



EUROPEAN  
FILE

The removal  
of technical  
barriers to trade

If a producer who wants to sell his products in another Community country has to modify them to comply with the industrial standards or legal regulations of that country or has to submit them to a testing and certification process, he faces a technical barrier to trade. The removal of such barriers is one of the priority tasks of the European Community as it works towards the large market of 1992.

There are three types of technical barrier:

- The first is caused by differences between national industrial standards (DIN in Germany, Afnor in France, BSI in the United Kingdom, etc.), which must be met as a condition for the import, sale or use of a product. Drawn up by private organizations, such standards for product form, functioning, quality, compatibility, etc. are not legally binding and the way they hinder trade can be quite subtle. For example, an insurance company may agree to pay for damage caused by building materials only when they have been certified as conforming to national standards.
- The second type of barrier results from differences in national regulations, which are similar to standards but which are legally binding. These rules are generally enacted in order to protect the public interest: health, safety, the environment, etc. For example, many Community countries regulate the composition of certain food products and make it illegal to market imported products that do not conform to national rules.
- A third type of barrier is created by the testing and certification procedures which ensure the conformity of a product to national regulations or industrial standards. A barrier to trade occurs every time an importing country requires certification additional to that required in the country of origin. The resulting extra costs and delays are well known in such sectors as pharmaceuticals.

In general, technical barriers to trade mean significant direct and indirect costs for European producers and consumers. They prevent or complicate large-scale production; they increase the cost of storing raw materials or finished products; they reduce competition and its beneficial effects on prices and on the range of choices available to the consumer; they affect the very structure of industry by reducing its overall competitiveness as a result of restrictions on competition and market expansion.

Why do such technical barriers exist? What makes them continue? Among the main reasons are:

- Philosophical differences regarding the means to be employed to safeguard public health, safety or the environment. So, for instance, standards for certain machinery may make workers responsible in some measure for their own safety, or may aim to protect them against any negligence on their own part, however foolish.
- Different traditions of standardization, testing and certification. Standards are often the result of agreements between different groups – producers, sellers,

insurers, etc. — who resist changing their habits to accommodate imported products which fulfil different criteria. Such variations may reflect a different level or rhythm of industrialization.

- However, the above reasons often conceal a desire to protect, despite the European Treaties, the interests of national producers, or even a complete industrial sector judged to be of strategic importance. Governments have been known to create a national preserve for producers of equipment in sectors such as telecommunications, while brewers and spaghetti manufacturers cling to laws which act more as an obstacle to imports than as the consumer safeguards they are proclaimed to be. This is why some technical barriers are very difficult to remove, while negotiated settlements are easier in other cases.

### **The role of the European Community**

The provisions of the Treaty of Rome which set up the European Community provide for the removal of two types of technical barrier to trade, both of which result from binding national rules.

- Measures in the first group fulfil requirements that cannot be defined as essential and indispensable (for example, protecting the characteristics of a typical product) and are either explicitly or (more frequently) implicitly protectionist or excessively restrictive in proportion to the interests which they are intended to protect. In such cases, obstacles to the free movement of goods are prohibited by Community law and national authorities are required to allow entry to products legally manufactured and marketed in another Community country.
- Other national technical rules concern requirements essential for the public interest (health, safety, the environment, etc.). If the means of protection provided for are actually proportionate to the intended objective, then imported products cannot claim to be exempted. Such a barrier can be removed only through harmonization, by replacing national rules with Community rules which address the same objective.

### **Harmonization and its limits**

In the 1960s, the Community initiated the harmonization of technical rules; its programme provided for the adoption, sector by sector, of a series of directives intended to define the technical specifications applicable to the design and manufacture of a range of products. Some of these directives — for example, those concerning toxic substances, cosmetics and food additives — are binding on everybody. Others, in the automobile sector for example, are optional for manufacturers, who retain the right to conform to parallel national rules, but national authorities are required to admit into their market vehicles which conform to the European rules.

The work accomplished by the Community in this area is certainly substantial: some 300 directives have been adopted. However, due to the highly detailed nature of

these texts, they generally deal more with particular products than with industrial sectors. The overall result of these activities has therefore been modest, when compared with the number of files awaiting attention. As the gap could only grow, the situation was frankly disturbing. National rules were being implemented more rapidly than existing ones were being harmonized: national authorities are able to draw up a new rule or make an existing industrial standard binding in a matter of months or even weeks, but it is a much harder task to negotiate a common solution with experts from 12 countries each with their different national solution. Some Community directives required years of technical discussions. As a result, there is the danger of being overtaken by technical progress, the speed of which is well known.

#### *A new approach to harmonization*

At the beginning of the 1980s, the seriousness of the situation forced the Community institutions to reflect in depth on the strategy to be implemented. The approach of the 1960s needed anyway to undergo a critical review, to take account of new production conditions and the new requirements of industrial society, whether in regard to safety, pollution prevention or consumer protection.

A first step was taken in 1984, when the Community's Council of Ministers formally stated for the first time that the objectives pursued by the different Member States were equivalent in principle, even if the technical means employed were different. Furthermore, the Council also said that Community harmonization should no longer define the technical details, only the objectives. In other words, Community directives could be confined to achieving the equivalence of objectives, by defining the essential requirements for industrial standardization to ensure market integration.

A year later, on 7 May 1985, the Council adopted a resolution which set out in detail the way this new approach was to be applied.

- The change was a radical one because it allowed for dramatic deregulation. Ministers were no longer required to deal in detail with technical problems; instead they were called on to define the essential requirements of a policy to protect the public interest, a task which corresponds more closely to the functions of political power. With the debates of the Council thus restored to an appropriate level, the possibilities for agreement increased. The adoption of the Single Act amending the Treaty of Rome also made for greater efficiency, as it introduced the procedure of voting by qualified majority for Council decisions in this field.

Furthermore, the Commission has proposed a particular application of the new approach to the food and agriculture sector. Community legislation here can be based on the principle that it is not necessary to regulate the nature and the composition of products, provided that the consumer is informed about them. An exception is made, however, whenever the question of human health arises. In such cases, the Council is required to define the basic rules and the Commission to adopt implementation measures.

- Apart from its advantages in terms of decision-making, the new approach makes it possible for the first time to plan the harmonization process with a real chance of success – as the Commission did in submitting to the European Council at Milan in 1985 its White Paper on completing the internal market. The new type of regulation enables a wide range of products, defined only by the type of risks which they entail, to be dealt with by a single legal instrument. The new proposals for directives cover entire industrial sectors – such as machinery and building materials – and tens of thousands of products. Between now and 1992, the deadline envisaged by the Single Act for the completion of the internal market, it will be possible to harmonize, with a relatively reduced number of directives, most of the rules adopted on grounds of health or safety.
- Community legislation and the resulting harmonized standards offer the advantage of a real unification of the technical framework for industrial development. The adoption by firms of industrial strategies on a European scale is made easier, as is integration of the two objectives of public interest and higher quality – and thereby improved competitiveness for European industry.

### *Preventing barriers to trade*

The harmonization effort will not be finished in 1992; users and consumers will always have new needs which demand new regulations. It is therefore essential to have available a procedure for preventive control of the measures envisaged to fulfil these needs, even before they are adopted by the national authorities. The point is to prohibit the adoption of measures which unnecessarily hinder trade or to block a national initiative for such time as is needed to draw up a Community regulation.

Such a procedure exists since 1983 and is in full operation. It is based on a directive which requires national administrations and standardization bodies to inform the European Commission and other Member States of every technical rule or standard they propose to implement. Since the entry into force of this mutual information procedure, some 600 proposed technical rules have been notified. In 35 cases, the proposals were blocked and replaced by proposals for a Community directive; in approximately 215 cases, the Commission or the Member States intervened to secure the amendment of certain elements which did not accord with the principle of free trade.

### **The role of national administrations**

The interplay of Community rules and harmonized national rules requires a fundamental distinction between the roles and responsibilities of:

- The Community, whose task it is to determine the precise rules to be imposed on manufacturers and the controlling authorities.
- The national authorities, who must transpose these rules into their own legislation and control their application.

There is, therefore, a clear distinction between the functions of defining and of applying rules. In order that such a system may achieve the conditions for a unified market, the authorities in each Member State must consider as valid and effective the measures taken in other member countries to apply the same rules. In other words, a product considered by one member country to conform to Community rules must automatically be so considered by all the other member countries.

This clearly touches on one of the most delicate responsibilities of public authorities: that of protecting their citizens. If there is to be mutual recognition of conformity controls, the controlling organizations must have rules of behaviour which are all the more strict, with the greater level of possible risk. That is why Community directives favour considered and often complex procedures for the certification and the control of product conformity.

### **The role of standardization**

Standards are technical documents which set specifications for industrial production. They are adopted by organizations which are recognized by the public authorities and whose task is to ensure that standards are the result of a consensus among all interested parties — manufacturers, users, consumers, administrations, etc. As already indicated, the status of standards is private. They are not binding, but codify the 'state of the art' at a given time and thereby encourage the transfer of technology. Because they rationalize and regulate relations between economic agents, who need a common technical language, they are indispensable to industrial activity.

The major Community countries have a highly-developed system of industrial standardization, which reflects the organization of their industrial market. The establishment of a unified market leads logically to a gradual integration of these national systems in a common system. Such a process is largely underway.

- Prompted by the Community, the European standardization bodies, CEN and Cenelec, which group together the corresponding national bodies, have adopted new procedures which require each member to replace its national standards with European standards. The European Commission encourages these activities by financing standardization work carried out at the Commission's request. When such a request is made, it involves the automatic application of a 'stand-still' clause to block any national activity of the same nature. Relations between the Commission, CEN and Cenelec are governed by an agreement made between them. Countries of the European Free Trade Association (Norway, Sweden, Finland, Iceland, Switzerland and Austria) are involved with this work as their own standardization bodies belong to CEN and Cenelec.
- The adoption by the Community of the new approach to technical harmonization has given an important impetus to this process of integrating national standardization work. Because the new Community directives confine themselves to determining the essential requirements for protecting the public interest, the free movement of products from one country to another also demands a

common reference framework for the technical application of these requirements. That is the function of standards. Producers manufacturing goods conforming to European standards can put them directly onto the market by declaring them as such, while national authorities are obliged to recognize that these products meet the essential requirements determined by Community regulation. In the new approach, European standardization has been given an essential role for the functioning of the internal market, a role which the Community institutions until recently had to exercise directly, with all the resulting inconveniences and advantages.

Are the European standardization bodies up to the task awaiting them? The answer will probably be supplied by the economic system itself. In effect, the new approach offers to economic agents the opportunity to become the principal actors in the process of market integration. The path taken by European standardization over the last three years seems to show that this invitation has been widely heeded.

However, the road ahead is a long one and will certainly not be covered by 1992. Standardization work is necessarily lengthy; the technical delays can be cut down only to a certain extent.

In its Resolution of 7 May 1985 on the 'new approach', the Council of Ministers provided for the Commission to examine the possibility of recognizing the equivalence of certain national standards, on a transitional basis pending the adoption of European standards. This is an alternative solution of limited scope, and one to which recourse could be made probably only in a restricted number of cases. It should not be allowed to divert the energy required for the development of European standardization.

### **An alternative solution to standardization**

- When national regulations hindering trade do not fulfil the essential and imperative requirements for the protection of safety, health, etc., there is, as we have seen, a solution other than harmonization: mutual recognition. Products legally manufactured and marketed in one member country have legal access to the markets of the other member countries, even when the regulations differ.
  
- The mutual recognition approach can, in principle, be extended to cases where there exist national rules fulfilling indispensable requirements, provided that such rules are aimed at equivalent results even though they may employ different measures. The application of this principle is difficult, however: there cannot be arbitrary judgments as to what is or is not equivalent. To avoid the random nature of assessments left to national authorities, the Single Act amending the

Treaty of Rome provided the Council of Ministers with a new instrument in addition to the Community directive: Article 100b now allows the Council to take decisions which recognize the equivalence of national rules.

### **The role of certification**

The principle of mutual recognition forms the very basis for the free movement of goods.

- This applies to all sectors which require harmonization by Community rules. The application of such common rules must be controlled by national authorities and they are required to recognize the validity of checks already carried out in other member countries, so that they do not have to be repeated.
- It applies *a fortiori* to sectors which do not require harmonization. In such cases, mutual recognition applies as much to national rules themselves, which remain different, as to certificates of conformity issued by the control authorities.
- Finally, and this is no less important, mutual recognition is from now on a necessary complement to European standardization in the process of market integration. In order to have its positive effects, the European standard must be certified. For a product to have access to all the public and private markets, it will not merely have to conform to a European standard; conformity will have to be certified and recognized by the competent organizations.

Most of the Member States currently have organizations responsible for the issuing of such certificates. Buyers want them because they are well-known and augur well for product quality, so manufacturers find it necessary to ask for them. Moreover, they have to do so each time a product is introduced onto another national market, thereby incurring costs and delays.

The mutual recognition of certificates of conformity to rules and standards is therefore essential for the free movement of goods. When there are harmonization directives, such recognition is made obligatory and is the subject of very specific procedures. In other cases the general rules of the Treaty of Rome (Article 30) impose the same obligation, but here the conditions for its application are still ill-defined.

With the support of national governments and of organizations representing all interested parties – businesses, trades unions, consumers, laboratories, certification bodies – the European Commission intends to promote the establishment of a European Testing and Certification Council. This autonomous structure, independent of the Community institutions, would need to be given the means to promote the negotiation and conclusion of mutual recognition agreements between all the European bodies and laboratories recognized as fulfilling the established criteria for

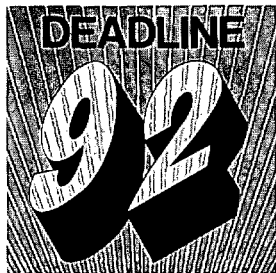


professionalism and credibility in international standardization. In addition, this Council would have to guarantee the transparency of agreements and respect for the interests of all the parties involved.

## **After 1992**

- The institutional framework for the elimination of technical barriers to trade has remained practically unchanged since the process began, with national competence being maintained in regard to application and verification. Applying the principle of mutual recognition poses difficulties of its own: one, which has already been touched upon, is the varying degree of professionalism and credibility among the various national structures for control and certification. (Hence the importance of a European Testing and Certification Council, if Community directives are to be properly applied.) In high-risk sectors where the protection of human health is involved (pharmaceuticals, medicine), these difficulties may become insurmountable. The prospect of eliminating border checks in 1992 could add to the difficulty, by depriving national authorities of their last line of defence against the importation of products judged, rightly or wrongly, to be insufficiently or incorrectly controlled. This could lead to a search for new solutions outside the traditional institutional framework, based on control systems jointly managed at Community level.
- Also, when it comes to applying the principle of mutual recognition in cases where national rules are not harmonized, the notion of an economic area without frontiers is hardly compatible with allowing imported products (including goods from outside the Community) a choice of the rules of the various Member States, while national products have no such choice. This kind of discrimination in reverse, although apparently not yet taken into consideration by the European Court of Justice, should be a powerful incentive to the Member States themselves, to deregulate while developing European standardization at the same time. The role of the competent organizations, CEN and Cenelec, would be increased, which could make them re-examine the balance in their work between European and national responsibility.

Here as elsewhere, the process of European unification opens new possibilities for going beyond present forms of cooperation, which still reflect too much concern to maintain traditional national structures and functions ■



---

The contents of this publication do not necessarily reflect the official views of the institutions of the Community. Reproduction authorized.

---

**Commission of the European Communities**

---

**Directorate-General for Information, Communication and Culture**  
**Rue de la Loi 200 – B-1049 Brussels**

---

Information offices (countries fully or partially English speaking\*)

**Ireland** 39 Molesworth Street, Dublin 2 – Tel. 71 22 44

---

**United Kingdom** 8 Storey's Gate, London SW1P 3AT – Tel. 222 81 22  
4 Cathedral Road, Cardiff CF1 9SG – Tel. 37 16 31  
7 Alva Street, Edinburgh EH2 4PH – Tel. 225 20 58  
Windsor House, 9/15 Bedford Street,  
Belfast BT2 7EG – Tel. 24 07 08

---

**USA** 2100 M Street, NW, Suite 707,  
Washington DC 20037 - USA – Tel. (202) 862-9500  
245 East 47th Street, 1 Dag Hammarskjöld Plaza,  
New York, NY 10017 - USA – Tel. (212) 371-3804

---

\* Offices also exist in other countries including all Member States.

---



Office for Official Publications  
of the European Communities  
L - 2985 Luxembourg

ISSN 0379-3133

Catalogue number: CC-AD-88-018-EN-C

**EN**