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WHITE PAPER

PREPARATION OF THE ASSOCIATED COUNTRIES OF CENTRAL AND EASTERN EUROPE FOR INTEGRATION INTO THE INTERNAL MARKET OF THE UNION

(presented by the Commission)

Competition

Social Policy and Action

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COMPETITION

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GENERAL INTRODUCTION

Competition policy is one of the essential elements constituting a cornerstone for the creation of the internal market. Without "the institution of a system ensuring that competition in the common market is not distorted" (Art 3g EC), the internal market would not be workable.

Introducing a competition policy and effectively enforcing it must therefore be considered to be a precondition for the opening of the wider internal market or ultimately of accession to the Union.

In trade matters increasing freedom of action by removing formal or informal barriers does not imply only deregulation. On the contrary it is necessary to establish and enforce a new set of transparent rules to regulate competition. Fair competition leading to an optimal allocation of resources is not an equilibrium state of an unregulated market. Whence the importance of good regulation in the areas of company behaviour as well as state behaviour. The link between trade liberalisation and reinforced competition is so important that efforts are now being made to enhance co-operation between competition authorities on an international level. If an internal market is created there is an immediate need to go much further than what needs to be achieved at global level and detailed rules need to be introduced to cover the various aspects of competition distortion.

Each individual country should prepare for the successful enforcement of the policy by stepping up its efforts of approximation of legislation, institution building and enforcement and executing at an accelerated pace the obligations that are contained in the Europe Agreements.

Agreements between undertakings - Abuses of dominant positions (Art. 85-86 EC)

Where state barriers to trade fall, there may be a great temptation for companies to get together in market sharing and other restrictive agreements to ward off competition by private means, or to abuse their dominant position in order to achieve the same aim. This cannot be considered acceptable because it deprives the economy and consumers of the benefits to be achieved by free trade and active competition.

What would happen is that the former barriers to trade continue to exist. The benefit, however, which previously accrued for instance to the state through import duties, is now being appropriated by the private partners of the agreement. From the point of view of society this is the worst possible situation. Therefore the application of competition rules is of the utmost importance in this context.

Mergers (Regulation 4064/89)

The internal market brings a number of challenges to companies which they may only be able to face by concluding strategic alliances in the form of mergers and acquisitions. While this is in principle an acceptable business strategy, care must be taken that market structures will stay competitive in the future, which explains the importance of merger control. Here again, absence of regulation may lead to the creation of dominance to the extent that the dominant firm can abuse its position by acquiring undue rents and reducing global welfare.

State aid (Art. 92-93 EC)

Where borders are opened, governments may also be tempted to award state aids as this remains one of their few remaining means to protect their industry against the increase of competition. In case where state aids are granted to promote certain general objectives such as research and development, environmental protection or ensuring regional cohesion, they may be accepted. This is generally the case where company investments have high positive externalities. This means that the company undertakes an investment generating a positive economic effect for society which cannot be appropriated by the company itself. The rational behaviour for the company is then to undertake these investments at a smaller scale than what is the optimal level for society. By an appropriate aid policy the Government can repair the situation and stimulate the company to undertake an investment policy which is globally optimal. However, other forms of aid that have the effect of distorting competition without accompanying benefits must be condemned. This justifies the plea for a strict state aid monitoring in the internal market.

Monopolies - Special rights (Art. 37-90 EC)

State monopolies of a commercial character, public undertakings and undertakings with special and exclusive rights present an inherent risk for free and open competition, to the extent they reserve specific activities for individual economic operators. In such cases there is deliberate creation of economic rents for certain players based on the assumption that the benefit of the rent be used for delivering public services or that it will accrue to the state as revenue. Whilst this can be basically acceptable it is a delicate task to constrain the market distortion to what is strictly necessary. Also situations of so-called natural monopoly are basically related to the size of the market and the state of technology. If a wider market is established it is necessary to reassess the rights of many monopolists. In order to fully benefit from the advantages of the internal market it is therefore necessary to adjust monopolies so as to avoid discrimination and to undertake liberalisation efforts to open regulated industries to competition. Special and exclusive rights should only be maintained to the extent that they are necessary in the general interest, for instance with the view of public services.

The transition

It is important that the economies of the CEECs start functioning within an acceptable regulatory framework in order to prevent markets developing in a way contrary to the associated countries' own interests by leading to monopolised and inefficient market structures. An active competition policy will help the transition process by creating healthy economic structures and avoiding abnormal profits. There are also obvious public finance reasons for keeping state aids under strict control. It will be necessary to ensure that all economic operators are working under the same rules and thus not enjoying any unfair advantage over competitors operating in the same market, and to create a climate of confidence comparable to that which exists between EU Member States.

Enforcement

For these reasons it is of utmost importance to ensure that the approximation process already set in place under the Europe Agreements be continued in all the areas of competition policy. In the Europe Agreements context it is not necessary to adopt all the details of the Union acquis in this field, countries can limit themselves to taking over of the principles within the appropriate structural framework. Each country may decide that particular forms of laws or guidelines are the most suitable in its individual situation and that a particular monitoring and enforcement structure serves the purpose best. It is important though to stress that the exercise is not confined to the sole adoption of laws and regulations or structure building. There must be a continued effort to ensure enforcement of the policy and to make the policy widely known and accepted by all economic agents involved i.e. by governments, companies and by the workforce.

The law must not only exist but it must also be applied and - above all - be expected to be applied. Economic agents must take their decisions under the assumption that the policy will be applied. Only then will the market generate the full potential of its benefit.

The wider market

This reasoning must be transposed to the wider European market to be created between the European Union and the CEECs. It is expected that the wider market will only be accepted by all players to the extent that a level playing field is established by the introduction of formal competition rules and by their effective enforcement. Failing this there would be a permanent source of potential conflict leading to reintroducing barriers and protection.

Whilst all the practices of monitoring and enforcing competition are already foreseen under the Europe Agreements it will be necessary in an internal market to modify certain processes. Certain tasks that fall within the associated countries' responsibility will be taken over by the Commission at a later stage in the accession perspective. Whence the importance of planning the processes and structures in this perspective. For activities that will fall in the Commission's competence at a later stage the CEECs may wish to create light ad-hoc structures. The difficulty will be to endow the authorities with sufficient power to enforce the policy. One solution may be for the CEECs to associate the Commission on a voluntary basis with decision shaping in the transition to the wider market and the accession.

The present body of laws in the CEECs is now being written under an assumption of autonomy. When certain competences would accrue to the Commission in a later stage it will be necessary to adapt the laws and regulations in this perspective.

The establishment of the internal market will even increase the need to explain competition to a wide public. Great efforts should be made to make all economic players fully understand the concept of a regulated economic liberty. Depending on the audience it may be necessary to highlight one aspect or the other.

I. STATE AIDS

DESCRIPTION OF THE LEGISLATION

1. Key elements

The Community state aid control system is based on Articles 92, 93 of the EC Treaty. The Commission is responsible for applying the Community state aid policy. The system is characterised by a certain number of key elements that are of crucial importance for its set-up and functioning. It comprises both substantive and procedural elements.

Substance

The substance of the Community system is characterised by the principle of prohibition of state aids that distort or threaten to distort competition by favouring certain undertakings or the production of certain goods, in so far as they affect trade between Member States. Nevertheless, Article 92 of the EC Treaty lists a number of instances where aid is considered to be acceptable because it promotes certain general objectives. Other forms of aid that have the effect of distorting competition without accompanying benefits must on the other hand be condemned.

The conditions and intensities for accepting specific types of aid are laid down in the directives, frameworks and guidelines as well as other acts adopted by the Commission. These acts must also be considered as constituting key elements of the Community state aid control system.

Procedure

Viable rules regarding procedures are indispensable in order to ensure effective enforcement and thus the functioning of a state aid control system. These rules must relate both to the powers of the authority charged with the application of the rules as well as to the rights of the undertakings concerned.

The authority must be endowed with sufficient powers to carry out its tasks efficiently. This comprises in particular the obligation in principle of the Member States to notify their aid schemes or cases in advance to and not to implement them before their approval by the Commission, and their obligation to recover aid that they have granted illegally.

With respect to the rights of undertakings that are directly concerned by Commission decisions, it is essential that they have the possibility of judicial review.

For the legislative alignment stage, the EU experience can only be considered of indirect relevance. A legal obligation for Member States to align their legislation to the Community state aid control system does not exist and would indeed be superfluous because of the Commission's role of the controlling authority under the EC Treaty.

For the CEECs, the situation is obviously different. Taking into account their obligations under the Europe Agreements, it is indispensable that they adopt a system similar to that of the Community with a national authority endowed with monitoring powers. This will also help to create an institutional system which will facilitate the fulfilment of the obligations resulting from later membership.

CONDITIONS NECESSARY TO OPERATE THE LEGISLATION

What is extremely important in order to guarantee the establishment of a state aid system is the creation of a monitoring authority and the adoption of procedural rules that ensure that this authority receives all the necessary information from the other relevant government departments and has the necessary expertise in the area, and the establishment of a survey of existing aids in the interest of transparency.

This will require, in parallel to the process of legislative approximation, intensive technical assistance for all the CEECs, given that these conditions have yet to be established or are only partially established. Technical assistance should be foreseen for the setting up of the system as well as for the training of the relevant officials in order to create the necessary expertise.

KEY MEASURES

- ***CHOICE OF STAGE I MEASURES***

DESCRIPTION & JUSTIFICATION :

In order to achieve these objectives, it is important in the first stage to ensure the adoption of the key elements as outlined in point 1 by the CEEC. However certain deviations could be considered. With respect to the powers of the monitoring authority to be established, it does not seem necessary in a first stage to endow it with powers as stringent as those of the Commission. It appears sufficient to ensure that it will receive all the necessary information to give reasoned opinions on the compatibility of the aid in question with the relevant substantive rules. At the same time, regarding the substantive rules to be adopted it must be borne in mind that the CEECs are initially considered as areas which would fall under Article 92(3)(a) of the EC Treaty. The adoption of these measures will lay the foundation for the establishment of a viable state aid control system.

Starting from the successful accomplishment of Stage I, further refinements should be envisaged, drawing on the EU experience.

II. MERGER CONTROL

DESCRIPTION OF THE LEGISLATION

Key elements

The Community merger control system as laid down in regulation No 4064/89 (EEC) is characterised by a certain number of key elements which are of crucial importance for the set-up and the functioning of the system. The Commission is responsible for applying the Community merger control policy. The system comprises both substantive and procedural elements.

Substance

Key features of the merger control system are the criteria relevant for the prohibition or permission of a concentration and the notion of concentration.

Thus a concentration which creates or strengthens a dominant position as a result of which effective competition would be significantly impeded in the common market or in a substantial part of it shall be declared incompatible with the common market.

It is further necessary to have a clear concept of the notion of concentration. Under Community law, this concept is based mainly on the qualitative notion of acquisition of control. Furthermore this concept includes also the creation of joint ventures as long as they result in a lasting change in the structure of the undertakings concerned and do not lead to a co-ordination of competitive behaviour between undertakings which remain independent.

Procedure

Viable rules regarding procedures are indispensable in order to ensure effective enforcement and thus the functioning of the merger control policy. These rules must relate both to the powers of the authority charged with the application of the rules as well as to the rights of the undertakings concerned.

The authority must be endowed with sufficient powers to carry out its tasks efficiently. In the merger control field this presupposes first of all the existence of clear criteria which give rise to the control procedure, as foreseen in the Community merger control regulation (for instance turnover of the companies concerned). The suspensive effect of the initiation of the control procedure should also be foreseen, just as the power to order the dissolution of an illegal merger.

The Commission further disposes of considerable powers regarding the investigation of alleged contraventions, comprising the right to request information and the right to undertake investigations on the spot, the power to impose fines of up to 10% of the concerned undertakings' turnover, the power to impose periodic penalty payments, to take provisional measures and to impose conditions.

At the same time the rights of the undertakings must be safeguarded. In the Community merger control is subject to tight deadlines so that undertakings may have legal security as quickly as possible. Furthermore in the Community this relates to the rights of the defence, comprising the right to be heard, third party rights, provisions on prescription, the protection of business secrets and confidentiality as well as the right to judicial review.

For the legislative alignment stage, the EU experience can only be considered of indirect relevance. A legal obligation for Member States to align their competition legislation does not exist. Such an obligation would not appear to be necessary because of the supremacy and direct effect of the Community rules, which has led to a non-conflictual co-existence of the national systems and the Community systems. Nevertheless many Member States have aligned their systems to that of the Community. This is considered to be extremely useful both in terms of psychological and of economic impact for the economic operators who no longer have to deal with different approaches depending on the national or Community framework.

For the CEECs, the situation is obviously different. An obligation of approximation was considered indispensable because there could be no extension of Community law to them as is the case for Member States. Such an approximation is therefore necessary *inter alia* to ensure that economic operators can be sure to act on a level playing field, and in order to prepare the CEECs' economies for future membership.

CONDITIONS NECESSARY TO OPERATE THE LEGISLATION

Legislative approximation in this field does not properly speaking presuppose the existence of certain factors or conditions. Rather, legislative approximation should be undertaken in parallel to the establishment of a market economy and the liberalisation of the economic system in order to ensure its functioning from the beginning. What is however extremely important in order to guarantee the establishment of a viable merger control system is the creation of an authority which has the necessary power for the efficient implementation of merger control rules, and the creation of a well-functioning court system, both with sufficient expertise in the area.

This will require, in parallel to the process of legislative approximation, intensive technical assistance in particular for those CEECs where these conditions yet have to be established. However, technical assistance should be foreseen for all CEECs for the training of the officials of the authorities and of judges in order to create the expertise needed to allow effective implementation of the merger control legislation.

KEY MEASURES

- ***CHOICE OF STAGE I MEASURES***

DESCRIPTION & JUSTIFICATION :

In order to achieve these objectives, it is important in the first stage to ensure the adoption of the key elements as outlined in point 1 by the CEEC. One deviation should nevertheless be considered. In order to take account of their specific situation as economies undergoing reform, it might be necessary to foresee that a concentration can be permitted for reasons of public interest even if it does create or strengthen a dominant position. The adoption of these measures will lay the foundation for a successful setting up of a viable merger control system.

Starting from the successful accomplishment of Stage I, further refinements should be envisaged, drawing on the EU experience.

III. RESTRICTIVE AGREEMENTS AND ABUSE OF DOMINANT POSITIONS

DESCRIPTION OF THE LEGISLATION

1. Key elements

The Community competition system with respect to restrictive agreements (Article 85 of the EC Treaty) and abuse of dominant positions (Article 86 of the EC Treaty) is characterised by a certain number of key elements that are of crucial importance for the set-up and functioning of the system. The Commission is responsible for applying the Community competition policy. The system comprises both substantive and procedural elements.

Substance

The substance of the Community system is characterised by the principle of prohibition.

Restrictive agreements and other forms of restrictive activities of undertakings, which may affect trade between Member States, are prohibited, null and void and not enforceable before national courts (cf Article 85 of the EC Treaty). It is only where such restrictive agreements fulfil certain specified conditions, which basically ensure that the advantages ensuing from the agreements outweigh the detriment to competition as long as competition is not eliminated, that an individual exemption can be granted by the Commission or, as far as categories of agreements are concerned, group exemptions can be established.

Similarly, the abuse by one or more undertakings of a dominant position within the common market or in a substantial part of it is prohibited (Article 86 of the EC Treaty) in so far as it may affect trade between Member States; exceptions to this rule are not possible.

The thrust of Community policy is demonstrated in particular in group exemptions and the notices established by the Commission. These acts must also be considered as constituting key elements of the Community competition system.

Procedure

Viable rules regarding procedures are indispensable in order to ensure effective enforcement and thus the functioning of competition policy. These rules must relate both to the powers of the authority charged with the application of the rules as well as to the rights of the undertakings concerned.

The authority must be endowed with sufficient powers to carry out its tasks efficiently. These would include the investigation of alleged contraventions, including the right to request information and the right to undertake on-the-spot investigations, the power to impose fines of up to 10% of the concerned undertakings' turnover, the power to impose periodic penalty payments, to take provisional measures, to impose conditions and to establish cease and desist orders.

At the same time the rights of the undertakings must be safeguarded. In the Community this relates to the rights of the defence, comprising the right to be heard, third party rights, provisions on prescription, the protection of business secrets and confidentiality as well as the right to judicial review.

For the legislative alignment stage, the EU experience can only be considered of indirect relevance. A legal obligation for Member States to align their competition legislation does not exist. Such an obligation would not appear to be necessary because of the supremacy and direct effect of the Community competition rules, which has led to a non-conflictual co-existence of national systems and the Community system. Nevertheless, many Member States by now have aligned their systems to that of the Community. This is considered to be extremely useful both in terms of psychological and of economic impact for the economic operators who no longer have to deal with different approaches depending on the national or Community framework.

For the CEECs, the situation is obviously different. An obligation for approximation was considered indispensable because there could be no extension of Community law to them as is the case for Member States. Such an approximation is therefore necessary inter alia to ensure that economic operators can be sure to act on a level playing field, and in order to prepare the CEECs' economies for future membership.

CONDITIONS NECESSARY TO OPERATE THE LEGISLATION

Legislative approximation in this field does not properly speaking presuppose the existence of certain factors or conditions. Rather, legislative approximation should be undertaken in parallel to the establishment of a market economy and the liberalisation of the economic system in order to ensure its functioning from the beginning. What is however extremely important in order to guarantee the establishment of a viable competition system is the creation of an authority, which has the necessary power for the efficient implementation of the competition rules, and the creation of a well-functioning court system, both with sufficient expertise in the area.

This will require, in parallel to the process of legislative approximation, intensive technical assistance in particular for those CEECs where these conditions yet have to be established. However, technical assistance should be foreseen for all CEECs for the training of the officials of the authorities and of judges in order to create the expertise needed to allow effective implementation of the competition legislation.

KEY MEASURES

- ***CHOICE OF STAGE I MEASURES***

DESCRIPTION & JUSTIFICATION :

In order to achieve these objectives, it is important in the first stage to ensure the adoption of the key elements as outlined in point 1 by the CEEC, comprising the integration of the main principles of block exemptions. They will lay the foundation for a successful setting up of a viable competition system. (Art. 85, 86 of the EC Treaty).

Starting from the successful accomplishment of Stage I, further refinements should be envisaged, drawing on the EU experience.

IV. STATE MONOPOLIES AND PUBLIC UNDERTAKINGS

DESCRIPTION OF THE LEGISLATION

Key elements

The following requirements represent the key elements of Articles 37 and 90:

- A. Articles 85 and 86 of the EC Treaty apply not only to private-sector firms, but also to public enterprises, except where a restriction of competition is essential in order to ensure the performance of certain public-interest tasks (Article 90(2)).
- B. Article 37 requires that national monopolies of a commercial character must be gradually adjusted so as to ensure that, when the transitional period has ended, no discrimination regarding the conditions under which goods are procured and marketed exists between nationals of the Member States of the European Union. This means in particular that, by the end of the transitional period, exclusive rights relating to imports, exports and wholesale distribution must be abolished.
- C. Article 90(1) prohibits Member States from enacting or maintaining in force, in the case of public undertakings and undertakings to which they grant special or exclusive rights, any measure contrary to the rules laid down in the EC Treaty.

This means that, as regards more particularly the application of Article 90(1) in conjunction with Articles 85 and 86, Member States may neither encourage nor impose on public undertakings or undertakings that have been granted special or exclusive rights, conduct that constitutes an abuse of a dominant position or the conclusion of agreements that restrict competition.

Article 90(1) in conjunction with Article 86 also prohibits Member States from introducing laws, regulations or administrative provisions that place public undertakings and undertakings to which they grant special or exclusive rights in a situation that such undertakings could not achieve themselves by their own conduct without infringing the provisions of Article 86.

For example, Article 90(1) in conjunction with Article 86 prohibits Member States from extending a monopoly, without objective justification, to include ancillary or separate activities belonging to separate markets that could be exercised by other firms.

These provisions also prohibit Member States from giving public undertakings or undertakings enjoying special or exclusive rights regulatory powers over their competitors.

Article 90(1) in conjunction with Article 59 prohibits Member States from granting or maintaining in force special or exclusive rights that restrict intra-Community trade in services, except where this is necessary in order to ensure that certain essential requirements are met.

Article 90(1) in conjunction with the rules on the free movement of goods, and in particular Articles 30 and 34 of the Treaty, prohibits Member States from granting or maintaining in force, after the end of the transitional period provided for in Article 37, special or exclusive rights that restrict intra-Community trade in goods, except where this is necessary in order to ensure that certain essential requirements are met.

As far as telecommunications are concerned, some of these requirements provided for in the Treaty were spelt out in Commission Directives 88/301/EEC on terminal equipment, 90/388/EEC on telecommunications services and 90/44/EC on satellites.

The process of achieving compliance with the abovementioned rules on the part of the Member States has been completed, with a few exceptions.

Commercial monopolies (oil, tobacco, alcohol, etc.) have been adjusted in accordance with Article 37, and exclusive rights relating to the import, export and wholesale distribution of such products have been abolished. However, problems remain in sectors such as electricity and gas.

In the case of services, exclusive rights have been abolished in areas such as telecommunications (except those involving voice telephony, where a number of transitional periods apply) and express delivery services. However, monopolies still remain in some sectors such as postal services. Action is being taken to open up such sectors to competition as well.

CONDITIONS NECESSARY TO OPERATE THE LEGISLATION

Abolition of discrimination on grounds of nationality.

Separation of public regulator and public enterprise functions : distinction between the State and undertakings controlled by the State (public undertakings). A separate legal personality for public undertakings or undertakings granted special or exclusive rights is necessary in the case of telecommunications and desirable in other sectors. A distinction must be drawn between public undertakings and the supervisory and regulatory authorities.

KEY MEASURES

• *CHOICE OF STAGE I MEASURES*

DESCRIPTION & JUSTIFICATION :

- In the case of the sectors in which there is no general-interest task justifying special arrangements, the principle must be established in national legislation that the competition rules apply to the autonomous conduct of public undertakings.
- Identification of the public-service tasks assigned to certain undertakings, the constraints associated with the creation of networks, and the restrictions which they justify (special or exclusive rights, etc.).
- Abolition of special and exclusive rights that are in breach of the Treaty. Application of the competition rules to the autonomous conduct of undertakings.
- In the sectors involving networks (electricity, gas, telecommunications, etc.), vertically integrated undertakings should distinguish, in their management and their accounts, between the various activities which they carry out (production, transmission, etc.).
- Article 37: gradual adjustment of national monopolies of a commercial character so as to ensure that no discrimination regarding the conditions under which goods are procured and marketed exists between nationals of the Member States of the European Union.

• *CHOICE OF STAGE II MEASURES*

DESCRIPTION & JUSTIFICATION :

- Introduction of competition into the monopoly sectors within the framework provided for by Article 90(1):
 - either through the admission of new operators
 - or through the splitting-up of existing operators into a number of separate operators.

- Article 37: completion of the gradual adjustment of national monopolies of a commercial character, so as to ensure that, when the transitional period has ended, no discrimination regarding the conditions under which goods are procured and marketed exists between nationals of the Member States of the European Union. This means in particular that, by the end of the transitional period, exclusive rights relating to imports, exports and wholesale distribution must be abolished.
- In the case of infrastructures which it is not always possible to duplicate, the principle must be established that all operators in the sector have a right of access.
- As regards exclusive rights that are compatible with the provisions laid down in the Treaty, the public-service obligations imposed on the monopoly operator must be clearly defined.
- Parallel to this, a regulatory system must be established that will ensure conditions of fair competition between existing operators and new entrants (monitoring of conditions governing access to networks, monitoring of cross-subsidisation, etc.).

SOCIAL POLICY AND ACTION

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GENERAL INTRODUCTION

As stated notably in the first Title of the Treaty, the Community is more than just a free trade zone. In fact, the process of building Europe has always reflected the need to maintain a balance between the economic and social dimensions. As a result, Community social policy covers many areas - with varying powers - including freedom of movement for workers, the co-ordination of social security schemes, equal opportunities for men and women, health and safety at work, and the harmonisation of certain labour law provisions.

The various elements of this social policy have been put in place gradually in line with the political, economic and social development of the Community and on the basis of the successive adaptations of the Treaty (Single European Act in 1987; Maastricht Treaty in 1992: Protocol on Social Policy and Agreement on Social Policy annexed to the Treaty).

The adoption of the Community Charter of the Fundamental Social Rights of Workers in 1989 was also an important milestone. This solemn declaration lays down a set of principles covering many aspects of living and working conditions. It has given new impetus to social policy, not only as a political symbol expressing the determination to see the social dimension taken into account in the completion of the internal market, but also in operational terms, since it has been accompanied by a programme of action for implementing its principles.

Moreover, efforts have always been made to involve the social partners in the development and implementation of Community social policy. The Agreement on Social Policy included in the Maastricht Treaty is an important step forward in this respect, as social rules at Community level may now take two forms: legislation or agreements negotiated at European level.

In order to establish a new social policy to meet current challenges, the Commission began consulting widely in 1993 with the launch of a Green Paper. This was followed by the publication of a White Paper in 1994 establishing a framework for future action by the Union in this area. The third stage in the process - a new social action programme - was adopted in April 1995. It sets out the new focus of work between 1995 and 1997 and seeks to continue and develop previous activities and to consolidate the Community acquis, notably in the areas of freedom of movement, equal treatment for men and women, labour law and the European Social Fund, as well as to give new impetus by putting forward proposals dealing in particular with employment, social protection, public health and the objective of equal opportunities for all.

Community social policy is therefore not limited to the legislative aspects alone. However, these are the only aspects taken into account in this exercise and they have been limited to the minimum provisions required by the establishment of an internal market. They are set out in the enclosed fact sheets and cover the following areas:

- the co-ordination of social security schemes;
- equal treatment for men and women;
- health and safety at work;
- certain aspects of labour law.

I. EQUAL OPPORTUNITIES FOR MEN AND WOMEN

INTRODUCTION

Action in support of equal opportunities for women is long-established in the European Union. The basic principle of equality that was incorporated to prevent unfair competition is recognized in Article 119 of the EEC Treaty which laid down the principle that men and women should receive equal pay for equal work. Apart from this, it must be borne in mind that the European Court of Justice has classified the right to equal treatment as a fundamental right in Community law. Therefore, the directives which implement the principle of equal treatment must be recognised as being of the utmost importance, at the very heart of the internal market.

Since 1975 the Community's equality law has been extended considerably, by a combination of legislative action and some far-reaching jurisprudence of the ECJ. For example, the court held in its judgement of 17 May 1990 (Barber) that benefits under an occupational scheme have to be considered as pay within the meaning of Article 119 of the EEC Treaty.

Apart from Article 119 of the Treaty of Rome, European equality legislation now comprises five equality directives, as well as numerous interpretations by the Court of Justice, and one directive, based on Article 118a, on the protection of pregnant and breastfeeding women at the workplace. Like all aspects of European Union law, it is common to all Member States and it takes precedence over national legislation. It is clear from numerous ECJ rulings that these directives can confer directly enforceable rights on individuals. This unique characteristic of Community law should be carried over into any agreement or arrangement for harmonising other legal systems.

DESCRIPTION OF THE LEGISLATION

These equality directives consist of the following:

The Equal Pay Directive, based on Articles 100 EC-Treaty:

Directive 75/117/EEC on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women provides details regarding certain aspects of the material scope of Article 119 and also contains various provisions, the essential purpose of which is to improve the legal protection of workers who may be wronged by failure to apply the principle of equal pay.

The Equal Treatment Directive, based on Article 235 EC-Treaty:

Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions provides for equal treatment for men and women in access to jobs, promotion, training and working conditions. It introduces concepts of indirect discrimination and positive action in favour of women.

The Social Security Directive, based on Article 235 EC-Treaty:

Directive 79/7/EEC on the progressive implementation of the principle of equal treatment for men and women in matters of social security provides for equal treatment in statutory social security schemes. This Directive applies to statutory schemes of both employees and the self-employed.

The Occupational Social Security Directive, based on Articles 100 and 235 EC-Treaty:

Directive 86/378/EEC of 11/12/86 on the implementation of the principle of equal treatment for men and women in occupational social security schemes provides for equal treatment in occupational schemes for employees and the self-employed. However, after the Barber judgement of 17 May 1990 and the subsequent judgements, several provisions of this directive became obsolete and void for employees. Article 119, which is directly effective, applies to all occupational schemes for employees and derogations to the principle of equal treatment such as in the area of pensionable ages or survivor's benefits are impermissible.

The Directive on Equal Treatment for Self-employed Men and Women and Women in Agriculture, based on Articles 100 and 235 EC-Treaty

Directive 86/613/EEC of 11/12/86 (OJ L359, 19/12/86) on the application of the principle of equal treatment between men and women engaged in an activity, including agriculture, in a self-employed capacity, and on the protection of self-employed women during pregnancy and motherhood relates to the principle of equal treatment of the self-employed and the spouses of the self-employed.

Directive on the Protection of Pregnancy and Maternity at Work, based on Article 118a of the EC-Treaty

Adopted on 19/10/1992, Directive 92/85/EEC (OJ L348, 28/11/92) on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding is the tenth individual directive under the Framework Health and Safety Directive 89/391/EEC. This Directive provides for the protection of employees, trainees and apprentices who are pregnant, have recently given birth or are breastfeeding and who have notified their condition to the employer.

It is worth repeating that in the Community legal order upon which all acts and policy of the Union is based, the principle of equality between men and women is of fundamental importance. The directives listed above illustrate the elaboration of that concept so as to apply it to various issues intimately connected with the labour market. It will be seen that they are concerned primarily with the definition of rights - it is this above all which the Member States must respect in transposing the directives. No special infrastructure is required. The rights created become part of the heritage of legal rights of the worker. In view of this, Stage I measures should include at least the 1975 and 1976 directives which are of enormous importance to male and female workers everywhere and which reflect accepted international norms in the area. It may be argued in a similar vein that the 1979 and 1986 directives on statutory and occupational social security should also figure in the process. In providing for equal treatment in many areas of social security, it has an enormous impact on employers and states.

CONDITIONS NECESSARY TO OPERATE THE LEGISLATION

Legislation in all areas of equality law must be implemented in such a way that individuals can pursue their rights effectively. The existence of a legal - administrative or judicial - system is pre-supposed so that the CEEC States can introduce such measures as are necessary to enable all persons who consider themselves wronged by failure to apply the principle of equal treatment to pursue their claims by judicial process. An administrative body in the national governments should be competent for the implementation and supervision of equality law.

For the implementation of the Pregnancy Directive 92/85/EEC, supervisory bodies for the control of the health protection at the workplace are needed.

Under former Communist systems, equality of men and women played an important role in terms of policy aims. The present change towards market economies seems to cause negative effects on the representation of women on the labour market and their position in pursuit of their rights. Independent trades unions and non-governmental organizations committed to equal rights of men and women, would be of great advantage. Their development should be supported under the PHARE DEMOCRACY and LIEN Programmes.

KEY MEASURES

- ***CHOICE OF STAGE I MEASURES***

DESCRIPTION & JUSTIFICATION :

Directives 75/117/EEC and 76/207/EEC are at the heart of equality legislation on the basis of Article 119 EEC-Treaty. Directive 75/117 elaborates the principle of equal pay contained in article 119 which has always been regarded as an indispensable element of the internal market. Directive 76/207 represents the extension of this principle to the broader field of working conditions.

STAGE I MEASURES

Directive 75/117/EEC OJ L45 - 19/2/75	Council Directive 75/117/EEC of 10/2/75 provides details regarding certain aspects of the material scope of Article 119 and also contains various provisions, the essential purpose of which is to improve the legal protection of workers who may be wronged by failure to apply the principle of equal pay.
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Directive 76/207/EEC OJ L39 - 14/2/76	Council Directive 76/207/EEC of 9/2/76 provides for equal treatment for men and women in access to jobs, promotion, training and working conditions. It introduces concepts of indirect discrimination and positive action in favour of women
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• **CHOICE OF STAGE II MEASURES**

DESCRIPTION & JUSTIFICATION :

Directives 79/7/EEC and 86/378/EEC apply the principle of equality of treatment for men and women to statutory and occupational social security schemes. They therefore require the extension of this principle to relatively complex areas for which the experience gained in the application of the earlier directives is indispensable.

STAGE II MEASURES

Directive 79/7/EEC OJ L6 - 10/1/79	Council Directive 79/7/EEC of 19/12/79 provides for equal treatment in statutory social security schemes. This Directive applies to statutory schemes of both employees and the self-employed.
Directive 86/378/EEC OJ L225 - 12/8/86	Council Directive 86/378/EEC of 24/7/86 provides for equal treatment in occupational schemes for employees and the self-employed. However, after the Barber judgement of 17 May 1990 and the subsequent judgements, several provisions of this directive became obsolete and void for employees. Article 119, which is directly effective, applies to all occupational schemes for employees and derogations to the principle of equal treatment such as in the area of pensionable ages or survivor's benefits are impermissible.

II. CO-ORDINATION OF SOCIAL SECURITY SCHEMES

INTRODUCTION

Adequate protection by Community provisions in the field of social security is a precondition to the effective use of the right to move and to stay within the Community. Without such protection, the existing disparities between the social security systems of the different Member States would adversely affect people moving across frontiers. They would risk losing all or part of their rights acquired or in the process of being acquired under national legislation, when leaving their country to work, to look for a job, to reside or to stay elsewhere in the Community.

The overall approach is not aimed at harmonising the Member States' systems of social security, but at achieving effective co-ordination of these systems throughout the Community.

Co-ordination is carried out in all the major branches of social security : sickness and maternity, invalidity, old-age and survivor's pensions, accidents at work and occupational diseases, unemployment benefits and family benefits. The Community provisions on social security have existed for more than 30 years and are contained in Council Regulations 1408/71 and 574/72. The regulations offer practical and satisfactory solutions to most of the cross-border problems arising in the field of social security.

The Community provisions on social security are based on four principles :

- 1) Only one legislation can be applicable. This protects migrant workers from having to pay social security contributions in more than one Member State while guaranteeing that they are insured somewhere.
- 2) Equality of treatment. Migrant workers are subject to the same obligations and enjoy the same benefits under the legislation of any Member State as the nationals of that State.
- 3) Retention of rights acquired. Pensions acquired under the legislation of a Member State is paid to the beneficiary even if he or she resides in another Member State.
- 4) Aggregation of periods of insurance or residence. In all branches of social security, entitlement to benefits may be subject to the completion of qualifying periods. For this purpose, periods completed in another Member State are taken into account.

DESCRIPTION OF THE LEGISLATION

Regulation 1408/71 leaves the Member States entirely free to determine and develop their social security systems according to their own views. No harmonisation is envisaged in any branch of social security. Community rules apply only to certain categories of persons who move from one Member State to another and their purpose is to prevent these persons from losing part or all of their social security rights acquired in one Member State as a result of moving to another.

Provided the necessary technical amendments are made to the Regulations beforehand, this co-ordination system can be extended to cover the citizens and territory of any country which becomes part of the internal market (thus, it was extended to the EFTA countries in the framework of the EEA). Such extension does not require any changes in the social security legislation of the acceding State.

CONDITIONS NECESSARY TO OPERATE THE LEGISLATION

Past experience with Spain and Portugal shows that it can take years to prepare and negotiate the technical amendments to the Regulations whose adoption must precede the extension of their territorial scope. This gradual process should be built on the results of the implementation of the limited co-ordination provisions contained in the Europe Agreements.

Consequently, the exchange of information between CEEC and EU social security authorities as well as training for the responsible persons in the associated countries is necessary from an early stage.

KEY MEASURES

- ***CHOICE OF STAGE I MEASURES***

DESCRIPTION & JUSTIFICATION :

In practical terms, it is not conceivable to extend the scope of Regulations 1408/71 and 574/72 first to some insured persons or branches of social security and only at a later stage to others.

Therefore, the extension of these Regulations to the CEECs should not be thought of in terms of gradual development (stages I, II, ...), but rather as a single step, to be taken after accession. Nevertheless, important preparatory work needs to be done at an earlier stage.

Although, as was said before, no harmonisation needs to be carried out in any branch of social security, the extension of the Community co-ordination rules requires technical adaptations of legislation, taking into account the particular characteristics of each country's national social security schemes. The preparation of this process of adaptation should start at an early stage.

STAGE I MEASURES

None.

STAGE II MEASURES

Council Regulation 1408/71/EEC OJ L149 - 5/7/71	Council Regulation 1408/71/EEC of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community.
Council Regulation 574/72/EEC OJ L74 - 27/3/72	Council Regulation 574/72/EEC of 21 March 1972 laying down the procedure for implementing Regulation 1408/71/EEC on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community.

III. HEALTH AND SAFETY AT WORK

INTRODUCTION

With the establishment of the European Communities, the need for a global approach to the health and safety of workers became evident.

Since the last century, social policies have developed in the Member States and progressive improvements have been made in occupational health and safety protection.

However, the pace of change differed from Member State to Member State and there were also wide differences in the measures taken on the health and safety of their workers. It was realised that occupational health and safety should receive Community attention, and improvement and approximation of the legislation in this area have subsequently been major objectives of the Community initiatives.

Indeed, European Union Health and Safety at Work legislation has been adopted over the last 30 years but has enjoyed a more rapid development since the adoption of the Single European Act in 1987. The main thrust of the recent developments has been to contribute to the social dimension of the Internal Market, while addressing the severe human and economic costs arising from neglect of workers' health and safety at work.

DESCRIPTION OF LEGISLATION

Two distinct legislative phases of the EU in the field of health and safety at work are clearly distinguishable.

The first series of binding legal acts were based on Article 100 of the EEC Treaty and started with Council Directive 77/576/EEC on safety signs at places of work (repealed by Directive 92/58/EEC) followed by the first framework Directive 80/1107/EEC (OJ L327 - 3/12/80) on the protection of workers from risks related to exposure to chemical, physical and biological agents at work and its four individual directives.

Following the adoption of the Single European Act, the second series of EU Health and Safety at Work legislation took on its present structure with the new legal base of Article 118A of the EC Treaty to regulate health and safety at work matters on a European level. This structure comprises a new framework Directive 89/391/EEC and its 14 individual directives (see annex).

By its wording, Article 118A only gives competence to the Community to set minimum requirements and therefore already takes account of the principles of subsidiarity and proportionality which are now fixed in Article 3b of the EU Treaty. Article 118A also provides an obligation for the European Union not to hinder the creation of Small and Medium Enterprise (SMEs) by administrative constraints due to its health and safety at work legislation.

CONDITIONS NECESSARY TO OPERATE THE LEGISLATION

Legislative approximation requires an effective enforcement infrastructure. This implies effective management of undertakings, appropriate training of workers and efficient labour inspectorates.

The labour inspectorate must ensure, by all the means at its disposal, that the law is enforced and the required administrative procedures are applied in the field of health and safety at work. The means to achieve this in the field of health and safety inspection at the workplace are :

- to verify whether the employer has taken the necessary measures to comply with the legislation and provided the organisation and means to enable him to identify, rectify and prevent deficiencies that might present risks to those at work;
- to stimulate the employer to protect the health and safety at work of all his employees, as required by the laws, regulations and administrative procedures, and thus to prevent accidents and ill-health;
- to encourage workers and/or their representatives to play their part as set out in the legislation to achieve a working environment that is safe and without risks to their health;
- to provide appropriate information and guidance to employers and workers in order to achieve better compliance with the laws, regulations and administrative procedures;
- to bring any deficiencies in the existing requirements to the notice of the authorities responsible for overseeing administrative requirements for the inspection of health and safety of persons at work.

KEY MEASURES

- **CHOICE OF STAGE I MEASURES**

DESCRIPTION & JUSTIFICATION :

It is obvious that the framework Directive 89/391/EEC should be listed under the priorities.

Indeed, the adoption of the principles included in framework Directive 89/391/EEC is indispensable in order to build up a system of protection of health and safety at work in line with the system existing in the European Union.

This directive aims at improving the safety and health of workers at work in all sectors of activity with few exceptions.

It requires the employer to assess the risks to safety and health at work, to make sure that the workers receive appropriate safety and health information and adequate safety and health training.

It includes relevant provisions about the protective and preventive services, health surveillance and the participation of workers on health and safety issues at work.

STAGE I MEASURES

Directive 89/391/EEC (OJ n° L 183 of 29.06.1989, p.1)	Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work.
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- **CHOICE OF STAGE II MEASURES**

DESCRIPTION & JUSTIFICATION :

A whole series of individual directives have been adopted based on the framework directive (see annex). Each of these covers the area of health and safety of workers in a particular domain. In stage II, the CEECs should examine these directives with the aim of achieving a satisfactory level of health and safety of workers in the most critical areas.

Annex to the fiche "health and Safety at work"

<p>Council Directive 89/654/EEC OJ L393 of 30.12.89, p. 1</p>	<p>Council Directive 89/654/EEC of 30 November 1989 concerning the minimum safety and health requirements for the workplace (first individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC)</p>
<p>Council Directive 89/655/EEC OJ L393 of 30.12.89, p. 13</p>	<p>Council Directive 89/655/EEC of 30.11.1989 concerning the minimum health and safety requirements for the use of work equipment by workers at work (second individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC)</p>
<p>Council Directive 89/656/EEC OJ L393 of 30.12.89, p. 18</p>	<p>Council Directive 89/656/EEC of 30.11.1989 on the minimum health and safety requirements for the use by workers of personal protective equipment at workplace (third individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC)</p>
<p>Council Directive 90/269/EEC OJ L156 of 21.6.90, p. 9</p>	<p>Council Directive 90/269/EEC of 29.05.1990 on the minimum safety and health requirements for the manual handling of loads where there is a risk particularly of back injury to workers (fourth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC)</p>
<p>Council Directive 90/270/EEC OJ L156 of 21.6.90, p. 14</p>	<p>Council Directive 90/270/EEC of 29.05.1990 on the minimum safety and health requirements for the work with display screen equipment (fifth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC)</p>
<p>Council Directive 90/394/EEC OJ L196 of 26.7.90, p. 1</p>	<p>Council Directive 90/394/EEC of 28.06.1990 on the protection of workers from the risks related to exposure to carcinogens at work (sixth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC)</p>
<p>Council Directive 90/679/EEC OJ L374 of 31.12.90, p. 1 amended by Council Directive 93/88/EEC OJ L268 of 29.10.93, p. 71</p>	<p>Council Directive 90/679/EEC of 26.11.1990 on the protection of workers from risks related to exposure to biological agents at work (seventh individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC)</p>
<p>Council Directive 92/57/EEC OJ L245 of 26.8.92, p. 6</p>	<p>Council Directive 92/57/EEC of 24.06.1992 on the implementation on minimum safety and health requirements at temporary or mobile construction sites (eighth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC)</p>
<p>Council Directive 92/58/EEC OJ L245 of 26.08.92, p. 23</p>	<p>Council Directive 92/58/EEC of 24.06.1992 on the minimum requirements for the provision of safety and/or health signs at work (ninth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC)</p>

<p>Council Directive 92/85/EEC OJ L348 of 28.11.92, p. 1</p>	<p>Council Directive 92/85/EEC of 19.10.1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC)</p>
<p>Council Directive 92/91/EEC OJ L348 of 28.11.92, p. 9</p>	<p>Council Directive 92/91/EEC of 3.11.1992 concerning the minimum requirements for improving the safety and health protection of workers in the mineral-extracting industries through drilling (eleventh individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC)</p>
<p>Council Directive 92/104/EEC OJ L404 of 31.12.92, p. 10</p>	<p>Council Directive 92/104/EEC of 3.12.1992 on the minimum requirements for improving the safety and health protection of workers in surface and underground mineral-extracting industries (twelfth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC)</p>
<p>Council Directive 93/103/EEC OJ L307 of 13.12.93, p. 1</p>	<p>Council Directive 93/103/EEC of 23.11.1993 on the minimum health and safety requirements for work on board fishing vessels (thirteenth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC)</p>

IV. LABOUR LAW AND WORKING CONDITIONS

INTRODUCTION

It was in 1972 that the Heads of State or Government of the European Community agreed at their meeting in Paris to confirm the social dimension of the construction of Europe. There was clearly a need to emphasise that Europe meant more than just the common market and the removal of customs barriers.

The completion of the internal market showed the importance of this social dimension. It is not just a matter of freedom of movement for people, as well as for goods, services and capital, but also of everything which helps to improve the well-being of the citizens of the European Community, and especially its workers. The construction of a dynamic and strong Europe relies just as much as on the recognition of a 'foundation' of social rights.

Accordingly, eight labour law directives have been adopted by the Council since 1975.

DESCRIPTION OF THE LEGISLATION

Directive 75/129/EEC (collective redundancies), providing for the information and consultation of workers' representatives and the notification of the competent public authority before a decision is taken to introduce collective redundancies (dismissal of at least ten workers for reasons unrelated to the individual workers concerned).

Directive 77/187/EEC (transfers of undertakings), which fixes - when a business is transferred - the rule according to which the contracts of employment or the employment relationships existing at the time of the transfer are automatically transferred from the transferor to the transferee. The Directive also provides for the information and consultation of workers' representatives before the transfer is carried out.

Directive 80/987/EEC (insolvency of employers), which seeks to ensure that some of the unpaid wages due to workers at the time when the employer becomes insolvent are paid through a guarantee fund created in every Member State.

Directive 91/533/EEC, which makes it compulsory for the employer to inform each individual, in writing, of the main terms and working conditions.

Directive 93/104/EC (working time), establishing minimum daily, weekly and annual rest periods and limits on the working week and night work.

Directive 94/33/EC (protection of young people at work), which prohibits work for anyone under the age of 15 (subject to some precise exceptions) and regulating work for persons between the ages of 15 and 18.

Directive 94/45/EC (information and consultation), which provides for the establishment of a European Works Council or an information and consultation procedure in Community-scale undertakings and groups of undertakings with the purpose of informing and consulting employees on a trans-national basis.

CONDITIONS NECESSARY TO OPERATE THE LEGISLATION

The exchange of information will be essential in the initial phase. The countries concerned should provide appropriate information on their systems of labour law.

The labour law directives can only be implemented where there is a sufficiently developed system of national labour law, including monitoring mechanisms and appeal procedures.

In the initial phase, it would therefore be necessary to set up the structures required for correct transposition of the provisions of Community law into national law and for effective application thereof.

In general, the application of the labour law directives requires definitions of certain key concepts in national law, especially the concepts of "employee", "employer", "employment contract", "employment relationship", "remuneration", etc.

As regards Council Directive 75/129/EEC of 17 February 1975 on the approximation of the laws of the Member States relating to collective redundancies, amended by Council Directive 92/56/EEC of 24 June 1992:

- the existence of workers' representatives (Article 2 provides for a procedure for consultations with workers' representatives) and a competent public authority (Article 3 lays down a procedure for notifying a public authority of any projected collective redundancy);

Council Directive 77/187/EEC of 14 February 1977 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses:

- the existence of workers' representatives for the application of the information and consultation procedure provided for in Article 6 of the Directive;

Council Directive 80/987/EEC of 20 October 1980 on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer:

- for the definition of the state of insolvency, Article 2 of the Directive refers to the proceedings provided for under the laws, regulations and administrative provisions of the Member States concerned in order to satisfy collectively the claims of the employer's creditors;

Article 3 stipulates that the Member States must provide for guarantee institutions which guarantee payment of the employees' claims covered by the Directive;

Under Article 5, Member States are obliged to lay down detailed rules for the organisation, financing and operation of the guarantee institutions in accordance with the criteria established by the Directive.

- **CHOICE OF STAGE I MEASURES**

DESCRIPTION & JUSTIFICATION :

The first three Directives because of their impact on the operation of the ir and the Directive on the protection of young people at work because it contains protection standards which are considered to be fundamental at national and international level.

STAGE I MEASURES

Council Directive 75/129/EEC OJ No L 48 of 22.2.1975, p. 29 modified by Council Directive 92/56/EEC OJ No L 245 of 26.8.1992, p. 3	Council Directive 75/129/EEC of 17 February 1975 on the approximation of the laws of the Member States relating to collective redundancies.
Council Directive 77/187/EEC OJ No L 61 of 5.3.1977, p. 26	Council Directive 77/187/EEC of 14 February 1977 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses.
Council Directive 80/987/EEC OJ No L 283 of 28.10.1980, p. 23	Council Directive 80/987/EEC of 20 October 1980 on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer.
Council Directive 94/33/EC OJ No L 216 of 20.8.1994, p. 12	Council Directive 94/33/EC of 22 June 1994 on the protection of young people at work.

- **CHOICE OF STAGE II MEASURES**

<p>Council Directive 91/533/EEC OJ No L 288 of 18.10.1991, p. 32</p>	<p>Council Directive 91/533/EEC of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship.</p>
<p>Council Directive 93/104/EEC OJ No L 307 of 13.12.1993, p. 18</p>	<p>Council Directive 93/104/EEC of 23 November 1993 concerning certain aspects of the organisation of working time.</p>
<p>Council Directive 94/45/EC OJ No L 254 of 30.9.1994, p. 64</p>	<p>Council Directive 94/45/EC of 22 September 1994 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees.</p>

V. TOBACCO PRODUCTS

INTRODUCTION

Two directives have been adopted on the basis of 100a of the Treaty , to provide for common rules on labelling of tobacco products with health warnings, and on the tar content of cigarettes. These rules were intended to eliminate possible barriers to trade which could have impeded the establishment and functioning of the Internal Market. These common rules take due account of public health protection.

1. Tar content of cigarettes

DESCRIPTION OF THE LEGISLATION

Council Directive 90/239/EEC of 17 May 1990 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the maximum tar yield of cigarettes.

The Directive in question is based on Article 100a, on the grounds that differences in laws on tar content of cigarettes could constitute barriers to trade and impede the establishment and operation of the internal market.

It has been important to ensure that the Directive is correctly transposed into national legislation and some Member States have been slow to accomplish this task.

CONDITIONS NECESSARY TO OPERATE THE LEGISLATION

Legislative approximation in this field will depend on the ability of Central and Eastern European Countries (CEEC) to measure the tar yield of cigarettes according to the measurement standards set out in ISO standards 4387 and 3400. Verification is to be carried out according to ISO standard 8243.

KEY MEASURES

- **CHOICE OF STAGE I MEASURES**

DESCRIPTION & JUSTIFICATION :

The introduction of legislation on tar content should not be done in stages. However, derogations on the date of implementation were granted to some Member States to allow them additional time to introduce national legislation or to change production from high-tar to low-tar products.

STAGE I MEASURES

Council Directive 90/239/EEC OJ N°. L137 of 30.5.1990, p.36	Council Directive 90/239/EEC of 17 May 1990 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the maximum tar yield of cigarettes
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2. Labelling of Tobacco products

DESCRIPTION OF THE LEGISLATION

Council Directive 89/622/EEC of 13 November 1989 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the labelling of tobacco products, as amended by Directive 92/41/EEC.

Some Member States have been slow to implement these rules. Also, the control of the application of the rules has given rise to some concern. The Commission has undertaken to examine if contravention is taking place and to strengthen the rules if necessary.

CONDITIONS NECESSARY TO OPERATE THE LEGISLATION

No particular preconditions directly arise from application of these Directives. However, labelling details include a reference to tar content, which has to be determined and verified by reference to ISO standards, under the terms of Directive 90/239/EEC.

KEY MEASURES

- ***CHOICE OF STAGE I MEASURES***

DESCRIPTION & JUSTIFICATION :

The introduction of legislation on labelling depends on the pre-existence of legislation on tar content, since this is an element to be mentioned on the labels.

Otherwise, the legislation on labelling itself should not be introduced in stages.

STAGE I MEASURES

Council Directive 89/622/EEC (OJ L359 of 8.12.1989, p. 1) as amended by Directive 92/41/EEC (OJ L158 of 11.6.1992, p. 30).	Council Directive 89/622/EEC of 13 November 1989 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the labelling of tobacco products.
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