand approximation of the national legislation but the method may be combined with certain minimum standards. Unfortunately, the mutual trust among the authorities of the Member states does not appear to be sufficient to allow the use of this method as often as the Commission would like to.

A variation of this method is the case of complex pieces of apparatus which are made as "one-off jobs" and for which each order presents a different specification. A good example of this would be certain types of pressure vessels. In the opinion of the Commission the establishment of Community specifications would require far more work than is justified by the interest

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in this area. In these cases the Commission proposes a simple conditional recognition of controls which allows the authorities in each individual country to exercise the controls which are mandatory in the importing country. It is evident that this solution has nothing to do with harmonization. It is also clear that a harmonization in this case would be senseless, but it gives the great advantage to producers of seeing the controls carried out in their own country at minimum cost, by inspectors of their own nationality, which eliminates any linguistic problems. In both variations of this method free trade is developed without approximation of legislation.

- The second method is optional harmonization, which means that a Member state must allow goods to be imported if they fulfil the Community rules and likewise such goods are also allowed for export. However, at the same time the existing national rules for the production can be maintained. Just as is the case with the previous method, it will be possible for the consumers and manufacturers to maintain national or local traditions which it would be senseless to abolish merely because of the elaboration of Community rules. Let me, as an example, mention the rules on beer. It would be meaningless to adopt Community rules for the brewing of EURO-beer, when only 7% of the production is exported. Community rules on brewing of beer might very well eliminate a number of local "specialities". On the other hand, in the long run it is not acceptable that the consumers in a Member state be prevented from the possibility of trying products which are allowed by the authorities in other Member states. Bread is another example. It is obvious that there should exist regulations permitting the free movement of such an ordinary product. On the other hand it is improbable that the people of the Member states should accept that local specialities should no longer be permitted in order to allow for export of standardized products.
- Horizontal harmonization means the adoption of general principles or methods to solve the problems for a number of products at the same time. For instance some countries have in order to protect consumers' interests adopted positive lists for additives. Other countries have negative lists. Some countries have rules requiring that prepacked goods as an average contain the quantity indicated on the package ; others have minimum requirements. If it is possible to find a flexible solution to these problems, the consumers will have better protection on their choice of goods.

- The last method, total harmonization, implies the substitution of Community rules for the existing national rules. This method has been used in cases where it was necessary to guarantee a minimum level of protection, for instance, the level of biodegradability of detergents or with regard to certain parts of automobiles. The adoption of the proposed directives for the safety of motor vehicles will be useful for trade but even more so for the safety on our roads. On the other hand it will not mean any decrease in the supply of models - in other words there will be no EURO-car. The method has also been used with regard to products where exact specifications are necessary but where the intrinsic characteristics of the products are not otherwise changed. It will be evident from what I have said that this method will only be suggested when it is indispensable and where no alternatives are available.

The area for total harmonization has thus been substantially reduced compared with the previous situation. On the other hand, in the instances where the Commission chooses total harmonization there seems to be agreement that no alternative solutions exist.

To recapitulate the policy of the Commission :

- when the Commission decides to make proposals for approximation - or harmonization - of legislation it will endeavor to find the solutions most flexible for the manufacturers, giving the widest possible choice of goods for and the greatest protection of the consumers, and taking existing and future technical progress into consideration to the greatest possible extent ;
- the Commission's attitude towards the problems is reflected in the programme for the elimination of technical barriers to trade which the Council adopted in December 1973. On that occasion the Commission announced its intention to make fundamental changes in existing proposals for the elimination of technical barriers to trade, especially in the field of processed food ;
- the concept "harmonization" is no longer a relevant description of the Commission's efforts to promote the free movement of goods and services.