

# COMMISSION OF THE EUROPEAN COMMUNITIES

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## THE COMMUNITY INTERNAL MARKET

### - 1993 Report -

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(presented by the Commission)

The First through the Seventh Reports (1986-1992) were published as *Report of the Commission ... concerning the implementation of the White Paper on completing the Internal Market*. This report covers 1993. The 1993 annex is in a separate document on AEI-EU. The 1994 and 1995 reports are titled *The Single Market*. The series ends with the 1995 report.

Blank pages not reproduced: 22 and 104.

**NOTE**

For ease of reading, references in the body of the report to Council or Commission legislation and to articles of the various Treaties are followed by an asterisk\* without a footnote. Precise titles and references are given at the end of the report in the list of Community legislation cited.

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## The internal market in 1993

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### Introduction

The internal market is working - but it can and must be improved if it is to fulfil its promise. This is the main conclusion of the Commission's first Annual Report on the operation of Community's internal market. The Community is well advanced in terms of implementation of the basic legal framework to assure the free circulation of goods, services and capital, although important political decisions are still needed to secure the free movements of persons. Even when this legal framework is finally in place, however, this will be the starting-point rather than the completion of Community policy for management and development of the internal market. This is why the Commission decided to issue at the end of the first year of operation of the internal market a Strategic Programme for the internal market (1), in order to set the Community's priorities clearly for the years ahead. This objective of fully exploiting the potential of the internal market in order to reinforce economic growth, competitiveness and employment in Europe was endorsed by the European Council in Brussels on 10-11 December 1993.

This first Annual Report on the operation of the internal market is a response to a request first formulated in the Sutherland Report on "*The internal market after 1992, Meeting the challenge*", and later echoed in the Commission communication of 2 December 1992 on the operation of the Community's internal market after 1992 (follow-up to the Sutherland Report) (2), to the effect that the Commission should produce an annual report on the progress of the internal market. For the establishment of a single market is not simply a question of adopting Community-level legislation. It is a more complex, long-term process of gradually changing legal structures and administrative practice at the national level and of encouraging new attitudes and behaviour from economic operators in the market. The date of 1st January 1993 represents the beginning, rather than the end, of this process. This Annual Report on the Community is intended to be a means of assessing, at regular intervals, to what extent the Community has achieved its objectives and of identifying priorities for future action. The Report will therefore not only record the recent past; it will serve as a signal to those operating in the single market of the Community's intentions for its future development.

The first part of the Report takes an overall view of the extent to which internal market legislation is already in place, and examines the main management issues addressed in the Commission's Strategic Programme. The second part examines in more detail the operation of the internal market during 1993 in each sector of activity.

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(1) COM(93) 632 final of 22 December 1993 "*Making the most of the internal market: Strategic Programme*"

(2) SEC(92) 2277 final of 2 December 1992

## 1st PART

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### Implementation of the internal market

#### I. Legislative decisions and national implementation

##### A. Progress in Community Legislation

Except for a relatively small number of proposals the basic legal framework for the Single market has been agreed. The systematic controls at the Community's internal borders on goods, capital and services have been abolished. Ninety-five per cent of the legislative measures in the Commission's 1985 White Paper <sup>(3)</sup> have been adopted by the Council. Furthermore, the Council has adopted a wide range of additional measures to complement the original 1985 programme and others are under discussion. With regard to the free circulation of persons, whilst customs controls have disappeared, identity controls continue to be made although some progress in this area is expected to be achieved shortly by the Schengen Group of countries. In certain areas not covered by the White Paper programme, notably the opening up of the competition in energy and telecommunications services, considerable work has still to be undertaken.

The priority now is for the Council to adopt the remaining White Paper measures and those measures required to accompany the abolition of internal border controls (discussed further below). Seventeen White Paper measures remain to be adopted in areas such as intellectual property, company law, VAT and company taxation. Important progress, particularly in the field of intellectual property, has been made recently. The Decision of the European Council at the end of October on the location of the Community Trade Mark Office in Alicante (Spain) paved the way for the adoption of the Regulation on the Community Trade Mark. Three other related White Paper proposals on procedural problems have been referred to the Council for adoption. Despite the difficult ethical problems involved, the internal market Council also reached a political agreement concerning the legal protection of biotechnological inventions. Decisions are, however, still awaited on proposals to establish a European company statute, and to eliminate double taxation (taking into account of losses, withholding of taxes on interest payments and royalties).

A number of proposals in the company law field have been blocked pending the outcome of discussions on the European Company Statute and pending a subsidiarity review. A proposal to modify rules on right of residence and employment permits for workers and their families is also blocked. A proposal relating to a special VAT scheme for small firms has not yet been the subject of substantive discussion in the Council, pending adoption of other indirect tax proposals. With regard to measures to accompany the abolition of internal border controls, the Council has on its table proposals relating to VAT harmonization provisions on gold transactions and transport of passengers, controls on exports of dual use goods. Concerning the 7th Directive on harmonization of national VAT rules concerning second hand goods, antiques and works of art Council came to a political agreement on 13 December 1993.

Although the major part of the legislative programme for the Single Market has been completed, a number of additional proposals were presented by the Commission during 1993, for example, on harmonization of hall-marking rules for precious metals, and on measures to prevent the putting into free circulation, export and transit of counterfeit and pirated goods. In the area of financial services, the Commission proposed to strengthen the prudential supervision of financial institutions and put forward a proposal on a guarantee scheme for investment protection. On the basis of its new Strategic Programme the Commission may also wish to adapt existing legislation or to strengthen the functioning of the Single Market by presenting further measures.

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<sup>(3)</sup> COM(85) 310 final of 14 June 1985

Proposals remain under discussion also in the field of technical harmonization relating to, for example, lifts, pressure equipment, motor vehicles and food. In the financial sector, decisions on a bank deposits guarantee scheme and on pension funds are also awaiting Council adoption.

## **B. National implementation of Community legislation**

Of the 282 White Paper measures, 265 had been adopted by the Council by the end of 1993 (95%). The transposition of this Community law into national law constitutes the next important step. The Commission is concerned that there are significant delays in some cases, although the overall performance of the Member States has improved in recent months.

263 White Paper measures have now entered into force (93%), of which 222 require national transposition measures. Approximately 87% of the total number of necessary transposition measures have been taken. In many cases, however, the lack of transposition by one or two Member States has meant that only half of the 222 measures have been transposed in Member States, while about 75% of them have become law in 10 out of 12 Member States.

An analysis by Member State shows that Denmark has taken 93% of the necessary transposition measures, followed by UK (90%), Italy and Portugal (87%). Most delays in transposition are in Greece (82,3%), France (82%), Spain (82%) and Ireland (81,4%).

Transposition has been completed or is above average in the areas of freedom of movement of capital, in elimination of physical frontiers (various controls and controls on persons), in financial services (excluding insurance), in the elimination of technical barriers, company taxation, VAT and excise duties.

The most important delays are concentrated in the areas of public procurement (where only 59% of the necessary national transposition measures have been taken), company law (60%), intellectual and industrial property (61%) and the insurance sector (73%).

The Commission continues to press the Member States to fulfil their obligations under Community law, and automatically opens formal legal proceedings against those Member States which do not notify their national implementing measures in time. At each meeting of the internal market Council during 1993 the situation has been reviewed by Ministers, who have reaffirmed the importance of rapid completion of these transposition measures.

This being said, the Commission does not have any evidence to suggest that the lack of national transposition has in itself caused extensive difficulties in the operation of the internal market. It is still too early to draw general conclusions, mainly because, taking account of the periods for transposition, economic operators and citizens have not had the time to take advantage or experience the effects of the new rules. The current economic recession in most Member States has also reduced potential expansion into new markets. The Commission has, however, received only a limited number of complaints concerning deficiencies in national legislation, mostly in the area of public procurement. Although some measures to accompany the abolition of border controls on goods have not yet entered into force (transfer of wastes, repatriation of cultural goods, sales of explosives etc.), any difficulties experienced in the interim are being dealt with through closer administrative co-operation between the authorities of the Member States and with the Commission.

Apart from complaints relating to the continuation of identity controls on persons, most public criticism has been made concerning the temporary VAT regime. The economic operators have drawn attention to difficulties concerning certain aspects of the special regimes. This was particularly the case with respect to the obligation to nominate a fiscal representative. In a certain number of cases, these problems have already been effectively tackled. On the whole, the experience of the temporary VAT regime has largely been positive. The Commission will be making appropriate proposals to simplify the rules where they are justified. A full report by the Commission on the working of the transitional VAT regime will be presented to the Council at the end of 1994, together with proposals for the adoption of a definitive VAT regime which should reduce the administrative burden on businesses in the Community.

## II. An action plan to ensure effective implementation of Community rules: the Strategic Programme

The achievement of the legislative target laid down in the White Paper, and its gradual implementation into national law, will not in itself guarantee that the internal market works. The Community will have to develop new ways of working in order to manage an "area without internal frontiers" and will have to actively promote greater use of new opportunities by those operating in the market. During 1993 the Commission has been busy preparing a definition of the main tasks ahead in the management and development of the single market. The result of this process is its Strategic Programme, "*Making the Most of the internal market*", which was issued on 22 December 1993.

The Strategic Programme was the subject of wide consultation on the basis of a Commission working document (4) between June and October 1993, in which all of the Community institutions and a large number of representative organizations at European and national level presented their views. The final version of the Programme represents the Commission's view, based on consultation, of the main areas in which Community action is needed to make this internal market work and to develop its full potential. It is intended to be a clear and comprehensive guide to the next steps to be taken by the Commission, the Member States or, where appropriate, the private sector itself in order to achieve the Community's economic objectives.

The main chapters of the Strategic Programme are outlined below. Future Annual Reports on the internal market will provide an opportunity for the Commission to provide a progress report under each of these headings.

### A. Managing Community law through administrative cooperation

Applying a common set of laws across a continent will present the administrations of the Member States and the Commission with new challenges. Although the Community has considerable experience of such cooperation in some areas (such as customs or agriculture) it will have to develop mechanisms for closer co-operation in others. The Commission was, at the end of 1993, finalizing a communication on administrative cooperation which would propose the guiding principles for such cooperation and establish a procedure for the systematic review of the need for co-operation in individual sectors.

Part of this review will be dedicated to assessing - from a Commission point of view - the need for new telematic networks linking national administrations and the Commission. Proposals for a pluriannual Community action named "Interchange of Data between Administrations" (5) are already before the Council; the main task is now to identify the Member States needs more precisely and to accelerate the implementation of operational systems.

During 1993 a number of new institutional structures intended to increase the efficiency with which the internal market is managed came into operation. The Advisory Committee for coordination of the internal market, composed of senior national officials whose task is to address any problem arising in the operation of the internal market, met several times. The Business Feedback Committee has since February 1993 provided an opportunity for dialogue with the business world on questions related to the operation of the transitional VAT régime.

### B. Ensuring that Community law is applied

The Commission is currently engaged in verifying the conformity of national legislation to Community law, although the sheer volume of national measures and resource limitations on the Commission side mean that not all legislation can be systematically checked. In a number

(4) "Working document of the Commission of 2 June 1993 on a Strategic Programme on the internal market" - COM(93) 256 of 2 June 1993

(5) COM(93) 69 final

of sectors the Commission will continue to rely on feedback from economic operators in order to take appropriate action.

In parallel, the Community has organized joint training programmes for national officials. During 1993 the Council of Ministers agreed to add a training programme for national officials dealing with indirect taxation (Matthaeus-Tax) to the existing programme for customs officials (Matthaeus) and the Karolus programme which aims to address all sectors of internal market legislation. If these exchange programmes are carried out as planned, over 5,000 national officials will participate in exchanges with other Member States in order to compare their experience in the application of Community law.

### C. Improving access to justice

Putting a common legal framework into place will only help citizens and businesses in their daily lives if they can avail themselves of their rights without difficulty in any part of the Community. Considerable work has still to be done in order to make sure that this is the case, and the Strategic Programme devotes a special chapter to measures which could assist in this process. Particular mention is made of the need to increase the familiarity of national judges and the legal profession with Community law, to facilitate legal recourse at national level, to ensure that judgements in one Member State can be enforced in another, and to look in more detail at the reasons for legal conflicts within the internal market.

Two important first steps were already taken during 1993, namely the Commission interpretative communication on the free circulation of services of 6 December 1993 <sup>(6)</sup> and the Green Paper on access to justice for consumers and the settling of consumer disputes in the single market <sup>(7)</sup>. The second document, in particular, is intended to open a public debate on the effects of continuing legal and jurisdictional frontiers within the single market; comments are invited before the end of May 1994.

### D. Improving the transparency of Community rules

The adoption and implementation of legislation must be accompanied by an active information policy in order that citizens and companies are aware of their rights and obligations and can act quickly whenever they are infringed. The Commission has continued to develop its policy during 1993.

The INFO 92 database, which already contains details concerning the implementation of the Community's legislative programme, was extended to include 300 detailed questions and answers on the practical implications of Community rules. The database is accessible in all Community languages. Collections of Community law in particular sectors are being developed; the first, on Community food law, was published in 1993. The process of consolidation of existing Community law also contributes to greater visibility and better public understanding; consolidated texts were agreed by the Council during 1993 in such areas as public procurement, medical diplomas and foodstuffs and discussion is continuing for dangerous chemical substances, fertilisers and units of measure.

### E. Assessing the economic impact of the internal market

The Commission is already committed to produce an in-depth assessment of the economic impact of the internal market for submission to the Council in 1996. Work on this study will begin in 1994. Meanwhile more short-term studies of the effects of new Community rules were launched in 1993 with respect to both public procurement legislation and the assessment by small and medium-sized enterprises of how existing internal market legislation was working (carried out by the Euro-Information Centres).

<sup>(6)</sup> OJ No C 334, 9.12.93

<sup>(7)</sup> COM(93) 576 final of 16 november 1993

The findings of the Euro-Info Centre study (carried out in July-September) were generally positive. Although some concern was expressed at the short-term costs of adjusting to the new VAT system, the difficulties in obtaining access to public procurement markets and lack of recognition by national authorities of Community certificates of conformity for industrial products, the overall impression was that the new legislation was working satisfactorily.

The Commission submitted to the Council in November 1993 a preliminary assessment of the economic effects of the internal market programme, in the context of the Council's consideration of the move to the second stage of economic and monetary union (the Article 109e Report). While underlining that it was premature to undertake a global assessment of those effects, because much of the legislation was not yet in force or transposed, and because of the inevitable delay before economic operators take advantage of new opportunities, particularly in the current recession, the Commission suggested that anticipation effects unleashed by the internal market programme are already acting as the catalyst for a qualitative shift in the nature of Community competition. The report considered in particular capital movements, foreign direct investment within the Community, cross-border mergers and acquisitions and trade in the sectors affected by legislative harmonization as indicators of significant economic change. Econometric calculations show, on average, that the contribution of integration to economic growth has accounted for about 0.4 per cent additional growth per year in the period 1986-1992.

The Commission intends to develop instruments for more regular assessment of the economic effects of the internal market during 1994; future reports should benefit from this process.

#### F. Implementing trans-European networks

During 1993 the importance of planning and executing trans-European transport, telecommunications and energy networks for the future development of the single market was recognised at the highest political level. The Brussels European Council of December 1993 agreed on specific action to accelerate the implementation of these networks through the intervention of Community financial instruments, along the lines laid down in the Commission White Paper on growth, competitiveness and employment. The Commission's Strategic Programme identified a number of other accompanying measures which could also contribute to this objective, in particular the promotion of better coordination, the stimulation of private investment, measures to ensure technical interoperability and the early development of telematic networks between administrations. The Commission will come forward with specific initiatives along these lines during 1994.

#### G. External volet

The internal market has also led to some changes in the organization of the common commercial policy. In particular the import regime, the export regime, the management of quotas, the commercial defense instruments and the export credit policy have to be modified. In many of the sectors where trade within the Community was liberalized, parallel negotiations on world wide liberalization took place. The conclusion of the Uruguay Round was in that respect very important.

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## PART TWO

### Operation of the internal market

The annual report for 1993 deals mainly with the management of the internal market: a large part of the Commission's activity was devoted to this, in completing the legislative framework

provided for in the White Paper and through a coherent set of measures guaranteeing genuine, uniform implementation of Community rules.

However, the single market has just entered on the second phase of its development, as identified in the Strategic Programme, characterized by a more dynamic conception of market regulation and by the identification of how the Community will be able to help the European Union's operators and citizens to take greater advantage of the opportunities offered by the single market. Thus, the annual report will try, in the years to come, to give a regular assessment of progress in implementing the measures outlined in the Strategic Programme, in order to achieve transparency in the legislation and its implementation.

## **I. Free movement of persons**

### **A. Abolition of controls at internal frontiers**

Although customs checks on individuals were done away with from 1 January 1993, the delay in abolishing identity checks provoked much criticism from private citizens and from the European Parliament, which initiated the procedure provided for in Article 175 of the EC Treaty against the Commission.

Helped by the entry into force of the Treaty on European Union, which offers new possibilities both at Community level and under Title VI, the Commission has further intensified its efforts to achieve that same objective.

A phased approach was decided on for 1993. To begin with, the Commission exerted steady pressure on the Member States to meet the commitments they have entered into, even as it itself continued with political initiatives. In the second stage the Commission will survey these initiatives and, while maintaining its political pressure, is deciding on what steps to take, specifically as regards legislation. It has thus adopted a proposal for a Council Decision on the convention on controls on persons crossing the external frontiers of the Union <sup>(8)</sup>, and a proposal for a Regulation, based on Article 100c of the EC Treaty, to determine the third countries whose nationals must be in possession of a visa <sup>(9)</sup>. A further decision, based on Article 100c(3) will follow, relating to a uniform format for visas.

These measures are to be seen as an integral part of a coherent overall approach to achieve the objective set out in Article 7a of the EC Treaty\*, achieving which will require further proposals to be put forward at the appropriate junctures.

### **B. Free movement of persons in the Community**

As regards both right of residence and the mutual recognition of diplomas and other qualifications, the main problems are due to delays in transposing Community provisions into national law, and to the interpretation of the new systems. In order to overcome these difficulties the Commission is going beyond its traditional contacts with Member State authorities and pursuing, in the various committees set up to implement these provisions, its policy of developing mutual confidence and improving administrative cooperation. In addition, in order to become more accessible, the Commission has committed itself to making the *acquis communautaire* more transparent, specifically by consolidating the directives concerning mutual recognition of diplomas.

As regards legislation, great importance attaches to bringing forward a draft directive on establishment of lawyers under their home-country professional titles, which provides for recognition of licences to practise and institutes a third type of recognition of qualifications, the first being based on professional experience in craft industry or the distributive trades and the second on

<sup>(8)</sup> COM(93) 684 final

<sup>(9)</sup> COM(93) 684 final

diplomas. After the Court of Justice, in its judgment of 7 July 1992, struck down Directive 90/366/EEC on the right of residence for students, the Council adopted, on 29 October 1993, a new directive based on Article 7(2) of the EC Treaty <sup>(10)</sup>.

## **II. Free movement of goods**

In collaboration with the other Community institutions, the Commission continued its efforts aimed at the adoption of the final measures in the White Paper programme for the completion of the internal market and the programme for doing away with frontier controls. It has paid great attention to the progress made by the Member States in transposing Community legislation.

At the same time the Community has adopted a Strategic Programme for the overall management of the internal market: the need has now become apparent to preserve the frontier-free area and to prevent new obstacles arising to the free movement of goods, by increasing the transparency of Community law, stepping up cooperation between administrations and reinforcing the control of the transposition and implementation of Community law.

In the long term view, the Community institutions have initiated or continued measures to expand and complete the *acquis communautaire*. Without embarking on a new programme of legislation, progress so far must be consolidated, the single market expanded to further areas and existing legislation adapted to technical and scientific progress.

### **A. Elimination of controls at internal frontiers**

Free movement of goods in the Community implies that there are no controls at intra-Community frontiers. Veterinary and plant-health checks have been harmonized and a number of customs procedures governing movement of goods have been abolished; only some sensitive goods, such as weapons and drugs, are still subject to spot checks. Staff carrying out checks on goods have been withdrawn from the internal frontiers and infrastructures have been modified in line with the requirements of the internal market (this has been helped by flanking measures such as those under the European Social Fund and the Interreg initiative).

One of the measures made necessary by the elimination of border controls is a new system for gathering statistics on intra-Community trade (Intrastat), introduced in 1993. It is based on direct monthly returns from businesses. The collection mechanism provides for exemption and simplification as appropriate. There were delays in getting out the first results in 1993, but these are being made good by efforts at national and Community level.

To sum up, no major difficulties have arisen. The only problems remaining concern indirect taxation, the transitional system for certain agricultural products under the Act of Accession of Spain and Portugal, and delays in setting up common market organizations for certain agricultural products and alcohol. Nor has it been possible for the Council to come to any decision on the proposal for a regulation concerning dual-use technologies.

### **B. Special free-movement arrangements**

The provisions governing special free-movement arrangements for weapons, explosives, cultural goods, radioactive substances, drugs and drug precursors, transfers of waste and transport controls were adopted and/or brought into force in 1993. The directive on explosives <sup>(11)</sup> is due to enter into force in 1995. Problems relating to delays in the transposition of the abovementioned measures are already being experienced, for example as regards weapons, drugs and precursors.

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<sup>(10)</sup> Council Directive 93/96/EEC (OJ No L 317, 18.12.93)

<sup>(11)</sup> Council Directive 93/15/EEC (OJ No L 121, 15.5.93)

The dangers resulting from the abolition of border checks, in particular tax and customs duty evasion and trafficking in drugs and other sensitive products, have been tackled through machinery for cooperation and mutual assistance among the Member States and between them and the Commission.

### C. Articles 30-36 of the EC Treaty

The Commission has used all the instruments provided for by Community law in order to ensure the free movement of goods. Even before the 1 January 1993 deadline, it disputed border checks which were contrary to Articles 30-36 of the EC Treaty. The Member States subsequently informed the Commission that such checks had been abolished.

Articles 30 et seq. of the EC Treaty prohibit quantitative restrictions on imports and exports and all measures having equivalent effect. The Commission ensures that these articles are applied consistently and uniformly and result in a clear and constructive approach. Accordingly, the assessment of trade rules in the light of these articles has given rise to numerous judgments by the Court of Justice, in particular in the *Cassis de Dijon* case <sup>(12)</sup> and subsequently.

From these case-law principles the Commission has derived the principle of mutual recognition, which has formed and continues to form the basis for all it has done to remove and prevent barriers to trade. In the foodstuffs and industrial products sectors the principle was extensively applied by the Commission in the 314 new cases submitted to it during 1993. Mutual recognition is intended to ensure the free movement of goods and products of all kinds, thereby avoiding unnecessary recourse to harmonization. It guarantees the preservation of national diversity and of the various traditions and customs, and contributes towards increasing the range of products available to European consumers.

The Court of Justice also gave a ruling regarding the parallel importation of motor vehicles, where liberalization has had a considerable economic effect <sup>(13)</sup>. The Commission also drew the necessary conclusions from the *Peeters* judgment <sup>(14)</sup> on the use of national languages in the marketing of foodstuffs in the interpretative notice which it put out, indicating that at the stage of sale to the ultimate consumer the requirement to use a particular language may contravene Article 30 of the EC Treaty by being disproportionate, mandatory translation of easily understood terms and expressions is not necessary.

With regard to rules on advertising likely to affect the opportunities for marketing imported products, the Court ruled in its *Yves Rocher* judgment <sup>(15)</sup> that Article 30 precluded the implementation of a ban on price-based advertising in which the new price is highlighted against the previous higher price.

Finally, the Commission is examining, in the light of the Court's new decisions, the compatibility with the Treaty of trading monopolies for tobacco products in certain Member States, while awaiting a decision on matters currently pending before the Court.

### D. Technical harmonization

The Community's activity on technical harmonization focused on administering and monitoring the transposition of existing legislation, backed up by the introduction of new administrative cooperation machinery and by improving transparency. New measures designed to complete the White Paper programme and supplement or amend existing legislation in the light of technical progress were adopted or proposed in the various sectors.

<sup>(12)</sup> Case 120/78 *Cassis de Dijon* [1979] ECR 649 - 20.2.79

<sup>(13)</sup> Judgment of the Court of First Instance, 17 July 1991 (Case T 23/90 - *Automobiles Peugeot v Commission of the European Communities and Ecosystem*)

<sup>(14)</sup> Case C-369/89, ECR [I-2971].

<sup>(15)</sup> Case C-126/91 (not yet reported)

As regards agricultural products, Community activity in 1993 centred on two aspects: ensuring compliance with the rules within the Community and gathering information on the situation in third countries.

As regards veterinary legislation, all the measures on animal and public health were introduced, veterinary controls were abolished at internal frontiers and those at external frontiers were strengthened and harmonized. Transposition of the legislation adopted for these purposes was considerably delayed owing to the large number of measures to be incorporated into national law by the Member States in a short space of time. The extent of transposition varies significantly between the Member States and there are more problems with the directives abolishing border controls, since these require a complete reorganization of veterinary controls. That being so, the results for the first year are positive and the Commission has received few complaints regarding incorrect implementation of Community law.

With regard to plant-health legislation, the measures provided for in the White Paper in respect of pesticides have been in force since July 1993. New plant-health rules were introduced in June 1993, followed by a considerable number of implementing measures which were adopted during the year in order to facilitate uniform transposition, together with exemption measures in respect of certain third countries. The new rules on organic farming have been in force since 1 January 1993. The existing rules on plants and seeds were improved and extended to cover fruit and ornamental plants. As regards livestock feed there were also major decisions on dietary nutrition and additives. The overall transposition picture is positive, except for the new provisions on harmful organisms.

A major effort is being made to rationalize foodstuffs legislation. The Council regarded the directives on various foodstuff products (jams, sugar, fruit juices, etc.) as excessively detailed, and the Commission is preparing proposals which will now take account only of the essential requirements.

As regards construction products, mechanical and electrical engineering and other fields covered by the new approach, activity centred on monitoring the implementation and application of directives. It should also be noted that problems relating to the free movement of aerosol dispensers, which was the subject of a safeguard clause ratified by the Commission, were resolved satisfactorily.

With regard to motor vehicles, the entry into force of the single EC type-approval procedure should be highlighted (optional from 1 January 1993 and compulsory from 1 January 1996), as should progress on producing consolidated versions of Community legislation on chemical products, pharmaceuticals and cosmetics. New provisions were adopted on chemical products and pharmaceuticals. In the latter area, access to the single market will be made easier for economic operators from 1995 by the new system of authorization for placement on the market and through the work of the European Agency for the Evaluation of Medicinal Products set up in 1993 by the Council.

The policies on standardization, certification and quality constitute essential complements to the implementation of the Community's technical legislation, and in particular the new approach directives. New tasks were assigned and the stress placed on following up work already in progress. Discussions were held with a view to extending the work to new areas, such as air traffic control or defence procurement. At the same time, the Community intends to develop general cohesion with regard to the assessment of conformity and extend this to its third-country partners. Exploratory discussions are in progress with a view to negotiating mutual-recognition agreements in the fields of testing and certification.

#### **E. Prevention of new barriers and exceptions to free movement**

The prevention of new barriers to the free movement of goods is fundamental to the proper functioning of the single market, and this accounts for the importance which the Community attaches to this aspect of managing the single market. Directive 83/189/EEC<sup>(16)</sup> is in this context a major instrument for preventing barriers to trade and for promoting exchange of

<sup>(16)</sup> Council Directive 83/189/EEC (OJ No L 109, 26.4.83)

information. The awareness by Member States of the need to implement more effectively the notification procedure in the agricultural sector resulted in a considerable increase in the number of notifications during the year. The routine notification by Member States of any project covered by the directive has led to a reduction in the number of infringement proceedings. Overall, the directive is being implemented more effectively than in the past and the adoption of the amending proposal presented to the Council should contribute towards improving the situation.

The completion of the single market and the abolition of controls at internal borders has led the Commission to introduce a new procedure for the exchange of information, designed to ensure that cases in which a Member State refuses to recognize the equivalence of the national rules of another Member State with its own are dealt with quickly, efficiently, transparently and consistently. A proposal for a Decision (17) was presented to the Council, based on the lessons learnt by the Commission from the inventory of barriers drawn up under Article 100b of the EC Treaty and from the communication which followed that exercise.

In addition, in December 1993 the Commission sent the Council and Parliament a communication on procedures for dealing effectively with urgent problems (18). The Commission is satisfied with the effectiveness of the procedures examined, which fulfil their objective, namely the rapid transmission of data between the Member States in cases involving serious and immediate danger.

As regards the granting of exceptions to free movement provided for in the EC Treaty, mention should be made of the efforts undertaken by the Community in order to remove the need for recourse to Article 115 of the EC Treaty, where the last authorizations concerned importations of bananas. They expired on 1 July 1993 with the entry into force of the common organization of the market for bananas.

### III. Freedom to provide services and right of establishment

Since 1985 a vigorous strategy has been implemented on services, including practical measures for the harmonization of legislation where implementation of the Treaty is not sufficient, as is the case for services having a special impact on the integration of the single market - financial, transport, telecommunications and media services - and emphasizing the parallels between the free movement of services and that of goods, introducing the principle of mutual recognition of national rules in the absence of harmonization.

The principle of the free movement of services forms an integral part of the dynamic and innovative case-law of the Court of Justice which, since the *Dennemeyer* Judgment of 25 July 1991 (19), no longer permits a Member State to prohibit the supply on its territory of a service legally provided in another Member State on the grounds that service conditions there are different. Only compelling reasons of public interest may justify a derogation from the principle of free movement of services, and only where this is in proportion to the intended objective. As to the right of establishment, in its *Kraus v Land Baden-Württemberg* judgment of 31 March 1993 (20), the Court extended the scope of Articles 48 and 52 of the Treaty to national measures applying without discrimination, in the case in point the provisions of national law governing the use of foreign university qualifications. This confirmed the *Dennemeyer* judgment in this respect.

Overall, Commission activity is aimed at consolidating the principles deriving from the case-law of the Court by means of a general and consistent policy with regard to their implementation, based on subsidiarity and avoiding laborious harmonization of the various sectors. In adopting

(17) COM(93)670 final, COD 489, 15 December 1993

(18) COM(93)430 final, 16 December 1993

(19) Case C-76/90 [1991] ECR I-4221

(20) Case C-19/1992

its interpretative communication concerning the free movement of services across frontiers (21) on 6 December 1993, the Commission's purpose was to help make economic operators and the competent national authorities better acquainted with their rights under the EC Treaty.

One year after the completion of the single market, the overall position regarding the free movement of services is positive although, in certain sectors, it is still too early to draw conclusions. This is particularly true with regard to financial services, since the main directives - the third-generation insurance directives - and the directive on investment services adopted on 10 May 1993 by the Council, will not enter into force until 1994 and 1996 respectively. By contrast, in the field of transport - where there were major delays in completing the single market - the adoption of all the measures contained in the White Paper was finally completed with the adoption by the Council on 25 October of the Regulation introducing definitive rules on cabotage (22), i.e. access for foreign carriers to domestic transport of goods by road in a Member State. This success, which is in addition to the third package of aviation measures adopted in July 1992 and the liberalization of maritime transport, which was achieved by 1 January 1993, among other things through the adoption of Regulation 3577/92/EEC on cabotage (23), signals the completion of the internal market in the transport field. As regards copyright, the existing legal uncertainty was removed through the adoption of Directive 93/83/EEC on satellite broadcasting and cable retransmission (24). Lastly, with regard to the protection of personal data, Community activity began with the presentation, in September 1990, of a package of proposals (25), applying different methods including the harmonization of national legislation. Following consultation of Parliament and the Economic and Social Committee, an amended proposal was presented on 15 October 1992; a common position is expected during 1994, after examination by the Council.

As regards external relations, in June 1992 the Commission sent the Council a report on how financial companies based in the Community were treated in 27 third countries. Although financial services are an integral part of the new General Agreement on Trade in Services (GATS), concluded as part of the Uruguay Round package on 15 December 1993, negotiations on them will continue during a transitional period, ending six months after the Agreement's entry into force. The Commission will be pursuing its efforts to negotiate greater liberalization of access to financial markets in certain third countries, and to get those countries to respect the principle of national treatment.

The Agreement on the European Economic Area came into force on 1 January 1994. Under it, the EFTA countries (except Switzerland) have taken over the *acquis communautaire* in financial services.

In addition, clauses covering financial services were included in a number of other agreements recently concluded (the EEA Agreement and the Europe Agreements). In the transport field, the Commission is in the process of negotiating, with a number of countries in Central and Eastern Europe, access to the market for inland waterway transport; a similar proposal for road transport has also been presented to them. A transport agreement was concluded with Slovenia on 1 September 1993.

The problems most frequently encountered by the Commission with regard to services relate to transposition and implementation. For example, the second banking directive, in addition to the problems of interpretation which it raises, has not been incorporated into national law in one Member State. This is holding up the introduction of a single passport as initially envisaged. Directive 90/388/EEC on competition in the markets for telecommunications services (26) continues to be implemented partially and incompletely in a number of Member States following difficulties in the interpretation of certain concepts, such as voice telephony services. In addition, the Commission has initiated infringement proceedings against all the Member States

(21) OJ No C 334, 9.12.93

(22) Council Regulation (EEC) No 3118/93 (OJ No L 279, 12.11.93)

(23) Council Regulation (EEC) No 3577/92 (OJ No L 364, 21.12.92)

(24) Council Directive 93/83/EEC (OJ No L 248, 6.10.93)

(25) COM(90)314 final and COM(92)422 final

(26) Commission Directive 90/388/EEC (OJ No L 192, 24.7.90)

owing to various problems in the transposition of Directive 89/552/EEC (27) on television broadcasting relating, in particular, to the increasingly complex nature of that business.

Besides itself keeping a watchful eye as far as it is able, the Commission relies on economic operators themselves to alert it to malfunctions in the machinery introduced. It has also introduced original machinery for cooperation with the Member States in monitoring transposition and implementation; these include the Working Group on the interpretation and implementation of the banking directives (WPIBD), which comprises representatives from the Member States and the Commission; arranging seminars in order to promote cooperation between the national and Community authorities on telecommunications; the Advisory Committee on access to the air transport market.

In addition to legislative measures and instruments for cooperation, the Commission is introducing a package of measures designed to make its activities more open and improve information for citizens and economic operators in the Union. To that end, in 1994 the Commission plans to produce consolidated versions of the main banking directives, together with the three generations of insurance directives. However, the preferred instruments will still be Green Papers and communications. Wide-ranging discussions have been started on the development of telecommunications in the Community between now and the end of the century; in its resolution of 16 June 1993, the Council approved the Commission proposal on the timetable for the introduction of a new regulatory framework for telecommunications services and asked the Commission to prepare, by 1 February 1996, the necessary amendments to the existing regulatory framework in order to complete liberalization of all public telephony services by 1 January 1998 at the latest.

The Green Paper on pluralism and media concentration in the single market (28) identified potential restrictive effects regarding access to media ownership and may form the basis for Community measures, following the consultations held during 1993.

Consultation on commercial communication was begun in 1993, with a view to adopting a Green Paper on commercial communication in the internal market in 1994.

#### **IV. Free movement of capital**

The conditions required for the achievement of the fourth freedom were established through the adoption of Directive 88/361/EEC, which provides for the complete liberalization of all forms of capital movement between Community residents (29). The directive has been implemented by all the Member States, and now only Greece may restrict certain short-term capital transactions until 30 June 1994 in order to implement its economic stabilization programme.

The establishment of a European financial area is nevertheless being hampered by lack of progress on the taxation of savings, where the proposal for a directive on withholding tax on interest has not yet been adopted.

#### **V. Public procurement**

The single market is intended to provide equal opportunities for all firms to take part in the important area of public procurement. The basic legislative framework, covering public works, supply and service contracts, was completed in 1993. Thus, in addition to the provisions on public procurement contained in the EC Treaty and the directives already adopted coordinating the procedures for the award of contracts, there are now consolidated versions of the directives on the procedures for awarding public works and supply contracts (Directives 93/36/EEC and

(27) Council Directive 89/552/EEC (OJ No L 298, 17.10.89)

(28) COM(92) 480 final of 23 December 1992

(29) Council Directive 88/361/EEC (OJ No L 178, 8.7.88)

93/37/EEC) and Directive 93/38/EEC on services in the water, energy, transport and telecommunications sectors <sup>(30)</sup>. Directive 92/50/EEC on services <sup>(31)</sup> entered into force on 1 July 1993.

The transposition by Member States of Community legislation in this field has been particularly difficult; 25 cases are pending before the Court of Justice under Article 169 infringement proceedings initiated by the Commission against the Member States for late transposition or transposition not in compliance with Community legislation. The directives concerning the former excluded sectors and the remedies directives are complex. In some cases the Member States which joined the Community more recently qualify for special transposition periods and have not yet reached the deadline for transposing the latest directives.

The rules on the procedures for the award of public contracts are being progressively extended through the case-law of the Court of Justice. In this connection mention should be made of the Court's 1993 ruling in the *Storebaelt* case <sup>(32)</sup>, in which it considered that the duty to respect the principle of equality of treatment of all bidders lay at the very heart of the works directive. At the same time, the Commission, in the course of dealing with numerous suspected cases of infringement of Community law brought to its notice through complaints, has evolved an approach based, among other things, on points connected with the concepts of a work, entry in a trade register, additional conditions not provided for by the directives, discriminatory clauses, references to national technical rules, the procedure for the submission of bids, special security measures or measures to protect the vital security interests of a Member State and proof of a firm's financial and economic standing.

The Commission attaches great importance to measures aimed at increasing transparency in this field. Training schemes for those involved continued in 1993, together with the publication of standardized forms and an interim nomenclature for describing the subject of contract notices published in the Official Journal of the European Communities, which has been warmly welcomed by trade associations. Several studies are in progress with a view to improving the availability of information, including the project to set up a public procurement information system (SIMAP), which is essential in order to increase the quality and reliability of data exchanged between the various parties involved during the award and performance of a contract.

Finally, the use of European standards through the assignment of tasks to the European Committee on Standardization (CEN), aimed at eliminating the use of discriminatory specifications, and the establishment of an observatory within the Advisory Committee, designed to measure the impact of its decisions on different sectors of the economy, constitute supporting measures aimed at making the rules in this field function more effectively.

The importance of the field is reflected in its external policy aspect and, in particular, the negotiations which the Community has been conducting with the other GATT signatory countries. The new Agreement now concluded will open up to international competition public procurement contracts to the tune of several hundred billion ecus each year.

## VI. Intellectual and industrial property

Harmonization work on industrial property is continuing with a view to increasing the competitiveness of firms and promoting research and innovation. The year saw important progress towards completing the internal market in this area. On 20 December the Council adopted Regulation (EC) No 40/94 <sup>(33)</sup> on the Community trade mark. This constitutes a single instrument of protection, valid throughout the Community, obtainable by making a single application and giving the same rights everywhere. On 17 December the Council reached political agree-

<sup>(30)</sup> Council Directives 93/36/EEC, 93/37/EEC and 93/38/EEC (OJ No L 199, 9.8.93)

<sup>(31)</sup> Council Directive 92/50/EEC (OJ No L 209, 24.7.92)

<sup>(32)</sup> Case C-243/89 *Commission v Kingdom of Denmark* - 22.6.93

<sup>(33)</sup> Council Regulation (EC) No 90/94 of 20 December 1993 (OJ No L 11, 14.1.94)

ment for a common position on the directive for the legal protection of biotechnological inventions. The Commission adopted two proposals on legal protection of industrial designs and models: one for harmonizing Member States' legislation, the other for a Community design and model, as single instruments of protection valid throughout the Community, along much the same lines as the Community trade mark.

As part of the programme of work aimed at strengthening the protection of copyright and neighbouring rights, harmonization work is continuing in order to protect and promote creativity in the Community. Works and objects protected by copyright in at least one Member State at 1 July 1995 will be entitled, throughout the Community, to protection during the artist's lifetime and for 70 years after his death. Neighbouring rights are protected under the new directive on the harmonization of the length of copyright. The proposal on the legal protection of databases complements the measures already adopted in order to establish the single market in this field.

## VII. Company law

Further efforts are still needed in order to supplement the core established during the 1970s and 1980s in order to enable businesses to operate in a more uniform legal environment and facilitate their establishment generally. The Council still has to decide on Commission proposals on the structure of public companies, cross-border mergers between such companies and takeover bids. In spite of the Commission's efforts, the proposal on the statute of the European company remains blocked at the Council. The Edinburgh European Council pressed for the quick adoption of the proposal. In the same vein, discussions continued on the proposals for the statutes for the European cooperative society, mutual society and association as part of the measures decided by the Commission with a view to expanding the dynamic created by the single market.

## VIII. Energy

A first step towards the creation of a single market for gas and electricity was taken by means of three directives on the transit of electricity and gas and price transparency<sup>(34)</sup>. However, a number of further measures will be needed in order to achieve a genuine integration of the gas and electricity markets. The proposals presented by the Commission in February 1992 and amended in December 1993<sup>(35)</sup> aim to establish common rules in the gas and electricity sectors by promoting the harmonization of rules on concessions for the production of electricity and the construction of gas pipelines and electricity lines; they also propose separating the management and accounting aspects of production, so as to increase transparency; finally, they introduce the concept of negotiated access for third parties, the strengthening of references to public service obligations, award procedures for new electricity production and transmission capacity and a harmonization work programme.

A draft directive on the award of licences for the extraction of hydrocarbons<sup>(36)</sup> is currently before the Council and Parliament. It would constitute an additional instrument supplementing the current directive on public procurement.

(34) Council Directive 90/377/EEC on price transparency (OJ No L 185, 17.1.19)  
Council Directive 90/547/EEC on the transit of electricity (OJ No L 313, 13.11.90)  
Council Directive 91/296/EEC on the transit of natural gas (OJ No L 147, 12.6.91)

(35) COM(93) 643 final

(36) COM(93) 110 final

## **IX. Taxation**

### **A. Indirect taxation**

Thanks to the introduction of the new VAT arrangements and the definitive rules on excise duties, there are no longer any tax formalities on crossing an intra-Community frontier. The freedom for the European consumer to purchase, inclusive of tax, the products he wishes in the Member State of his choice, irrespective of his country of residence, is thus guaranteed.

The new transitional VAT arrangements are functioning satisfactorily overall. The few problems encountered relate to differences in national legislation, to the system of tax representatives and to the operation of special arrangements (distance selling and the sale of new vehicles). Thanks to the Business Feedback Committee, however, it has been possible to identify the problems quickly and solutions have either been, or are in the process of being adopted. A new proposal for simplification, following that adopted by the Council in December 1992, will be proposed by the Commission shortly.

Since the success of the new system depends on close cooperation between the Member States' tax authorities, an operational management structure and a computer network for the exchange of information (SITE) were set up in October 1992. The MATTHAEUS-TAX programme, adopted by the Council on 29 October 1993, provides for Community-level training and the exchange of staff between tax administrations in the Member States.

Transitional as it is, the system will be regularly reviewed in cooperation with the Member States' tax authorities with a view to simplifying its use; in the light of the lessons learnt, the Commission will present proposals on the definitive VAT system before the end of 1994.

The new excise duty arrangements which, unlike those for VAT, do not include a transitional phase, are working without major difficulties, although a number of problems have been identified. The Commission is continuing its efforts to facilitate the operation of the system, and will be presenting a proposal for a simplifying directive very shortly.

### **B. Direct taxation**

Businesses, and particularly SMEs, are still not able to benefit fully from the single market. The proposal for a directive on the abolition of withholding taxes on payments of interest and fees between firms based in different Member States and the proposal on the inclusion in firms' accounts of losses incurred by their permanent branches and subsidiaries located in other Member States, presented by the Commission to the Council at the end of 1990, have still not been adopted. Since Community policy is to eliminate double taxation of cross-border activities, the Commission will continue its efforts in this area and will shortly present new proposals for measures.

In addition, regarding insurance services, a solution is urgently required to the problem posed by the Bachmann case (C204/90) on freedom to provide services. The Commission will therefore promote pragmatic solutions based on improved cooperation between the authorities and insurance companies in the Member States.

## **X. Payment systems**

On 29 July 1993 the Commission presented the findings of an independent study on transparency in cross-border payments<sup>(37)</sup>. The conclusions of the study, whose aim was to assess the merits of guidelines drawn up by the banking sector itself, showed that these made few tangible improvements in terms of transparency, cost, transaction times and double charging. Since

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(37) Document P(93) 670

firms and consumers making cross-border payments are being penalized, the Commission has announced that, if no improvement results from the voluntary agreements concluded between the banks, it intends to propose, in July 1994, a directive containing appropriate measures to remedy these deficiencies which are disrupting the operation of the single market.

## **XI. Back-up policies**

### **A. Consumer protection**

The Commission's efforts in other areas are contributing towards reinforcing the positive effects of the single market. These include consumer protection policy, one of the aims of which is to allow consumers to benefit from the advantages of the single market. This is the aim of Directive 93/13/EEC <sup>(38)</sup> on unfair clauses in contracts, along with other proposals currently before the Council. Studies are under way in several areas, including access to justice, after-sales services, cross-border mortgage loans, the transparency of banking services and the amendment of the directive on contracts negotiated outside commercial establishments.

### **B. Competition policy**

The Community is adopting a pragmatic approach towards the increase in competition resulting from a number of factors, including the completion of the single market, the globalization of markets, current economic difficulties and rapid technological change. The policy of dismantling monopolies has therefore been pursued particularly in the telecommunications sector, where technological progress has removed the justification for them. The monitoring of state aid also takes into account the European dimension created by the single market when drawing up the restructuring plans resulting from the Commission's follow-up to its enquiries in this field. In monitoring mergers, the Commission has focused its efforts on improving the transparency and efficiency of procedures. The main core of the application of Articles 85 and 86 of the EEC Treaty has related to distribution agreements on perfume and cars. Commission activity has also been concentrated on transport with a view to ensuring compliance with the general provisions of the EC Treaty in this sector, which is now more open to increased competition.

### **C. Small and medium-sized enterprises**

The Commission is also endeavouring to follow the recommendations made in the studies on small and medium-sized enterprises and minimize the administrative, legal and financial burdens on them resulting from Community legislation. The Community wishes to promote financial opportunities and encourage investment by SMEs. A round table of leading figures from the banking sector has been set up to examine relations between credit institutions and SMEs.

Specific problems, such as excessively long payment periods, the use of new technologies and transfer difficulties are being tackled through studies with a view to taking concrete action, private projects co-financed by the Community, and specific action plans, along much the same lines as current measures concerning tourism.

### **D. Environmental protection**

Environmental protection policy occupies an important place among the horizontal policies. The concept of sustainable and harmonious economic development which would respecting the environment has been accepted without dispute during the work on implementing the

<sup>(38)</sup> Council Directive 93/13/EEC (OJ No L 95, 21.4.93)

White Paper. The successful operation of the single market greatly depends on taking into account environmental protection requirements in Community legislation. However, new problems, such as waste management and climatic change, call for more suitable responses than rules and regulations along, and also involve standardization, voluntary agreements and economic instruments, for all sectors concerned..

#### **E. The social dimension**

The development of the single market must be accompanied by the progressive introduction of a social dimension. The Commission has presented almost all the proposals included in the social action programme <sup>(39)</sup> but it has to be acknowledged that progress has been less than it had hoped. Nevertheless, several key directives have been adopted, in particular on the protection of pregnant workers, collective redundancies, the adaptation of working time, and health and safety at work. Major proposals were presented by the Commission to the Council, including the Community employment framework aimed at launching collective and concerted action by the Community institutions and the Member States against unemployment. The entry into force of the social protocol involves the extension of Community jurisdiction and gives scope for using new procedures in order to realize the social dimension.

The Commission has also brought out a Green Paper on European social policy. Discussion of the proposals it contains is currently under way and should be concluded by 31 March 1994. The conclusions will form the basis for a White Paper on social policy, to come forward in the second half of 1994.

#### **F. Training and education**

Finally, the presentation by the Commission in 1993 of a summary of the results and achievements of Community training and education programmes (Petra, Force, Eurotecnet and Comett) will serve as a basis for new proposals, which will contribute to promoting and progressively establishing a European area for education and training, to accompany and balance the completion of the single market.

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<sup>(39)</sup> COM(89) 568 final, November 1989

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## Introduction

1. The beginning of 1993 was the deadline for passage of the programme of legislation called for in the *Commission's 1985 White Paper, Completing the Internal Market* (1). The Community institutions and the Member States worked together to see the programme through by 1 January 1993, and the fundamental decisions were taken in all sections of it with the exception of the free movement of persons, putting the finishing touches to what can fairly be described as an area without internal frontiers in which the free movement of goods, services and capital is ensured.

Since then the Commission has been making a thoroughgoing study of the measures needed to ensure that this single market functions properly. The conclusions of a working party chaired by Mr Sutherland were set out in a detailed report, *The Internal Market After 1992 - Meeting The Challenge*, which set out to identify problems arising with the management of the single market and to make recommendations for their solution. One of its recommendations was that there should be an annual report on the working of the single market.

2. In its communication of 2 December 1992, *Communication on the Operation of the Community's Internal Market after 1992 - Follow-up to the Sutherland Report* (2), the Commission confirmed that it would be producing an annual report on the operation of the single market, and outlined its form and purpose: it would be intended to improve the transparency of Community rules and of their implementation; it would follow on from the reports on the implementation of the White Paper (3), and would extend to the whole of the operation of the single market.

The Commission again confirmed that intention in a further communication entitled *Reinforcing the Effectiveness of the Internal Market*, and added in the working document which accompanied it that the report would describe all aspects of the administration of the single market (4).

3. In its final form, therefore, the report for 1993 seeks to outline the salient features of the operation of the single market and to assess the administration of all measures taken in each field. The single market is not just a matter of the legislative programme in the White Paper; measures which had already been taken before 1985 are also relevant, as are other developments which have consolidated and built on the programme. To keep the general picture in view the report also refers to the general policies which figured among the objectives of the Single Act and to areas which were outside the scope of the White Paper.

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(1) COM(85) 310 final, 14 June 1985

(2) SEC(92) 2277 final, 2 December 1992

(3) The seventh and last report on the implementation of the White Paper was issued on 2 September 1993: COM(92) 383 final

(4) Commission working document, *Towards a Strategic Programme for the Internal Market*, COM(93) 256, 2 June 1993

In the interests of transparency the report sets out to give an account of all the factors which enter into the administration of the single market. It describes the operation of the machinery which has been set up and the interpretation of the Community rules.

4. This report is the first in a new phase in the implementation and development of the internal market, in which objectives and the measures taken to achieve them will be governed by the single market programme entitled *Making the Most of the Internal Market: Strategic Programme* (5). Beginning in 1994 it will also serve as a basis, alongside other papers and reports, for monitoring the action plan for employment which was adopted by the Heads of State and Government at the European Council in Brussels on 10 and 11 December 1993 (6).

The European Council will have the annual report before it when it discusses progress with the action plan each year in December.

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(5) COM(93) 632 final, 22 December 1993

(6) Presidency conclusions: SN 373/93

## PART ONE

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### Implementation of the internal market

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#### Section 1 - Legislative work

##### § 1 - Decision-making process within the institutions

5. **Systematic controls at the Community's internal borders on goods, capital and services have been abolished.** Ninety-five per cent of the legislative measures in the Commission's 1985 White Paper (1) have been adopted by the Council. Except for a relatively small number of important proposals the basic legal framework is therefore agreed. Furthermore, the Council has adopted a wide range of additional measures to complement the original 1985 programme and others are under discussion. A detailed list of internal market proposals - adopted or currently on the table - is set out in the appendices to this report. With regard to the free circulation of persons, whilst customs controls have disappeared identity controls continue to be made although some considerable progress in this area has been achieved by the Schengen Group of countries. In certain sectors not covered by the 1985 White Paper programme, notably energy and telecommunications services, considerable work has still to be undertaken before a single Community market can be created.

6. **The priority is for the Council to adopt the remaining White Paper measures and those measures required to accompany the abolition of internal border controls (see Annex 1).** Delays in the decision-making process with regard to these measures are the responsibility of the Council. Seventeen White Paper measures remain to be adopted in the areas notably of intellectual property, company law, VAT and company taxation. Decisions are still awaited on important proposals to establish a European Company Statute and to eliminate double taxation (taking into account of losses, withholding of taxes on interest payments and royalties). The decision by the European Summit on 29 October 1993 on the location of the Office for Harmonization in the Internal Market (trade marks and designs) in Spain paved the way for an agreement on the proposal relating to the Community Trade Mark. Following the decision of the Spanish government, the location will be in Alicante. The proposal relating to the Community Trade Mark was adopted by the Council on 20 December (Regulation (CE) No. 40/94\*).

The Council needs to take these decisions without further delay or should decide whether it wishes to proceed with certain proposals (such as those concerning the European company statute or food irradiation). Decisions have still to be taken on proposals concerning the legal

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(1) COM(85) 310 final, 14 June 1985

protection of biotechnological inventions and on a Community system to protect legal rights of plant breeders. A number of proposals in the company law field have been blocked pending the outcome of discussions on the European Company Statute (2) and pending a subsidiarity review (3). A proposal to modify rules on right of residence and employment permits for workers and their families is blocked in the Council. A proposal relating to a special VAT scheme for small firms has not yet been the subject of substantive discussion in the Council, pending adoption of other indirect tax proposals. With regard to measures to eliminate intra-Community controls, the Council has on its table proposals relating to VAT harmonization provisions on second hand goods, gold transactions and transport of passengers; controls on exports of dual use goods and, very recently, a proposal relating to the harmonization of rules on hall marking of precious metals. The adoption of these proposals would be an important contribution to the functioning of the Single Market.

The European Parliament has given its opinion on all but one of the outstanding White Paper measures. Only in a few cases is the absence of an opinion holding up decisions in the Council concerning non-White Paper measures (such as VAT on gold transactions).

7. The major part of the legislative programme for the Single Market has been presented by the Commission. However, the work of building the Single Market did not end with the opening of the internal frontiers on 1 January 1993. On the one hand, a number of proposals were presented during 1993, for example, on harmonization of hall-marking rules for precious metals, and on measures to prevent the putting into free circulation, export and transit of goods of counterfeit and of pirated goods. In the area of financial services, the Commission brought forward a proposal to strengthen the prudential supervision of financial institutions and another proposal concerning a guarantee scheme of investment protection. On the basis of the Strategic Programme, referred to below, the Commission wish to adapt the adopted legislation or to strengthen the functioning of the Single Market and will therefore present further legislative measures.

8. Since the presentation of the 1985 White Paper other fields were identified as important for the functioning of the internal market such as energy, telecommunications and trans-European networks. As a result the Commission has put important measures on the Council table concerning application of ONP principles to voice telephony, a single licence for provision of telecommunications services and a single Community market for natural gas and electricity. In the field of trans-European networks proposals were brought forward on a declaration of European interest and on telematic networks between administrations. These measures were necessary to maintain the development of the Single Market. It is in these areas in particular that the Council has to place its efforts, as it had already shown with the adoption on 29 October 1992 of three Decisions on the establishment of a transeuropean road network, a transeuropean waterways network and a combined transport network (4). Proposals also remain under discussion in the field of technical harmonization relating to, for example, lifts, pleasure boats, pressure equipment, motor vehicles and food. An important success for the realization of the free provision of cabotage services in the transport sector was reached at the Transport Council in June 1993. The legal texts relating to a limited common system of road taxation and to the definitive regime for road transport cabotage of goods were finally adopted on 25 October 1993. In the financial sector, proposals on a bank deposits guarantee scheme and on pension funds are awaiting decisions.

(2) 5th directive on limited company liability: COM(72) 887 final; COM(83) 185 final; COM(90) 627 final  
10th directive on cross-border take-overs: COM(84) 727 final

(3) 13th directive on take-over bids: COM(88) 823 final; COM(90) 416 final

(4) COM(92) 230 final and COM(93) 231 final

## § 2 - Making the Most of the Internal Market: Strategic Programme

9. On 22 December 1993 the Commission adopted its Strategic Programme for the Internal Market, entitled *Making the Most of the Internal Market* <sup>(5)</sup>. The programme was drawn up after broad consultation between the Community institutions and organizations representing economic and social interests, on the basis of the Commission communication *Reinforcing the Effectiveness of the Internal Market* and its accompanying working document *Towards a Strategic Programme for the Internal Market*, which the Commission adopted on 2 June 1993 for transmission to the Council, Parliament and the Economic and Social Committee <sup>(6)</sup>.

It is intended that the Strategic Programme should serve as a guide for the consolidation and development of the single market by the Community in the years to come; it meets a need identified in the Sutherland report and in resolutions adopted by the Council and Parliament in December 1992 <sup>(7)</sup>. A plan of this kind is needed because completion of the body of legislation required is no guarantee that the single market will work properly. Free movement is profoundly changing the context of economic activity in the Community, and this poses a number of challenges both to government and to business.

10. The strategic programme aims at:

- completion of the basic legal framework for the single market;
- managing the single market by establishing machinery to monitor the transposition and implementation of Community legislation, including measures to improve administrative cooperation, access to justice, and the evaluation of Community rules;
- developing the single market by setting up machinery for adapting Community rules to the needs of a functioning market, including:
  - greater transparency in new legislation and procedures,
  - applying the principle of proportionality;
  - a coherent strategy for information and communication,
  - further improving the environment for business (enforcement of competition policy, improving cross-border payments, further proposals on transport, action to promote the protection of intellectual and industrial property, improvements in the area of company law, the creation of a favourable tax regime for business, the upgrading of European standardization, conformity assessment and quality systems, measures to help SMEs, evaluation of the need for action in the areas of commercial communication and the media, action to promote efficient and competitive systems in commerce and distribution, and measures to increase competition and business opportunities in the energy sector),
  - improving the environment for the consumer,
  - developing a coherent approach to the relationship between sustainable development and the internal market;
  - establishing trans-European transport, energy and telecommunications networks;
- a dynamic and open external policy.

The programme will be revised and adapted regularly in order to take account of the development of the single market.

11. The Council meeting on the internal market which was held on 16 December 1993 welcomed the broad outline of the Strategic Programme. It took note of the conclusions of the European Council in Brussels on 10 and 11 December 1993 on **full use of the single market and the development of trans-European networks**, and stressed the need for a coordinated approach here. It also took note of the invitation which the European Council addressed to the Council and the Commission to continue their work in the light of the guidelines laid down by

<sup>(5)</sup> COM(93) 632 final, 22 December 1993

<sup>(6)</sup> COM(93) 256 final, 2 June 1993

<sup>(7)</sup> SEC(92) 2277 final, 2 December 1992

the European Council and of the Commission's Strategic Programme. The Council said it was awaiting with great interest the communications and proposals promised in the Strategic Programme concerning measures to ensure the operation and dynamic management of the single market; it undertook to give them priority in its own proceedings so as to arrive at decisions rapidly.

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## Section 2 - Application of Community rules

### § 1 - Transposition

12. The achievement of the objectives set out in Article 7a of the EC Treaty\* (formerly Article 8a of the EEC Treaty), which calls for an area without frontiers in which free movement is ensured, depends mainly on the way in which the single market rules are applied. If the single market is to work properly in practice, that legislation has to be integrated into the national legal systems.

Of the 282 measures which the Commission laid before the Council under the White Paper programme, 263 have been the subject of a Council decision and 18 are still pending. Over the last three years there has been rapid transposition of this legislation into the laws of the Member States. Despite the entry into force of around 100 fresh items requiring national implementing measures, the rate of transposition rose from 70% in March 1991 to almost 82% in December 1992.

Of course, the level of transposition tends to fall every time new legislation enters into force. This happened at the beginning of 1993, when more than 30 items entered into force and the rate fell to 69%. But the national authorities responsible acted to remedy the situation, and in February the rate of transposition had returned to 80%.

There was a slowdown in the rate of transposition in the second quarter of 1993, but the trend at present appears to be positive once again. There are 222 items requiring implementing measures, and nearly 86% of the measures needed to transpose them have been adopted; over 110 of them have been transposed throughout the Community. Three quarters of the legislative programme has been transposed by ten Member States or more.

13. National performances vary. Countries such as Denmark, Portugal and the United Kingdom have maintained a high rate of transposition, while others, such as Germany, Ireland and Spain have not been able to keep up the necessary pace. The position of Greece and the Netherlands improved in the course of September, bringing them up to the Community average. Italy, which had built up a large backlog over at least the last three years, succeeded in overcoming it and maintaining a pace well above average.

14. Taking the various sectors covered by the programme one by one, transposition is complete as far as the free movement of capital and the rules on excise duty are concerned, and nearly so in the case of company taxation. Member States transposed the indirect taxation Directives within the deadlines, though with little time to spare, so that the new arrangements were able to operate from 1 January 1993. Transposition is progressing in matters of controls on persons, financial services (except insurance) and technical requirements.

Continuing delays in transposition are for the most part due to procedural difficulties associated with the national decision-making process or to the technical complexity of the legislation required. The problem is concentrated in a few areas:

- **Public procurement:** Transposition of the three directives on supplies, works and review procedures, which have been in force for more than a year and a half, is almost complete. The outstanding delays are mainly in France, Germany and Spain. There are serious hold-ups with the directives on utilities. Leaving aside Greece, Portugal and Spain, which have extra time in which to adopt national measures, only six Member States have transposed the main Utilities Directive and four the separate directive on review procedures for the utilities. National measures have reached only 59% of those called for.
- **Company law:** Difficulties in this field have led to hold-ups in most Member States, except in the case of the Regulation on the European Economic Interest Grouping (EEIG). The national measures taken to implement the five Community acts in force here amount to only 60% of all those needed.
- **Intellectual and industrial property:** Most of the delays have arisen with the directive on trade marks and the directive on computer software, both of which have been in force since the beginning of the year. Half the Member States have fallen behind here; the difficulties are for the most part due to the highly technical nature of the legislation, which often requires far-reaching changes to domestic law. The transposition rate is 61%.
- **Insurance:** Of the six directives intended to establish freedom to provide services in the insurance business, four still await transposition even though the deadlines have passed (the Member States mainly concerned are Luxembourg and Spain). The delays are greatest in the case of the Motor Insurance Directive and the Non-life Insurance Directive. The Motor Insurance Directive has been in force since May 1992, but four countries have not yet notified national measures to transpose it. The Life Assurance Directive, in force since November 1992, has been fully transposed by only two countries, and partly so by two others. National measures to implement the six directives come to 73%.

There are also some delays in animal and plant health and in pharmaceuticals:

- **Veterinary and plant-health control:** Despite major difficulties still being encountered at the end of 1992, the transposition of the rules adopted in this area is now at an advanced stage. In general it can be said that continuing delays affect only directives which have come into force recently, and that the majority of cases involve Greece, Ireland, the Netherlands and Spain. The rate of transposition is close to 92%.
- **Pharmaceuticals:** Of about 30 pharmaceutical directives which were submitted with a view to the completion of the internal market, eleven have not yet been transposed by all Member States. But the delays are not major ones, and affect only a very small number of Member States. Some directives were adopted by the Council in 1991 or 1992 but entered into force only in 1993. Most Member States have transposed these, with the exception of those on veterinary medicinal products, where the time allowed expired only in April and August 1993.

15. The Commission keeps a systematic watch on the incorporation into the national legal orders of the Community measures taken under the 1985 White Paper. But **this check on the figures does not give a true picture** of the character of the national measures being taken and the way the Community legislation is being implemented in practice. The Commission acts in two ways to monitor this aspect.

The Commission seeks to ensure transparency in national measures by publishing regular reports on the implementation of Community law <sup>(8)</sup>, and through databases (Celex and Info 92) which provide references for national measures implementing Community legislation. Any Member State may use this information to obtain copies of implementing legislation. The situation could be improved by publishing such measures in full, so that there would be better mutual supervision of their effectiveness.

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<sup>(8)</sup> See the *Tenth Annual Report to the European Parliament on Commission Monitoring of the Application of Community Law - 1992* (OJ C 233, 30 August 1993)

The Commission also checks national measures to see that they do properly implement the Community legislation. This is not simply a matter of comparing wordings; the Commission has to take account of the various forms of legislation in different countries, perhaps originating at different levels of government, and of the legal system in general. Given the complexity of this task, the Commission has to follow a variety of methods.

- In most cases the Commission studies the national measures at the draft stage. Collaboration between Commission staff and national authorities here allows differences of interpretation to be sorted out and avoids infringement proceedings later.
- Once national implementing measures are notified the Commission studies their compatibility with the Community legislation; in some cases it asks for studies to be carried out by outside experts. If necessary it initiates infringement proceedings. In some technical areas the Commission acts on complaints from private parties or Member States who observe that national measures are incorrect. Meetings of the various Community-level specialized committees allow a constant watch to be kept on the working of the rules and thus on how well they have been implemented.

The task of monitoring proper implementation is frequently rendered difficult by the Commission's lack of resources. Methods of organizing this form of supervision and ensuring systematic and consistent examination of national rules are being considered under the Strategic Programme.

Certain elements of the establishment of the internal market depend crucially on the availability of standards. In particular, the functioning of the "New Approach" Directives, and aspects of the opening of public procurement contracts to competition, are closely linked to the availability of European standards and their transposition at national level.

The *Eleventh Annual Report to the European Parliament on Commission Monitoring of the Application of Community Law - 1993*, which is being finalized at present, containing analyses and figures covering infringement proceedings which the Commission has initiated against Member States under Article 169 of the EC Treaty\*, will be the main reference document for information on the application of Community law. However, Annex 2 to this Report on the internal market gives, for the first time, an overview of progress in transposing into national law all the Council and Commission legislation concerning the internal market.

## § 2 - Implementation

### A. Cooperation between administrations

#### a) *Cooperation between administrations*

16. The Sutherland Report identified administrative cooperation as a key factor in the operation of the single market, and it is to be the subject of a communication which the Commission will be submitting to the Council and Parliament in the first quarter of 1994.

Administrative cooperation is already working well in many areas (such as veterinary matters, plant health, pharmaceuticals, foodstuffs, customs and indirect taxation), but completion of a single market requires a thorough study of the way it works, as each supervising authority now has a responsibility to the Community as a whole. In the course of preparing the communication the Commission has had a series of discussions with Member States, looking at administrative cooperation in various areas, such as the "new approach" to technical regulations, or dangerous substances, foodstuffs, the recognition of qualifications, veterinary inspection and medicines for human and veterinary use.

In the course of the preparatory work a few options have begun to emerge as desirable regarding measures to be taken at Community level to provide a back-up for administrative cooperation; these would be limited to the strict minimum needed to ensure the proper opera-

tion of the single market and would have to be in proportion to the objectives pursued and avoid unnecessary red tape:

- The Council should approve the general framework proposed for administrative cooperation, both among the Member States and between them and the Commission, so that the single market legislation is applied in as transparent and consistent a way as possible. It should be accepted that the departments responsible for applying the legislation in the Member States are under an obligation to assist one another in the performance of their duties by responding to requests for cooperation and by exchanging relevant information under appropriate rules of confidentiality.
- The Commission should launch a work programme, to be completed by the end of 1994, to identify the administrative cooperation arrangements already in operation or already proposed in different fields, to designate "enforcement correspondents" to act as points of contact with the other Member States and the Commission in each field, and to establish whether the present machinery does really match needs.
- The Commission should take measures to help with administrative cooperation between the Member States: this might be done by drawing up guides interpreting the legislation, by facilitating the establishment of computer links between departments, by assembling and analysing data, by facilitating the management of staff responsible for applying Community legislation in the single market through exchanges between States (along the lines of the Karolus and Mattheaus programmes which are already under way) and other training schemes, by publishing a periodical which would provide documentation and contact for national administrative departments, and by simplifying administrative cooperation procedures through the use of standard forms.
- The Council should take steps to improve existing machinery for mutual assistance between administrations <sup>(9)</sup>.

The Commission would propose legislative measures if it proved necessary in the light of the results of this work programme.

#### b) *Trans-European data-transmission links*

17. In 1992, in order to improve administrative cooperation, the Commission promoted the development of networks in four priority areas: taxation, customs, veterinary and plant-health control, and statistics.

The customs systems are concerned particularly with the administration of the integrated Community tariff (Taric) <sup>(10)</sup> and enable the Commission to send national customs authorities information on customs duties and agricultural levies, goods classification decisions (binding tariff information) and quotas (the Quota base). Throughout 1993 there were weekly electronic dispatches to customs departments in the Member States informing them of any new measures governing imports into the Community and exports from it. This information was then incorporated into the national systems for automatic clearance and the production of printed working tariffs.

The tax systems are concerned with the exchange of information on the collection of VAT in intra-Community trade in goods (VIES), and the exchange of information on excise duties (under development).

There are also a number of systems which enable customs tax authorities to exchange information in their efforts to combat fraud: the Scent system established in 1987, and its improved version CIS (customs information system), which has a richer selection of functions, is already in operation: 220 work stations are installed and an intensive information programme is under way (soon to be brought into line with the X400 standard). This system enables customs

<sup>(9)</sup> For example, in the customs field, the amended proposal for a Regulation in COM(93) final - SYN 450, 1 September 1993

<sup>(10)</sup> OJ C 143 and 143A, 24 May 1993; Taric tabulates the Community legislation on the import and export of goods, and thus makes for transparency in the customs field

departments to send one another information on unlawful trafficking in drugs and other sensitive products such as cultural and dual-use goods. A Scent system for taxes is being developed.

18. An overall modernization strategy was also defined, in order to provide the Community area with electronic data transfer networks which would benefit all departments with a role in the management of the single market.

In 1993 the Commission adopted a communication to Parliament and the Council accompanied by two proposals for Council decisions, one proposing a set of measures concerning trans-European data transmission networks linking administrations, and the other proposing Community support machinery in the form of a multiannual programme to be known as IDA (interchange of data between administrations) (11), which is intended to help with projects of common interest and measures to make these networks interoperable. The total cost of the programme for establishing data transmission networks between administrations is ECU 340 million. A preliminary appropriation was included in the budget for 1993 to meet the most pressing needs. An information system for public procurement (Simap) and the data transmission project being developed by the European Agency for the Evaluation of Medicinal Products were included.

To facilitate administrative cooperation the Commission is currently consulting with the Member States on the accelerated introduction of an electronic mail system linking all the administrations involved in the management of the internal market (12). Such a network is considered a priority objective in both the White Paper on *Growth, Competitiveness and Employment* and the Strategic Programme; it is an indispensable tool for ensuring the smooth operation of the single market and will provide tangible evidence of the usefulness of information technology in strengthening administrative cooperation.

19. Coordination of policy on data-processing networks is vital if their development is to be coherent and synchronized, to prevent the installation of disparate and incompatible systems. There are three main concerns here:

- giving the Community a system for administering Community rules which facilitates the smooth operation of the single market for the greater good of industry and commerce and of society in general;
- restoring a climate of confidence by giving business the assurance that Community rules are being applied uniformly and fairly, and by stepping up measures to combat fraud;
- modernizing the administrative environment of businesses, thus making them more competitive, by speeding up and simplifying formalities.

B. Creation of structures to ensure that the internal market functions smoothly

a) *Advisory Committee for Coordination in the Internal Market Field*

20. In 1990, in order to help it with problems arising in the course of the completion of the single market, the Commission set up a working party of senior officials from national administrations, known as the "coordinators", who sought to coordinate work concerning the internal market. The Commission subsequently decided to institutionalize this group, and set up, by Decision 93/72/EEC of 23 December 1992, the 'Advisory Committee for Coordination in the Internal Market Field', which is made up of representatives of the Member States, who are for the most part former coordinators.

(11) COM(93) 69 final

(12) The Euromail initiative: COM(93) 700 final, p. 74; COM(93) 632 final, pp. 13/14

The Committee is intended to settle any difficulty which might arise out of the operation of the single market and possibly from the ending of controls at internal borders. It advises the Commission on any question which requires an effective and immediate response or which needs urgent attention. Since February 1993 it has considered matters as varied as the ending of border controls, follow-up to the Sutherland report, cultural property, data-transmission networks, ratification and transposition of international conventions, administrative cooperation, preparations for the strategic programme, and the transfer of corpses and of radioactive metallic waste. The wide scope of the subjects dealt with illustrates the way the Committee is already helping to consolidate administrative cooperation.

**b) Business Feedback Committee**

21. The Business Feedback Committee (comité d'écoute) was set up in February 1993 and had met three times by the end of June. The membership of the Committee consists of representatives of the business world at all levels - the major trade and industry organizations as well as representatives of SMEs - and of the network of Euro-info Centres. It is chaired by the Commissioner responsible for indirect taxation (Mme Scrivener) and provides an opportunity for direct dialogue on questions connected with the operation of the transitional VAT regime and excises. All participants have expressed their appreciation of the creation of the Committee, which allows direct and structured access to the Commission by representative bodies. The Committee values the direct feedback to the Commission on the operation of the new VAT provisions.

**c) Advisory Committee on Customs and Indirect Taxation**

22. The Advisory Committee on Customs and Indirect Taxation was set up by Commission Decision 91/453/EEC of 30 July 1991.\* It has 19 members representing a range of categories: industry (3), agriculture and fisheries (2), commerce (2), trade organizations (2), chambers of commerce and industry (2), transport (2), banking and insurance (1), customs agents (including forwarding agents) (2), tourist bodies (1), labour (1), consumers (2) and small and medium-sized businesses (1). The Committee met twice in 1993. Its comments on the introduction of the single market in the customs and indirect taxation spheres have been generally positive.

### § 3 - Monitoring

#### A. At Community level

23. Article 155 of the EC Treaty\* gives the Commission the task of monitoring compliance with Community rules: except in a few well-defined cases, on-the-spot inspection is a matter for the Member States. In some areas the Commission does carry out on-the-spot inspections. One of these is plant health.

The Office for Veterinary and Phytosanitary Inspection and Control carried out inspections in all twelve Member States and in 38 non-Community countries during 1993.

Inspections are carried out on veterinary and public-health grounds in establishments producing fresh meat or meat-based products, or in order to investigate fraud, or to detect the use of hormones; there are also inspections in the fishing industry. These inspections have shown that the establishments producing fresh meat in the Community have been steadily improving. Animal health inspections were concerned more particularly with horses, poultry and sperm and embryo production in certain non-Community countries. A large number of inspections are associated with outbreaks of infectious diseases both inside and outside the Community.

The establishment of a single market has made it necessary to set up veterinary inspection posts at the Community's external borders; the posts have had to be inspected in order to establish whether what was proposed by the Member States corresponded to the Community standards, and a selection was gone through before a Community list was drawn up.

Complaints made to the Commission regarding the application of Community law also provide a channel through which the Commission can monitor the application of the rules by the Member States.

## B. At national level

### a) Training/information measures for government departments

#### Customs

24. The Council has approved a programme of Community action on the vocational training of customs officials, known as the Matthaëus programme (Decision 91/341/EEC).<sup>\*</sup> This comprises three main types of training measure: exchanges of customs officials between Member States (1 800 between 1989 and 1993), seminars on questions of common interest (more than 50 between 1990 and 1993) and common training programmes, which are approved at Community level and then implemented in the Member States' own training centres (the Commission has approved four programmes so far).

The Matthaëus Committee has provided a channel for the exchange of information on the structure and methods of operation of customs departments in different countries, a channel whose usefulness extends beyond the Matthaëus programme proper.

#### Indirect taxation

25. The Community dimension in the work of tax departments in the Member States is growing steadily, and the Commission proposed that there should be a training programme for officials responsible for indirect taxation, Matthaëus-Tax, along the lines of the Matthaëus programme for customs officials. The Council approved this programme on 29 October 1993 (Decision 93/588/EEC).<sup>\*</sup>

#### The KAROLUS programme

On 22 September 1992 the Council adopted Decision 92/481/EEC on the adoption of an action plan for the exchange between Member State administrations of national officials who are engaged in the implementation of Community legislation required to achieve the internal market. This action plan, known as "Karolus", began on 1 January 1993, and is to run for five years. It is intended to make it easier for Community single market legislation to be applied in a uniform fashion and to encourage personal contact between the officials responsible for implementing it in the Member States. It will enable 1 900 of them to work with their opposite numbers in another Member State for an average period of two months.

In 1993 the priority areas were pharmaceutical products, public procurement, export controls on dual-use products and technologies, conformity testing and market supervision, foodstuffs, plant health, banks, insurance companies, stock exchanges and undertakings for collective investment in securities, and road transport.

In 1994 the number of priority areas was increased in consultation with the representatives of the Member States who sit on the management committee assisting the Commission with the administration of the programme; the priorities now also include consumer protection with regard to consumer credit, product safety and package tours, management of transfers of waste between Member States, checks to ensure that seagoing vessels comply with international rules on maritime safety and environmental protection, operation of the statistical programmes relating to the internal market, competition (with the emphasis on the drafting and application of rules on restrictive practices, dominant positions and merg-

ers), free movement of workers, and the implementation of Directive 83/189/EEC on technical standards and regulations.\*

By the end of 1993 applications under the scheme had been received from 500 officials in all Member States with the exception of Belgium and Luxembourg. Eleven host countries were applied for, the exception being Greece. The operation has thus been slow to get under way; this is presumably due to the time needed in the Member States to set up coordination machinery for the programme, and to circulate information among potential exchange officials, given the very different ways in which the departments concerned are organized.

The European Institute of Public Administration in Maastricht is helping the Commission with the organization of the programme.

## b) Access to justice

26. If the Community area is to be run properly, national and Community institutions must be able to enforce Community law, enforcement being an integral part of any legal system. The rule of law is a fundamental principle of the constitutions of all Member States, but the fact remains that single market entitlements such as freedom of movement will be exercised to the full only when individuals and firms are satisfied that they will indeed be able to enforce their rights, in a clear and simple fashion, wherever they may be in the Community. Otherwise citizens will not view the territory of the Community in the way they view the territory of their own country, and the operation of the single market will suffer as a result.

When it drew up the Strategic Programme, therefore, the Commission included a chapter on redress: access to justice and judicial cooperation, which sets out a series of measures intended to improve the situation, over the three years 1994-96. These measures fall under four main headings:

- improving access to Community law in legal circles;
- encouraging recourse to the national courts;
- reinforcing the mutual recognition of judgments;
- further study of the question of conflict of laws in the single market.

27. Some of the measures called for were launched in 1993.

The two most important of these were the following:

- On 6 December 1993 the Commission adopted an Interpretative Communication concerning the Free Movement of Services across Frontiers (13) under Articles 59 et seq. of the EC Treaty\*. This sets out to make interested parties aware of the principles the Court of Justice has developed in cases involving services, at a time when the macroeconomic importance of the services sector is growing in terms of both gross national product and employment. The Court has held that a Member State may not prohibit the supply on its territory of a service lawfully provided in another Member State on the sole ground that the requirements there are different. Only overriding reasons relating to the public interest can justify a departure from the principle of free movement, and the exception must be in proportion to the objective pursued.
- On 17 November 1993 the Commission adopted the Green Paper Access of Consumers to Justice and the Settlement of Consumer Disputes in the Single Market (14). This offers a detailed analysis of the difficulties which arise in the settlement of cross-border disputes, whether through the courts or through out-of-court proceedings involving arbitration or an ombudsman. It concludes that the complexity of disputes between one country and another is ultimately a consequence of the existence of legal and judicial borders within the Community. The Commission accord-

(13) OJ C 334, 9 December 1993

(14) COM(93) 576 final, 16 November 1993

ingly proposes a number of themes for discussion, in order to initiate a thoroughgoing debate on the steps which might be taken at Community level. Interested parties have until 31 May 1994 to send the Commission their comments and suggestions, on a matter which affects the daily lives and affairs of individuals and businesses alike.

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## Section 3 - Transparency

**28. Transparency in Community law is vital to the relationship between the public and the institutions: if the single market is to succeed, ordinary members of the public must know their rights, and if those rights are infringed they must know what remedies are available to them.**

Transparency or openness also means that when legislation is drawn up citizens should be consulted through organizations which represent them and defend their interests. The different social and economic groups will then be able to make their views known from the earliest stages in the drafting of Community legislation.

Citizens who are aware of their rights and of what the Commission is doing, and who have representatives dealing with the Commission on their behalf, will be able to play their proper part in the development of the Union.

Transparency also serves to ensure that the principle of subsidiarity is being applied properly, by enabling everyone to see whether the Commission is acting only where necessary.

### § 1 - Transparency of Community law

**29. Given the importance of information and communication here, the Commission is reviewing the information channels it uses at present, in an effort to identify more effective methods, and is designing operations to be undertaken in partnership with the Member States. It is also drawing up a general information plan for the single market.**

The **Info 92 database** is the most complete source of information on the single market. It currently has six sections dealing with the single market:

- news update, providing information on recent and forthcoming events (agendas and reports of proceedings of Council, Parliament and Commission, dates of entry into force of directives);
- completing the internal market, which is concerned especially with the implementation of the White Paper (detailed information and points to note about each measure, whether adopted or still pending) <sup>(15)</sup>;
- national implementing measures, stating the legal acts used to transpose Community legislation into the domestic laws of the Member States, with publication references <sup>(16)</sup>;
- the area without frontiers: questions and answers, made up of about 300 clearly set out answers to questions on the main aspects of the single market which have been asked by members of the public through Euro Info Centres, Commission offices and Team

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(15) This section is published in booklet form each year in six volumes, stating the position on 1 January of the current year

(16) This section is published in booklet form twice a year, stating the position on 1 May and 1 November of the current year

Europe (this section of the database is partly accessible to the public, in nine Community languages, and is to be fully accessible by the end of 1993);

- consolidated legislation, providing current texts of single market legislation; these have been put together purely for information purposes, without any formal approval (consolidated versions in nine languages have been available for consultation since February 1993) (17);
- the social dimension of the single market, which at present provides practical information on the free movement of persons (right of residence, living and working conditions, vocational qualifications, social security, etc.).

The Commission also intends to publish compilations of legislation by subject area, in all the Community languages. The first of these concerns foodstuffs, and sets out all the legislation on the subject, in consolidated form wherever necessary. The next one is to deal with pharmaceuticals.

A study of INFO 92's impact on the public in 1994 might lead the Commission to reorganize it.

#### Legislative consolidation

*Alongside the informal or declaratory consolidation work incorporated into the Info 92 database there is the legislative consolidation programme, which is another important step towards greater transparency in Community law. In legislative consolidation a new version incorporating a legislative act and all its successive amendments is formally approved and replaces the earlier legislation.*

*The Council adopted a few consolidated directives of this kind in 1993, dealing with qualifications in medicine, public procurement, and fruit juices and certain similar products<sup>18</sup>. Proposals on tractors, dangerous substances, fertilizers and units of measurement are in the course of adoption (19).*

*The fact remains, however, that despite declarations stressing the importance of this work the time taken is far too long. About 18 months went by between the Commission proposal and final adoption of those consolidated directives which have been approved, and little progress has been made with the others, some of which were proposed more than two years ago. To reduce the delay new working methods should be defined which take account of the fact that consolidation is a purely formal step. The substance of the act remains unchanged, and there is no need to reopen a debate which may well lead to disagreement and delay. The Commission is continuing its discussions with the secretariats of the Council and Parliament.*

*The Commission intends to continue and develop this work within the limits of the resources available. In addition to the consolidation measures provided for in the 1993 legislative programme, a recent Commission communication lists all the single market legislation needing consolidation (20).*

## § 2 - Transparency of national implementing measures

30. On the basis of what was said in the course of the consultations which led up to the Strategic Programme, the Commission is considering whether it would be worth taking steps to improve the transparency of national implementing measures. In the Strategic Programme (21) the Commission suggested that all implementing legislation in each subject area should first be published, after which the Commission would consider approaches from

(17) Legislation on foodstuffs, proprietary medicinal products and company law is already available; legislation on the new approach and the removal of tax frontiers will be available shortly

(18) Medicine: Directive 93/16/EEC\* - public procurement: Directives 93/36/EEC,\* 93/37/EEC,\* and 93/38/EEC\* - fruit juices and certain similar products: Directive 93/77/EEC\*

(19) Tractors: SEC(91) 466 final, 20 June 1991 - dangerous substances: SEC(91) 1608 final, 23 September 1991 - fertilizers: SEC(91) 1858 final, 5 December 1991 - units of measurement: SEC(91) 1047 final, 20 June 1991.

(20) COM(93) 361 final, 5 December 1993

(21) COM(93) 632 final, 22 December 1993

private publishers wishing to put out these collections in other Community languages; but a majority of Member States did not feel this was a priority. Nevertheless, the views of those active in the economy will also be considered, and the Commission will consider any other method which might make information on the legislation governing the operation of the single market in the Member States more accessible to businesses and consumers.

The Commission is considering the possibility of a pilot scheme in 1994 under which it might subsidize a small number of private plans to publish national legislation transposing Community law, on the basis of a call for expressions of interest to be published in the Official Journal of the European Communities.

31. It may be noted that in the tax and customs field, a body of documentation has gradually been built up which is intended to include all national measures transposing Community tax directives and all essential national customs legislation. This should allow the continuation of comparative analysis of the transposition of tax directives and of the application of customs rules in the various Member States. In the case of VAT an analysis of this kind was already well under way in the two years before completion of the single market. The same technique is to be extended to the directives on excise duties and to the external customs dimension of the single market, perhaps applying a subject breakdown.

### § 3 - Information and communication

32. In its work programme for 1993 the Commission gave priority to **information and communication**. To maximize the effect, better coordination is needed: it would allow clearer messages to be sent with a greater impact on the public, and help to improve transparency in Community affairs.

To coordinate the various efforts going on, reduce duplication, ensure that messages have greater impact and secure better cost-effectiveness, the Commission has approved a Communication on the coordination of information and communication policy for the single market (22). This recommends active coordination of information and communication work in the Commission, with special reference to the single market, and a new coordinated programme to intensify information and communication work.

On 15 June 1993 a detailed analytic inventory of information and communication programmes in the various Directorates-General was presented (23). Further proposals, on a global action plan for information and communication on this topic and on strengthening some actions already in progress, are being studied by the Strategy Group.

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## Section 4 - Economic and industrial impact of the internal market

33. The internal market should be conceived of as an **enabling programme offering individual companies in certain sectors the opportunity to expand through growth of market share on other Community markets** - opportunities which were previously denied by the existence of widespread non-tariff barriers. The impact of the internal market should therefore be gauged in terms of its effect on the trading patterns of individual companies or carefully

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(22) Joint Communication from Mr Pinheiro and Mr Vanni d'Archirafi, SEC(93) 682 final, 5 May 1993

(23) *Better Information on the Single Market - an Analytic Inventory*, document X/B version No 4, 15 June 1993

defined sectors, and in terms of its impact on market structures and the degree of competition in previously oligopolistic national sectors. The macroeconomic estimates of the Cecchini report (24) are an illuminating indication of the long-term benefits which will result from the improved resource allocation induced by the internal market programme. They cannot, however, be used as a benchmark for assessing the success of the Single Market programme. This is because the macroeconomic consequences of Community legislation in liberalizing trade will be phased in over a number of years, and because the impact of the internal market will be virtually impossible to isolate from the various other economic forces operating on the Community economy (such as globalization of many markets, technological progress, past and future enlargements, German unification and liberalization towards Eastern Europe).

34. The internal market is - first and foremost - an initiative which is intended to produce improvements in the microeconomic tissue of the Community economy. The Commission therefore proposes to focus on the reshaping of business operations and industry structures in those sectors and regions of the Community market which are most affected by the completion of the internal market. Attempts to evaluate the internal market from a microeconomic perspective will have to take the following issues into account:

- Timing issues - The internal market has not been a "Big Bang". Legislation has entered into force at different times, which means that liberalization in some sectors (foodstuffs, toys, machines) is relatively more advanced than in others where legislation may not yet have come into effect ("third generation" directives in insurance, or public procurement legislation affecting utilities). Thus for many sectors it may be too early, at this stage, to witness the impact of internal market legislation on business and the wider economy.
- Complementary measures - In some cases, internal market completion requires that the Community go beyond the basic legislative checklist laid down in the White Paper. The implementation of the forthcoming Strategic Programme will help to ensure that the full potential of the internal market is realised.
- The general macroeconomic environment - The current recession has led many Community firms to be more cautious and to delay strategic reactions to the opportunities generated by the internal market. Once economic recovery gets underway, firms may begin to implement corporate strategies designed to take advantage of market openings stemming from the internal market programme, and this in turn will induce the systemic and structural changes which are expected to follow. The improvement in business fortunes as recovery gathers momentum is, therefore, likely to be the signal for corporate restructuring in response to the internal market.

35. Although it is too early to draw definitive conclusions about the impact of the internal market, the following developments suggest that the internal market is already acting as the catalyst for a qualitative shift in the nature of Community competition.

- The removal of border formalities is facilitating cross-border trade. Evidence of the improvements is documented in a survey of Euro-Info Centres carried out in July 1993 (25), and in the first Annual Report of the SME Observatory (26). Both studies also underlined the fact that internal market legislation to increase access to public procurement markets, and to remove technical trade barriers have yet to make their impact widely felt.
- The removal of controls on capital movements has allowed for a marked increase in the degree of integration of some Member States (France, Italy) into international capital markets. Increased integration of capital markets and markets for portfolio investment will facilitate cross-border investment, and ease the credit squeeze in some Member States which had contributed to higher costs of capital in those

(24) "Le coût de la non-Europe - Basic findings" - ("Document") - Luxembourg: OOEPC, 1988 - 16 volumes

(25) Euro-Info Centre: Single Market Questionnaire - Results: Euro-Info Centre Project, September 1993.

(26) First Annual Report of the European Observatory for SMEs. Report submitted to DG XXIII by the European Network for SME research, and coo-ordinated by EIM (Small Business Research and Consultancy, Netherlands Economics Institute). August 1993.

countries. Free capital movement also represents a precondition for effective liberalization of Community financial services markets.

- The internal market has been accompanied by a surge in intra-Community foreign direct investment. This has been heavily concentrated in those sectors most directly concerned by internal market liberalization, and has been particularly pronounced in certain service sectors.
- The internal market programme has also attracted considerable interest from overseas investors. It has been one factor which has led to increased investment in the European Community on the part of United States', Japanese, and companies from EFTA States.
- Part of the increased intra-Community direct investment has taken the form of a wave of cross-border mergers and acquisitions which constitute a strong indication of companies intention to step up their presence on partner country markets.
- In the banking and insurance sectors, where obstacles to cross-border trade were particularly pronounced, there is evidence of a profound change in the nature of cross-border competition. This is reflected in a growing number of branches and outlets in other Community countries, and in an increasing share of national insurance markets held by partner country producers.
- There are indications that the removal of non-tariff barriers is already facilitating intra-Community commerce and competition in the sectors most affected by the internal market programme. Summary statistics which suggest that such an evolution is taking place are the increase in the proportion of Member States' trade which is directed towards other Community countries, and the increasing share of national consumption which is met by intra-EC imports. Examples of the sectors concerned include telecoms equipment, medico-surgical equipment, electrical machinery, machine tools, consumer electronics, and computers and office equipment. This development implies increased partner country presence on national markets and, by extension, greater competitive discipline on domestic incumbents.

36. Although the internal market has not yet reached its full potential, its credibility and irrevocability have exerted profound effects on business behaviour. On average, econometric calculations show that the contribution of integration to economic growth has accounted for around 0,4 per cent per year in the period 1986-92. A more in depth preliminary assessment of the economic impact of the internal market programme can be found in the report on progress with regard to economic and monetary convergence and with the implementation of Community law concerning the internal market (27).

37. In keeping with point 10 of Council Resolution 92/1218/EEC\* of 7 December 1992, the Commission intends to present, during the course of 1996, a **global analysis of the effectiveness and the impact of measures taken within the framework of the completion of the Internal Market**. This work is to be launched in early 1994. In the interim, the Commission has begun a number of actions to evaluate the practical operation of Internal Market legislation, including in-depth field research carried out by selected Euro Info Centres, and a series of public procurement studies which are under way. In addition to the legislative aspect of drawing up and applying public procurement directives, the Commission has to measure the impact of its decisions on the behaviour of buyers and sellers and on the very structure of the economic sectors concerned. This ongoing exercise will be strengthened by the setting-up, in the very near future, of a "*Public Procurement Observatory*" which will enable the Commission to involve the Member States in its research, studies and discussions. Additional information on issues related to the economic and business impact of the Internal Market can be found in the "*Panorama of EC industry*" (28) and the "*First Annual Report of the SME Observatory*" (29).

(27) SEC(93) 1755, 8 December 1993

(28) "*Panorama of EC Industry 93*", EC, OPOEC, 1993

(29) DG XXIII, April 1993

38. In order to support these analyses of the internal market but more importantly to allow for the proper and continuous monitoring of the internal market and to increase the transparency of the internal market for the economic agents acting in the newly created economic space, a number of initiatives have been undertaken by EUROSTAT. This led to the introduction of new and improved statistical standards and infrastructure to increase statistical quality and comparability (NACE/Rev1, CPA, statistical units and enterprise registers) and the extension of statistical instruments in new areas (PRODCOM).

Moreover, an effort is currently undertaken to renew and adapt to current standards the legislation for the collection of statistics on the structure and activity of enterprises. This involves an update and revision of the current directives for the collection of economic statistics on industry and construction as well as an extension of the coverage of these types of statistics to services sectors, an area specifically taken up by EUROSTAT within the context of the internal market.

A special sub-committee of the CEIES (European Advisory Committee on Statistical Information in the Economic and Social Sphere) is currently revisiting the statistical programme so as to ensure an as close as possible liaison between the expected effects of the internal market and the statistical instruments necessary to measure these effects.

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## Section 5 - External aspects

### Completion of the Common Commercial Policy in the context of the internal market

#### § 1 - Import Regime

39. Establishing a uniform import regime apt for the internal market comprises both an external element, such as the elimination of disparities in the import regime resulting from residual national restrictions, and an internal element, namely, curtailment of recourse to Article 115\*. Once these conditions are fulfilled, third country products and services will be subjected to the same treatment in all Member States, and there will be no obstacles to the circulation of these goods within the Community once they have been legally placed on one Member State market. As a result, domestic producers in the Member States will be confronted with the same degree of competition from third country imports which constitutes an essential element of a "level playing-field" for competition in the internal market. In addition, the system of frontier checks which was used to regulate the movement of certain third country products between the Member States, also hampered intra-Community trade in Community manufactured products. The filling-in of the remaining gaps in the common import regime has therefore formed an integral part of the programme to complete the internal market.

40. National quantitative restrictions on imports from third countries have been reduced. Such a reduction was possible through various negotiations, including the dialogue with Japan and the new agreements with Central and Eastern European countries. The Commission has proposed new regulations with respect to the application of a common import regime<sup>(30)</sup> abolishing all residual national restrictions and instauring a limited number of quantitative Community quotas against China. The Council has not yet taken a decision on them.

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(30) See COM(92) 288 final, COM(92) 374 final and COM(92) 455 final

41. With respect to safeguard measures, with the exception of agricultural products covered by market regimes, the Community can take these measures under the Regulation (EEC) N° 288/82\* relating to common rules for imports or under Regulation (EEC) N° 3420/83\* relating to the common rules for imports from state-trading countries. In addition, safeguard measures are provided for in Regulation (EEC) N° 1766/82\* dealing with trade with China and in each preferential agreement implemented by separate regulations.

In view of the realization of the internal market, the Community has now abolished the national trigger mechanism which previously allowed a Member State to decide on its own to apply a national safeguard measure except with respect to state-trading countries and in the association agreements with Turkey, Cyprus and Malta.

The possibility to take regional safeguard measures, allowed for under GATT, will still remain but will have to be implemented in a way compatible with the internal market.

42. There are now no measures under Article 71.3 and 74 of the ECSC Treaty\* restricting free circulation of steel or coal originating in third countries. The Commission policy is not to authorise any such measures under Article 71.3 and 74 of the ECSC Treaty\*. As a consequence, the application of national restrictions on direct imports (Article 71.1\*) by Member States will become less effective.

## § 2 - Export Regime

43. Progress has been made to adapt both the Community's export restrictions and Member States' national export restrictions to the internal market. The examination of the Commission's proposal for a Regulation on the control of exports from the Community of dual-use goods is being pursued in the Council (see part 2, section 2, § 2C).

## § 3 - Management of Community Quotas on Imports and Exports

44. The completion of the internal market and the ruling of the European Court of Justice on the question of Generalised System of Preferences<sup>(31)</sup> mean that as a general rule Community quotas can no longer be divided up among Member States. Thus a quota management system compatible with the internal market had to be established.

The textile quota regimes have been made compatible with the internal market and the Commission has submitted a proposal to replace the Regulation (EEC) N° 1023/70\* relating to the management of Community quotas under this Regulation. In addition, the Commission services have prepared an integrated system to manage quotas in a unified market.

## § 4 - Community commercial defence instruments

45. One of the proposed tasks of the Court of First Instance, as provided for by the Treaty on European Union is to decide in cases when an appeal is made to a Commission or Community decision in the area of commercial defence. When being asked for an opinion, the Commission decided to make its favourable opinion on this question subject to the parallel improvement of

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<sup>(31)</sup> Case 51/87 of 27.09.88

the decision-making mechanism of the various commercial defence instruments (anti-dumping/anti-subsidy regulation), the Regulations enabling the adoption of safeguard measures (common rules on imports, the new instrument of commercial policy).

The Commission has introduced to the Council the appropriate proposals, but the Council has so far not yet taken a decision.

## § 5 - Agreement on the European Economic Area

46. Following the "No" vote in Switzerland on the EEA, in December 1992, a diplomatic conference was held on 17 March 1993 by the remaining contracting parties, at which an adjusting protocol was signed. The amended protocol deletes references to Switzerland but provides for its participation in the Agreement at a later date. The European Parliament gave its assent to this adjusting protocol in June 1993 and ratification by Community Member States has been completed.

The main aim of the Agreement is to extend the Community single market to the EFTA States. The mechanism for achieving this is through the basic provisions of the Agreement, which lay down a set of principles based on the Treaty of Rome, and secondly by the EFTA States taking over all Community legislation relevant to the four freedoms - the freedom to provide services and the free movement of goods, workers and capital. The agreement has entered into force on 1 January 1994 (Decisions of the Council and the Commission 94/1/ECSC, EC\* and 94/2/ECSC, EC\*).

## § 6 - Export Credit Insurance

47. Export credit insurance is still largely operated by Member States at the national level and considerable disparities exist between Member States' systems (e.g. in premiums and country cover policy). However, work is under way in the Council which should give the Commission the necessary basis for formulating a proposal for a directive towards the end of the year. In addition, public export credit insurance bodies enjoy particular advantages which restrict the market possibilities for private insurance companies, that have expressed interest in part of the insurance given for short term transactions.

The Commission is considering proposing to the Member States, pursuant to Article 93(1) of the EC Treaty\*, the removal of such advantages as far as short term business is concerned which is of interest to private insurers.

## § 7 - Customs Union

48. On 12 October 1992, the Council adopted Regulation (EEC) No 2913/92 establishing the Community Customs Code<sup>(32)</sup>. This regulation represents a reform of all customs legislation since 1968, and provides for new export procedures adapted to the requirements of the single market. These procedures have been applied since 1 January 1993, whereas the whole Code was brought into operation a year later, together with the implementing provisions. On the basis of a Council Decision of 5 April 1993, the Commission intends to negotiate customs co-

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(32) OJ L 302 of 19.10.92

operation agreements with a number of countries (ei. Canada, Korea, Hong Kong, Japan, United States).

49. On 8 February 1993 the Council adopted Regulation (EEC) No 339/93\* on checks for conformity with the rules on product safety in the case of products imported from third countries.

The main purpose of this Regulation is to provide customs authorities with a common legal basis enabling them to suspend release of goods imported from third countries where those goods display certain characteristics which would give rise to a serious doubt as to the existence of a serious and immediate risk to health or safety.

This suspension of release enables the customs authorities to notify in good time the national authorities responsible for monitoring the market with regard to product safety and to ensure that the national authorities are able to verify - within a short but reasonable period of time - the suspect goods, in accordance with their Community and national obligations, before they are released for free circulation.

The Regulation provides for the same possibility where the customs authorities find that a product is not accompanied by a document or not marked in accordance with the applicable rules on product safety. By adopting this text, the Council has ensured efficient and consistent management of the common external frontier by all national customs authorities in respect of product safety.

In order to step up the fight against fraud, in September 1993 the Commission presented an amended proposal for a Council Regulation which would have the effect of markedly improving Regulation (EC) No 1468/81 as regards mutual assistance between administrations concerning customs and agricultural fraud (33). In addition to strengthening mechanisms for information exchange and common investigations, this proposal provides for the setting up of a computer database on cases of fraud in areas within the Community's competence.

In its report of 15 December 1993 on the implementation of the Mattheaus programme for training customs officials, the Commission foresees a retargeting of actions under this programme, towards, on the one hand, priority customs activities and, on the other hand, activities which tend to ensure the even application of customs legislation by the Member States.

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## Section 6 - Trans-European networks

50. The concept of trans-European networks lies at the focus of a number of major Community policies: the internal market, economic growth, cohesion and integration in the European area. Since its communication of December 1990 (34), the Commission has continued its action to develop transport, telecommunications and energy networks on a European scale. From now on, the completion of trans-European networks must be part of the process of European union. The Union Treaty (Title XII) supplies the legal instruments, while the agreement on the Delors II package (December 1992) provides the budgetary resources for Community action. The conclusions of the Edinburgh and Copenhagen (June 1993) European Councils confirmed the priority to be given to the development of trans-European networks, which are to be seen as one of the main elements of the growth initiative adopted at Edinburgh, of the White Paper

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(33) COM(93) 350 final of 1 September 1993

(34) COM(90) 505 final

on growth, competitiveness and employment <sup>(35)</sup>, and of the Strategic Programme for managing and developing the internal market <sup>(36)</sup>.

The Community intends to be active in promoting investments in networks with a view to boosting economic activity in Europe. The White Paper of December 1993 highlighted the resources necessary and priority projects of Community interest. The development of networks requires a global strategy over the medium to long term, with regard to both the different sectors concerned and the instruments to be used. Only a global, coordinated approach which integrates the elements of interconnection, interoperability and market access can create the conditions for the emergence of these networks.

51. The different specialized compositions of the Council (transport, telecommunications, energy) are already discussing the implementation of trans-European networks, as are the Internal Market and Ecofin Councils. The drawing-up of a set of guidelines, on the basis of close cooperation with the Member States, Parliament and the economic operators concerned, must ensure that Community action is consistent and transparent. The Copenhagen European Council called on the Commission and the Council to complete, by early 1994, the network plans in all the relevant sectors (transport, telecommunications and energy). In October the Council and Parliament adopted master plans for high-speed trains and road, inland waterway and combined transport.

52. The Community budget is making a contribution to many initiatives on trans-European networks in the form of feasibility studies and pilot schemes, reduced-interest loans and loan guarantees (European Investment Fund) under the budgetary headings for networks and regional policy. It also makes a substantial financial contribution to transport infrastructures in the four eligible countries (Spain, Greece, Ireland and Portugal) through the cohesion financial instrument since 1 April 1993, and shortly through the Cohesion Fund. The Structural Funds also make a significant contribution to the development of trans-European networks under regional policy. The already important role of the European Investment Bank (EIB) in financing networks has been strengthened by the growth initiative and the new financing instruments adopted at Edinburgh:

- the temporary lending facility for 1993-94 and beyond, amounting to ECU 8 billion (the majority of which is earmarked for trans-European networks);
- the European Investment Fund, with resources of ECU 2 billion, whose objective is to provide loan guarantees on a commercial basis.

It will be necessary to mobilize private finance for economically viable projects in order to support the Member States' efforts. The creation of legal and administrative conditions favourable to private financing, the development of a partnership between the public and private sectors and the use of a declaration of Community interest could help in mobilizing private investors.

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<sup>(35)</sup> COM(93) 700 final, 5 December 1993

<sup>(36)</sup> COM(93) 632 final, 22 December 1993

## PART TWO

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# Operation of the internal market

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## Introduction

**53.** With the removal of frontier controls, even though identity checks are still carried out, the Community's internal market has become the domestic market for enterprises. For most individuals and businesses, the abolition of controls within the Community is the most visible result of the completion of the internal market.

The basic measures concerning physical checks on goods have been adopted. The provisions required for the abolition of all customs documents have been adopted, and veterinary and plant-health checks have been harmonized, thereby making it possible to abolish frontier controls. The adoption and establishment of this consistent set of measures means that lorries can freely cross borders with their goods and that checks are no longer carried out on goods carried by individuals.

**54.** In order to obtain as accurate a picture as possible of the actual situation, the Commission has recently launched a study on frontier controls (1). It is directed at not only physical frontier controls - the study is based on an analysis of the situation at the main intra-Community land, sea and air border-crossing points, and examines all means of transport - but also the initiatives taken by the Member States to change the existing infrastructure and by national administrations to change traditional behaviour.

The study's initial findings confirm the Commission's generally positive assessment with regard to the situation at the frontiers:

- the overall customs presence has been reduced - even eliminated - at the different border posts. The few remaining customs controls in operation are spot checks, carried out throughout the territory of a Member State;
- the transport of goods is the first area to benefit from freedom of movement. There are only a few isolated remaining problems in sea and air transport;
- the abolition of checks on people is, of course, suffering from the current political situation - the number of checks actually carried out varies considerably between the different border-crossing points, including within the same country.

None the less, most of the physical infrastructure is still in place. The Member States have admittedly made certain efforts by installing blue, green and red lanes at airports and, for road transport, by vacating border posts, but the continued existence of separate traffic lanes, road signs and traffic signals - even chicanes - at the border gives the citizen the impression that the

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(1) "Report on the operation of frontier controls after 1 January 1993", Coopers & Lybrand, ETD/93/B5-3000/M2/08

changes announced are behind schedule. The Commission will continue to play a monitoring role here.

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## Section 1 - Free movement of persons

### § 1 - Abolition of controls at internal frontiers

#### A. Article 7a\* of the EC Treaty

55. While the elimination of frontier controls on goods has become a reality, the same is not true for the removal of identity checks, which is behind schedule to a worrying extent.

Even the application of the Convention implementing the Schengen Agreement has not been achieved. For its part, Parliament has brought an action against the Commission under Article 175 of the EC Treaty\* to establish that it has, in violation of the Treaty, failed to act to present the proposals needed to establish free movement of persons in the internal market.

56. Once it had become clear that free movement of persons had not been fully achieved by 1 January 1993, the Commission stepped up its efforts to achieve this objective without further delay, constituting as it does an essential element in the construction of Europe.

For 1993 it approved a phased approach:

- first, the Commission, by continuing to take political initiatives, exerted steady pressure to ensure that the progress announced by the Member States for 1993 was actually achieved;
- second, it undertook to decide on measures to be taken, in particular by way of legislation, without in any way letting up on its political pressure.

57. There is one recent development likely to facilitate the action that the Commission intends to take in the second phase of its strategy: the entry into force of the Treaty on European Union provides the Commission with new opportunities, at both Community level and under Title VI of the Treaty, in fields which were previously covered by intergovernmental cooperation;

#### B. Back-up measures

58. At its meeting on 24 November 1993 the Commission adopted a new draft proposal for a decision by the Council of the European Union establishing a convention on controls on persons crossing the external frontiers of the Member States (2).

This proposal takes over the political progress made in the draft Convention which was finalized by the Member States in mid-1991 but could not be signed because of a dispute over Gibraltar. However, the draft has been adapted to take account, in particular, of the provisions of the Treaty on European Union, the European Economic Area (EEA) and Community competences.

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(2) COM(93) 684 final

59. Among the new provisions of the Treaty on European Union is Article 100c, on the basis of which the Commission has sent the Council a proposal for a Regulation determining the third countries whose nationals must be in possession of a visa when crossing the external borders of the Member States <sup>(3)</sup>.

Article 100c has been incorporated into the provisions of the EC Treaty concerning the internal market. Therefore, the conclusion must be that it is intended to contribute to achieving the free movement of persons in the internal market as provided for by Article 7a of the EC Treaty\*. This is the assumption on which the Commission has drawn up the proposal.

The proposal contains a list of more than 120 third countries whose nationals will have to have a visa. The list is the same as that agreed by the nine Member States which are signatories of the Schengen Agreement.

With regard to other third countries, the Member States will remain free to require a visa or not. The Commission proposes that this option be subject to a time-limit (the deadline proposed by the Commission is 30 June 1996, which will allow the Council to decide by qualified majority), given that the ultimate objective of Article 100c is that all third countries be put on either a positive list of countries whose nationals do not require a visa or on a negative list where they do. The diverging practices of the Member States during this transitional period concerning countries that are not on the negative list must under no circumstances lead to controls in breach of Article 7 of the EC Treaty.

60. The two above proposals provide for mutual recognition by the Member States of visas issued by each of them for crossing external frontiers. This important principle is intended, inter alia, to facilitate the completion of the internal market as regards movement of persons.

The two proposals are an integral part of an overall and consistent approach to attain the abolition of identity checks at internal frontiers; they will be followed, when the time is ripe, by further proposals from the Commission to resolve other problems in this field.

61. In order to complete the picture regarding the back-up measures essential to the removal of identity checks at internal frontiers, it should be noted that:

- the Dublin Convention of 15 June 1990 determining the Member State responsible for examining applications for asylum made in one of the Member States has already been ratified by six Member States; preparation of the implementing measures for this Convention is almost complete;
- work on the draft Convention on the European Information System (EIS) has continued. The draft must also be adapted to take account of the provisions of the Treaty on European Union.

## § 2 - Free movement of persons in the Community

### A. Right of residence

62. With regard to right of residence, there are a number of points to be made concerning 1993.

- Following the judgment of the Court of Justice of 7 July 1992 annulling Directive 90/366/EEC on the right of residence for students, on 17 May 1993 the Commission sent the Council a new proposal for a directive based on the second paragraph of Article 7 of the Treaty.\* This directive (93/96/EEC\*) was adopted by the Council on 29 October 1993.

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(3) Idem

- At the same time, the Commission is monitoring the sound application of the directives already transposed by the Member States, on the basis in particular of complaints and petitions by individuals that are referred to it. When this happens, Commission departments make contact with the authorities of the Member States and usually succeed in resolving at this stage problems of application of Community legislation without the need to initiate formal infringement proceedings.
- As for the 1990 directives, three Member States have not yet transposed them formally, and this creates a situation of legal uncertainty that is detrimental to their potential beneficiaries. The national implementing provisions (drawn up so far by nine Member States) are currently being examined to ensure that they are compatible with Community law.
- The proposals on freedom of movement, movement and residence within the Community for workers and their families <sup>(4)</sup> is currently before the Council.

## B. Diplomas and other qualifications

63. The main problems here are delays in transposing the first general system (Directive 89/48/EEC\*) - a number of Member States have, however, recently used more rapid transposition methods - and the interpretation of the new general systems (Directive 92/51/EEC\*). These latter, providing for the possibility of compensation (adaptation period, aptitude test) in cases where there are major differences in training, apply to the recognition of diplomas for professions that are not covered by the directives on recognition of work experience in craft industry or the distributive trades, or by the directives on automatic recognition of diplomas with coordination of the training given (e.g. doctors).

64. In the future, the Commission intends to pursue its policy of developing mutual confidence and improving administrative cooperation, in particular in committees and other groups of senior officials set up to apply directives or at ad hoc meetings with national authorities, with a view to the efficient and rapid exchange of information. With this in mind, and in order to be more accessible, the Commission is keen to make the *acquis communautaire* more transparent and easier to understand <sup>(5)</sup>. Lastly, it is making every effort to utilize the Court's case-law <sup>(6)</sup> to resolve problems that are not yet governed by the directives <sup>(7)</sup>.

65. With regard to legislation, the Commission attaches great importance to a draft directive on establishment of lawyers, under their home-country professional titles, which will introduce recognition for licences to practice. Recognition of this third type of qualification - the first being professional experience in the craft industry or the distributive trades, the second being diplomas - is first and foremost designed to facilitate the establishment of experienced professionals where it is necessary to have a diploma to practice the profession. The principles of this directive have been agreed by the profession (Consultative Committee of the Bars and Law Societies of the EC) and by eleven Member States. On the other hand, the idea of a regulation on the joint exercise of regulated professional activities across borders has not found a consensus among either the Member States or a large number of the professional organizations. In the meantime, the Commission plans to adopt a recommendation to the Member States which offers the professions at least a form of joint practice.

<sup>(4)</sup> COM(88) 815 final - SYN 185

<sup>(5)</sup> For example, a legislative consolidation brought together the three basic directives on the mutual recognition of diplomas in medicine and the four amending directives (Directive 93/16/EEC\*).

<sup>(6)</sup> For example, the recognition of diplomas concerning professions covered only by directives on recognition of professional experience. See Heylens (222/86), Vlassopoulou (C-340/89), Denneweyer (C-76/90), Newman (C-104/91), Kraus (C-19/92)

<sup>(7)</sup> See the answer to Written Question No 839/92 by Mr Glinne on hairdressers (OJ No C 247, 24.9.92, p. 42)

### 1. Information system on the comparability of qualifications

The information system on the comparability of vocational training qualifications between the Member States of the European Community was set up by Council Decision 85/368/EEC\*, which called on the Commission to complete work on the comparability of the qualifications of skilled workers.

This system is designed to provide a description of the practical vocational requirements imposed by each Member State for the exercise of the professions concerned and therefore to establish a suitable comparison and information system. The objective was not to harmonize legislation but instead to promote the free movement of workers in the Community by making it easier for the qualifications obtained by an individual in his home country to be accepted in another Member State.

The spirit of this exercise was confirmed by two subsequent Council Resolutions:

- Council Resolution of 18 December 1990 on the comparability of vocational training qualifications (the aim being to speed up the work undertaken and put the emphasis on the dissemination, exchange and use of the information already gathered);
- Council Resolution of 3 December 1992 on the transparency of qualifications.

These legislative tools enabled the Commission to carry out important work on comparability between 1985 and 1993. It has now almost completed its work programme: 209 professions covering almost 500 professional activities under the SEDOC classification have been examined across the following nineteen sectors of activity <sup>(8)</sup>:

<u>Sector</u>	<u>No. of professions in CJ</u>
1. Hotel and catering	8
2. Motor-vehicle repair	9
3. Construction	13
4. Electrical/electronics	10
5. Agriculture	26
6. Textile-clothing	9
7. Metalworking industry	20
8. Textile-clothing	22
9. Commerce	6
10. Clerical/administration, banking and insurance	6
11. Chemical	7
12. Tourism	5
13. Transport	9
14. Food industry	12
15. Public works	11
16. Printing/media	5
17. Wood	10
18. Iron/steel	12
19. Leather	9

In the national evaluation reports, the Member States have stressed the usefulness of work on comparability. They laid particular emphasis on the contribution to mutual recognition of qualification systems.

However, they also recalled several limits to the mechanism:

- The system takes into account only "skilled workers" whereas geographical mobility today concerns above all employees with a higher level of qualifications;
- The methodology laid down by the decision of 16 July 1985 incorporates neither skills acquired through professional experience and continuing training nor changes in job descriptions;
- The system's "output" (the description of practical professional requirements and the comparative tables of diplomas and certificates) do not fully meet the requirements expressed by workers and firms. They are not clear and are difficult to use (the description of professional requirements is considered somewhat incomplete and over-simplified);
- Thus, the documents and sources of information available to potential users (workers, firms, trainers, guidance officers, students, etc.) are rarely consulted (the only exception being the United Kingdom).

<sup>(8)</sup> The Community descriptions of these 19 sectors of activity have been published in the Official Journal

*These criticisms raise questions as to how the system could be improved. This forms part of the more general discussion in the Commission on establishing a vocational training policy that complies with the Treaty on European Union.*

### **2. National Academic Recognition Information Centres (NARIC)**

*The Community NARIC network consists of National Academic Recognition Information Centres designated by government in each EC and EFTA State and supported and coordinated by the European Commission in the framework of the ERASMUS programme for cooperation in higher education and student mobility (Council Decisions 87/327/EEC\* of 15 June 1987 and 89/663/EEC\* of 14 December 1989). The Community network of NARIC centres closely cooperates with the similar networks of the Council of Europe (NEIC) and UNESCO-CEPES (NIB).*

*The NARIC centres give advice and information concerning the academic recognition of diplomas and periods of study. This advice is provided to higher education institutions, students and their advisers, parents, teachers and respective employers.*

*Most NARICs equally provide information on matters of professional recognition and they have been nominated by their government to function as "contact points" for the Council Directive 89/48/EEC\*.*

*Next to guidance and counselling, the NARIC network also produces a series of publications and studies on higher education qualifications. The network notably provided data for the "Student Handbook on higher education in the European Community" (1990) and "A Guide to higher education systems and qualifications in the European Community" (1991). An update of this last guide extended with information on professional recognition and chapters on the EFTA countries will be published in the first half of 1994.*

### **3. Information Systems on Education and Training National Systems**

*The EURYDICE network and the CEDEFOP center have been engaged in supportive roles in the field of information systems on educational systems and policies and vocational training respectively; both rely on national agencies supporting the collection and dissemination of information at the level of Member States.*

## **Section 2 - Free movement of goods**

**66. A corollary of the free movement of goods in the Community is the absence of controls at intra-Community frontiers. A number of customs procedures relating to the movement of goods have had to be adapted or abolished to achieve this objective:**

- abolition for most purposes of internal Community transit and of the Community movement carnet;
- restriction of the Single Administrative Document (SAD) to trade with third countries;
- adaptation of the TIR, ATA and other carnets to the new conditions of free movement;
- elimination of checks rule on luggage of air and sea passengers travelling between Member States;
- checks on luggage of passengers travelling from or to third countries.

National veterinary and plant-health checks have been harmonized, thereby making it possible to eliminate frontier controls. In the case of certain sensitive goods (arms, drugs) random customs checks are carried out at the internal frontiers and, without discrimination, over the whole of Community territory.

As regards land borders, the officials responsible for checking goods (customs officials, veterinary inspectors, tax inspectors, etc.) have been withdrawn from internal frontiers. Depending on the needs of the different administrations, they have been transferred to internal offices or assigned to other tasks, or have taken early retirement.

With regard to infrastructures, the situation varies according to the geographical location of the Member States but, overall, the changes resulting from the completion of the internal market have been implemented: the barriers, equipment and signs have been taken down, customs offices at common frontiers have been closed and converted into interior offices or put to other purposes.

No major difficulties have been reported with regard to the movement of goods at internal frontiers. The few remaining difficulties are due to indirect taxation (products subject to excise duties, duty-free allowances, duty-free sales at ports and airports) or to the transitional arrangements applied to a number of agricultural products under the Act of Accession of Spain and Portugal. The Commission has used the means at its disposal to deal with these difficulties and to find acceptable solutions in close cooperation with the customs administrations of the Member States, in particular in the Customs Questions Committee (Deputies), either at regular meetings or, where it has proved necessary, at extraordinary ones.

#### Systems for statistics collection

67. Methods for compiling statistics on intra-EC trade have had to be overhauled as a result of the disappearance of customs formalities and the Single Administrative Document. In the light of this development, a new collection system called INTRASTAT has been introduced in January 1993. This system builds on the records of transactions with entities in other Member States which individual companies are required to keep under the transitional VAT system. These records are processed at national level, and findings relating to the level of intra-Community trade are forwarded to the Community's statistical services at three monthly intervals. In order to reduce any administrative burden on enterprises resulting from the new collection methods, a system of statistical thresholds has been implemented. As a result, more than 60% of intra-Community agents are excluded from the intrastat survey. In addition, a number of firms benefit from the use of simplification thresholds which entitles them to use a VAT declaration requiring less detailed information. In sum, only one third of all agents engaged in intra-Community trade are completing detailed declarations.

68. There have been some teething problems with the new collection system. The following are the principal difficulties which have been encountered in the switchover to the new system:

- The link with taxation - The fact that statistical on intra-Community transactions are extracted from tax declarations imposes some constraints on the type of detailed information which is available. These constraints relate in particular to the determination of the reference period, or the treatment of certain types of operation (e.g. contract work).
- The level of non-response by firms - It has been estimated that the level of non-response has averaged between 10 to 25% of operators in the different Member States.
- The delays in the transmission of declarations - The late publication of regulations has not always enabled enterprises to adapt their administrative organisation in time, which has led to delays in the transmission of declarations. These problems are being steadily overcome.
- The classification of goods - The level of detail of the combined nomenclature has resulted, principally for those SMEs without computer systems, in an increased complexity of declarations and a greater number of lines to be declared. This last effect has been accentuated by the absence of a threshold for each transaction.
- The treatment of the information - It has proved difficult to adapt the computer systems of national administrations sufficiently quickly as to enable the proper treatment of information. The resulting delays have not only affected data on intra-Community transactions, but have also concerned statistics on trade with third countries.

These transitional difficulties have meant that a full set of detailed results for all Member States during the first months of 1993 have only become available in September and October.

However, considerable progress has been made in getting to grips with these problems, through concerted action taken at national and Community level.

One category of action concerns the development of computerised and telematic systems to speed up the completion or processing of declarations. Within the context of the Edicom project (Electronic Data Interchange in Commerce), a greater use of state-of-the-art technologies is being promoted. Within the framework of this project, a specific programme has already been launched with a view to facilitating the establishment of statistical declarations by the enterprise. These systems are only beginning to make their presence felt, but are already proving very useful.

#### Measures to combat fraud

*The removal of controls at the internal frontiers could involve a double risk:*

- first, for the Community economy and for the citizen threatened by traffic in drugs and other sensitive products;
- second, for own resources (and hence the Community budget) from customs and tax fraud.

*The new Community context therefore requires improvements to the mechanisms for administrative cooperation and mutual assistance between the Member States and between them and the Commission.*

*In the customs field, the investigation departments of the Member States and of the Commission have become increasingly accustomed to working together and to carrying out joint investigations in third countries. With a view to developing this cooperation, in September 1993 the Commission presented an amended proposal for a Council Regulation <sup>(9)</sup> to substantially improve Regulation (EEC) No 1468/81.*

*Administrative cooperation in the field of indirect taxation is based on a number of legislative instruments: Council Regulation (EEC) No 218/92\* established, as part of the measures to abolish frontier controls, an electronic VAT Information Exchange System (VIES). This allows verification of the VAT identification numbers of economic operators and mass transfers, or consultation, of turnover data from each Member State to its partners, which constitutes an important aspect of the control mechanism and of measures to combat fraud.*

*In the field of excise duties (Directive 92/12/EEC\*), the establishment of detailed procedures for monitoring the movement of goods ensures effective administrative cooperation between the Member States and reduces the risk of fraud. In addition, Directive 77/799/EEC\*, amended by Directive 79/1070/EEC\*, provides for mutual assistance by the competent authorities of the Member States in the field of direct taxation.*

*The Commission, in conjunction with the Member States, has also examined the problem of cooperation in the fight against drugs. For example, external trade in drug precursors is now covered by a number of regulations <sup>(10)</sup>. Following their adoption, several "sensitive" third countries agreed with the Community to monitor trade in these goods in accordance with mutual cooperation arrangements.*

*However, the fight against drugs also covers fields where Community competence is still developing but where the removal of controls at the internal frontiers could have led to an increase in all types of illicit trafficking. The Member States have realized that there is a need for action at Community level and, together with the Commission, have developed a number of cooperation mechanisms in the field of the fight against drugs, in particular:*

- a customs strategy for the external frontier
- an analysis of risks;
- the organization of joint monitoring and detection exercises;
- the drawing-up of a draft intergovernmental convention covering the non-Community aspects of the customs information system (to be signed in 1994).

*Following the entry into force of the Treaty on European Union, this work has been taken over by a customs cooperation working party recently set up under the auspices of the organs under Article K.4\*.*

<sup>(9)</sup> COM(93) 350 final - SYN 450, 1 September 1993

<sup>(10)</sup> Regulation (EEC) No 3677/90 as amended by Regulations Nos 900/92 and 3769/92

### Retraining of customs agents

69. The abolition of tax frontiers and controls at the Community's internal frontiers has meant that a large number of enterprises in this sector are faced with the need to retrain their staff. In this context, the Community will not be able to take over the responsibilities of the Member States or of the profession concerned. However, in view of the exceptional nature of the situation, which is linked to the nature of the activities in question, the Commission felt that back-up measures were necessary and justified in order to facilitate the profession's adaptation to the internal market of the profession concerned.

These back-up measures comprise two elements: measures under the Structural Funds, in particular the European Social Fund and the Interreg initiative, and measures not financed by the Funds which were the subject of Council Regulation (EEC) 3904/92. Within the limit of ECU 30 million set by this Regulation, the measures supported concern the regions and enterprises most affected, but are limited to the period directly following the completion of the internal market, i.e. 1993.

## § 1. Instruments provided for by Community law for ensuring free movement of goods

### 1° Articles 30 to 36 of the EC Treaty\*

#### A. Introduction

70. Articles 30 *et seq.* prohibit quantitative restrictions on imports and exports and all measures having equivalent effect.

In accordance with the decisions of the Court of Justice and the Commission's practice, "measures having equivalent effect" comprise all forms of action by the State not covered by other specific provisions of the EC Treaty, which are capable of hindering, directly or indirectly, actually or potentially, intra-Community trade <sup>(11)</sup>.

Analysis of the Court's decisions and of the Commission's practice shows that actions by governments can be regarded as measures having restrictive effects on intra-Community trade where:

- they impose conditions only on imported products;
- they impose conditions which, while formally applicable to domestic products and those of the other Member States, *de facto* affect only imported products or make it more difficult or burdensome to import or market imported products than domestic products;
- they impose selling conditions which, while *de facto* or *de jure* applicable in the same way and without any difference at all both to domestic products and products from other Member States, go beyond the effect associated with specific rules, i.e. they are disproportionate to the legitimate objective which is worthy of protection and which they are designed to achieve.

71. The Commission ensures that Articles 30 to 36 of the EC Treaty,\* are applied consistently and in a uniform manner, thus creating clear and constructive practice.

(11) Case 8/74 Dassonville [1974] ECR 837 - 11 July 1974

In addition, the Commission favours partnership with the Member States when settling the cases submitted to it, so as to find quick solutions not requiring legal proceedings. Such partnership takes the form of "package" meetings held periodically with the Member States. As a result of this dialogue, the Member States often issue interpretative circulars or other administrative guidance to ensure immediate compliance with the Treaty rules pending formal amendment of the national rules in question.

The Commission also adopts notices. These seek to set out and elaborate the principles emerging from the Court's decisions and from the Commission's practice; they explain the implications and the rules and procedures which the Member States must incorporate in their legislation. The notices are non-standard acts intended to provide the sectors concerned with information; they constitute one of the means by which the principle of subsidiarity can be put into practice.

## **B. Abolition of border controls on goods**

72. From 1 January 1993, border controls were to be abolished under Article 7a of the EC Treaty.\* During 1992 the Commission drew the Member States' attention to the need to comply with the deadline laid down in that Article. It also undertook to examine, before that deadline passed, the border controls which it regarded as infringing Articles 30 to 36 of the EC Treaty.\*

On completion of this exercise, the Member States informed the Commission that border controls on goods had been abolished. The virtually total absence of complaints as far as goods are concerned, nearly a year after the 1 January 1993 deadline, should also be highlighted. At all events, the Commission is determined to take all appropriate measures to put an end to the infringements established.

## **C. Commercial rules and acceptance of products from other Member States**

73. Commercial rules are government measures which regulate the marketing of products on national territory, specifying in particular the conditions which such products should meet, e.g. as regards labelling, form, dimensions, weight, composition, presentation, name, identification, packaging, performance, durability, energy consumption, handling ability and adaptability to different uses.

These rules generally apply without distinction to domestic and imported products alike and are intended to achieve objectives set by the Member States themselves such as the protection of the health and lives of people and animals, environmental protection, consumer protection and fairness in commercial transactions.

As the Commission had an opportunity to explain in Directive 70/50/EEC\* of 22 December 1969, such rules constitute measures having an effect equivalent to a quantitative restriction on imports, as prohibited by Article 30 of the Treaty,\* if they have restrictive effects which exceed the legitimate effects of commercial rules. Such is the case, in particular, where the restrictive effects are disproportionate to the legitimate objective pursued, which is worthy of protection at Community level, or again where the same objective can be achieved by some other means which inhibits trade less.

The assessment of commercial rules in the light of Articles 30 *et seq.*\* led to several judgments by the Court of Justice, notably the case Rewe known under the name 'Cassis de Dijon' (12) and the judgments which followed it.

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(12) Case 120/78 [1979] ECR 649 - 20 february 1979

74. From this case-law background, the Commission distilled and clarified the principle of **mutual recognition**, which was and continues to be the basis of its action with regard to the abolition and prevention of obstacles to trade. The principle means that the Member States, when drawing up commercial rules, may not adopt an exclusively national outlook. It also means that a Member State may not, in principle, prohibit the sale on its territory of a product legally marketed in another Member State, even though that product is manufactured in accordance with technical or qualitative rules which differ from those laid down in its own laws, if the product in question meets in an appropriate and satisfactory way the legitimate objective of such rules.

In foodstuffs and industrial products, the principle of mutual recognition was applied on a wide scale by the Commission in 1992-93. The following were some key developments in these sectors:

- An Italian rule laid down that bread sold in Italy should have specific characteristics and properties. The result was that bread legally marketed in another Member State whose composition was different from that authorized by the rule could not be sold in Italy as bread. The rule was altered, through the introduction of suitable labelling, to allow such sales in future.
- Since the Court of Justice's judgment on the purity requirement for beer in Germany <sup>(13)</sup>, German legislation on beer no longer prohibits the import of beers whose composition does not meet German requirements. Nevertheless, it provided that only imported products which did not comply with German rules were to indicate their ingredients, this was not required of German beers complying with the "national recipe". According to the Commission, this requirement meant that a generic name, in this case "beer", was reserved only for those products which complied strictly with a national recipe, thus making it more difficult to sell imported beers.
- An Italian rule prohibited the additive monosodium glutamate in uncooked meat. This had the effect of preventing in particular the import of salami and raw ham containing the above substance but legally sold in the rest of the Community. In accordance with the decision of the Court, as clarified in the notice on the free movement of foodstuffs <sup>(14)</sup>, the Member States must accept foodstuffs from other Member States unless these represent a danger to the health of consumers. In this particular case, the use of the additive monosodium glutamate in uncooked meat posed no health problems.
- German rules for radio receivers specified that reception capacity must be restricted to the frequency bands reserved for public communication. This requirement constituted an infringement of Articles 30 to 36 EC\* since it resulted in preventing the marketing in Germany of radio and television sets legally sold in other Member States and having a reception capacity larger than or different to that laid down in the German rules. The requirement also obliged manufacturers to modify their receivers in order to market them in Germany.
- Businessmen are free to manufacture their products in accordance with the rules in force in the Member State of destination, which may not obstruct the import of the said products on the grounds that they do not comply with legislation in the country of manufacture. Accordingly, Italy changed its rules which subjected the import of proprietary medicinal products for veterinary use to the grant of a marketing licence by the authorities in the country of manufacture.
- Portuguese rules required that products containing vegetable oils and fats other than cocoa butter as a total or partial substitute for the latter should bear in front of their name the words "artificial chocolate". The Portuguese authorities repealed the rules objected to and adopted a Decree stipulating that the name be altered only in those cases where the product in question contains more than 5% vegetable oils and fats other than cocoa butter.
- Pasta manufacturers have developed a method which makes it possible to market fresh pasta with a use-by date of up to 120 days. In France, these new products were

(13) Case 178/84 [1987] ECR 1227 - 12 March 1987

(14) OJ No C 271 of 24 October 1989

obstructed by a rule which said that a "fresh" foodstuff lost its freshness if its shelf life exceeded 42 days. The French authorities have authorized marketing of the new pasta, since appropriate labelling informs the consumer that the pasta has been specially treated in order to remain fresh for nearly three months.

- Type-approval procedures, through the delays and extra costs which they cause, many constitute barriers to trade where they are not based on legitimate requirements. Thus, in the field of telecommunications equipment, the Spanish authorities recognized that it was not necessary to lay down such a procedure for radio communication equipment used only for reception. For such products, a simple statement of conformity issued by the manufacturer is sufficient. The Spanish authorities have already adopted a provision to the effect that a statement of conformity is equivalent to a type-approval certificate in the case of aerials for the reception of satellite broadcasts.
- Even where the approval of certain equipment constitutes a requirement that is compatible with the principle of free movement of goods, it is essential that the rules for the approval procedure allow the mutual recognition of appliances lawfully manufactured and/or marketed in another Member State. This is what the Belgian authorities did in respect of telecommunications terminal equipment: equipment which satisfies the basic requirements specific to the Belgian public telecommunications network is recognized.

These few examples show how suitable the principle of mutual recognition is for ensuring the free movement of goods and products of all sorts, in accordance with the requirements regarded as worthy of protection at Community level - evidence, if any were still needed, that the existence of a common market of twelve Member States does not result in the levelling-down which some people fear. The principle also means that the Community does not have to resort to an unwarranted degree of harmonization, thus avoiding the spectre of standardized products, especially where foodstuffs are concerned, resulting from the imposition of European standards which would have flooded the market with "Euro products" which were identical from one end of the Community to the other.

75. Much more than this, the principle of mutual recognition guarantees the survival of national diversity and the various traditions and customs still thriving in the Member States, to which citizens are particularly attached since they often regard them as an integral part of their cultural heritage. The principle of mutual recognition is therefore nothing less than a specific application of that other fundamental aspect of building the Community: the principle of subsidiarity enshrined in Article 3b of the EC Treaty\* as amended by the Treaty on European Union.

76. European consumers can also thank the principle of mutual recognition for the increase in the range of products on sale at ever-decreasing prices. Selling their products on a market which covers half a continent enables businessmen to make economies of scale and hence reduce their costs, to the greater benefit of the man in the street. Freedom of movement, as achieved through mutual recognition, attacks national rules which tie consumers to a given product e.g. by laying down a particular composition for this or that foodstuff ("recipe-laws"). Such provisions crystallize given consumer habits so as to consolidate an advantage gained by domestic industry, which then devotes itself to satisfying those habits. This type of rule, apart from arbitrarily depriving consumers of the opportunity to discover the specialities and traditional products of other Member States, whose composition differs from that laid down by the law of the importing country, prevents the interpenetration of markets - to the detriment of both business and consumers.

77. Finally, in *Keck and Mithouard* (15) the Court of Justice reaffirmed that rules laying down the conditions to which imported products must conform, such as those referred to above (see first paragraph of point B), constitute measures which infringe Article 30\* since they are not justified by a public-interest objective. The Court explained that the application to products from other Member States of national rules limiting or prohibiting certain selling methods was not such as to obstruct trade between Member States, provided that such rules apply to all operators concerned who carry out their activity on the national territory, and provided that, de jure

(15) Joined cases C-267 and C-268/91 - 24 November 1993 (not yet reported)

and *de facto*, they affect the marketing of domestic products and those from other Member States in the same way.

This position of principle was confirmed by the Court in *Hünernmund* (16).

It is too early to say now what the practical implications of this decision will be.

#### D. Geographical names and indication of origin

##### a) *Geographical names*

78. A geographical name can be used in many different ways, all of which have one thing in common, namely that the **geographical origin** figures in the product's designation. Two such instances are the designation of origin and the geographical ascription.

New light is thrown in this respect by Council Regulation (EEC) No 2081/92\* on the protection of geographical indications and designations of origin for agricultural products and foodstuffs.\*

The Regulation defines the term "designation of origin" but does not protect indications of origin; it resorts to a new concept, i.e. a "geographical indication", which it defines as the name of a region, a specific place or, in exceptional cases, a country, used to describe an agricultural product or a foodstuff, which possesses a specific quality, reputation or other characteristic attributable to that geographical origin and the production and/or processing of which take place in the defined geographical area.

In *Exportur* (17), the Court, referring to geographical names, points out that such names can enjoy a great reputation among consumers and constitute for producers established in the places to which they refer an essential means of attracting customers (last part of paragraph 28 of the judgment).

In accordance with the Court's decision and with Commission practice, names which have become generic cannot be protected under the above Regulation or under Article 36 of the EC Treaty.\*

The cases examined hitherto by the Commission, pursuant to Articles 30 and 36 of the EC Treaty\*, have been dealt with in line with this practice and this case-law. This will continue to be the case as far as the geographical names of products in sectors which have not been harmonized at Community level are concerned.

##### b) *Indication of origin*

79. Indication of origin consists in marking on the product the country in which it originates. Such an obligation constitutes a barrier to trade, if only because of the additional cost involved.

The Commission has always considered, and this has been confirmed in this by the Court (18), that a rule imposing the indication of an origin such as "Made in ..." or of some other type cannot be justified on the grounds of consumer protection, since by its very nature it is designed to enable the consumer to distinguish between domestic and imported products and may therefore encourage him to give his preference to the domestic product.

The same problem arises in connection with a rule of a State which requires the affixation of a corrective label of origin, i.e. an indication of the country of manufacture where the product

(16) Case C-292/92 - 15 December 1993 (not yet reported)

(17) Case C-3/91 ECR 5529

(18) Case 113/80 *Souvenirs of Ireland* [1981] ECR 1625 and Case 207/83 *Origin marking* [1985] ECR 1201

bears a marking (emblem, national site, etc.) which could make the consumer believe that the product is of domestic origin.

For instance, the Commission had to deal with a UK regulation, now repealed, which required products of a brand registered in the United Kingdom but which were manufactured abroad to indicate their origin. A similar case arose with an Italian regulation, which has also since been repealed, requiring importers of textile products bearing an Italian trade mark to affix a corrective label of origin. This case is particularly interesting, since an Italian firm wanting to resort to subcontracting or commission work, i.e. to have its products manufactured or processed by a firm in another Member State, could not import or reimport the product into Italy without a corrective label of origin being affixed. This could place it at a disadvantage on its own market as the result of possible consumer prejudice against foreign products. Such a regulation, it can be said, conflicts with the very foundations of the Community, since the Treaty of Rome, as amended by the Single European Act, seeks to merge national markets into a single market with all the characteristics of a domestic market. The compulsory marking of an indication of origin, apart from making it more difficult to sell in one Member State products from other Member States, has the effect of slowing down economic interpenetration in the Community by discouraging the sale of goods produced as a result of a division of labour between Member States.

The Court has none the less observed that *"if the national origin of goods brings certain qualities to the minds of consumers... the protection of consumers is sufficiently guaranteed by rules which enable the use of false indications of origin to be prohibited"* <sup>(19)</sup> (see Article 3(1), point 7, of Directive 79/112/EEC\*).

#### E. Parallel imports

80. Many believe that the expansion of imports of goods by agents who are not part of the distribution network approved by the manufacturer or by individuals constitutes an incentive to competition and to lower prices.

##### a) *Proprietary medicinal products*

81. For health reasons, each proprietary medicinal product must be controlled by the authorities before it is put on the market and throughout the course of that operation. Domestic licensing rules must not exceed, however, what is necessary to protect human health and life effectively. Thus, the authorities are not entitled to require a parallel importer to produce documents which he is unable to procure, since only the manufacturer has them, especially when the latter has already produced them to the authorities <sup>(20)</sup>.

Similarly, the mere fact that the name of the medicine imported in parallel is not identical to that of the product already authorized does not allow the supervisory authority to regard the imported product as different and hence subject to a completely new authorization procedure, since the imported product, which comes from the same manufacturer as the one already authorized, has the same therapeutic effects. This point of view has been acknowledged by the German authorities, who are content in such cases to check that the medicine imported in parallel and the one already authorized are identical as regards their therapeutic effects.

<sup>(19)</sup> Case 207/83, *Commission v United Kingdom*, [1985] ECR 1201, paragraph 2

<sup>(20)</sup> See Case 104/75 *De Peijper* [1976] ECR 613 and the Commission's interpretative communication of 6 May 1982 on the parallel imports of proprietary medicinal products whose marketing has already been authorized, OJ No C 115 of 6 May 1982

**b) Motor vehicles**

82. The liberalization of parallel imports of motor vehicles has not inconsiderable economic repercussions. It enables consumers to benefit from the price differences between Member States: growing numbers of people are buying their vehicles abroad and importing them into their State of usual residence, either themselves or through a business which does it for them. Such a practice also has a positive effect on those who do not resort to it, since vehicle manufacturers, as a result of the expansion of parallel imports, have been forced to reduce the striking differences between the prices for the same model in different Member States. Such divergences make the practice of parallel imports all the more attractive.

One must not forget that, apart from the purely economic advantages of parallel imports for private individuals, the abolition of regulatory obstacles to the registration of vehicles imported from another Member State is of practical importance for the citizen. When an individual settles in a Member State other than that of which he is a national, he generally imports his vehicle; this he must re-register locally after a certain period in which the original registration is authorized or a provisional one is issued. The European citizen will never be convinced of the reality of the internal market if re-registering his own vehicle means he has to deal with a lot of red tape, whose purpose he fails to understand. In this way too, Community law provides considerable help for the Community citizen.

As the Commission explains in its notice of 4 November 1988 <sup>(21)</sup>, a Member State may object to the type approval and registration of a vehicle previously registered and approved in another Member State, for reasons associated with the vehicle's technical characteristics, only if there is a serious risk to human health and life, which it is for the competent authorities to explain and substantiate through a quick and inexpensive procedure.

As a result of the major changes that have occurred in the Community rules on motor vehicles with the entry into force of Community type-approval for vehicles, the Commission is updating the vehicles notice; this will also make it possible to tackle new problems that have been identified through the application of Article 30\* to this sector.

While national rules, other than those on the technical characteristics of vehicles, which obstruct imports may be examined under Article 30 of the EC Treaty\* <sup>(22)</sup>, the restrictive effects of the measures in question on the free movement of goods must not be too tenuous or merely hypothetical.

The Court had a chance to reiterate this principle in its judgment of 13 October 1993 <sup>(23)</sup>, when it gave a preliminary ruling on the compatibility with Article 30 of the obligation in German law that retailers must provide information. The dispute which gave rise to this reference for a ruling was between the owner of a motorcycle shop and a customer who had refused to take possession of a motorcycle imported from France as a result of a refusal by the official German distributors to repair under guarantee motorcycles imported in parallel. The buyer claimed that the retailer had not fulfilled his duty to provide information by not drawing his attention to the behaviour of the German distributors.

In the above judgment of 13 October 1993, the Court held that Article 30\* did not clash with a ruling by a court imposing an obligation to provide information before a contract is signed on the grounds that the restrictive effects of the obligation in question are too uncertain and too indirect for the said obligation to be regarded as likely to interfere with trade between Member States.

<sup>(21)</sup> OJ No C 281 of 4 November 1988

<sup>(22)</sup> See Case C-47/88, where the Court referred, in paragraph 13 of its judgment, to the possibility of assessing the compatibility with Article 30 of certain Danish vehicle registration taxes

<sup>(23)</sup> Case C-93/92, not yet reported

## F. Obligation to use the national language

83. The Commission has always considered that imposing the use of a given language at stages prior to sale to the final consumer cannot be justified on consumer protection grounds, since this type of regulation is not necessary: businessmen, who are the only persons involved, will conduct their affairs in the languages which they know well, or in which they will be able to get the particular information they want.

When goods are sold to the final consumer, to require a particular language may also be contrary to Article 30 since such a requirement would be disproportionate.

Thus the principle of proportionality is opposed to the compulsory translation of terms and expressions which are easily understandable even though they are not in the, or one of the, official language(s) of the Member State where the goods are sold to the final consumer.

Such cases arise in particular where terms and expressions are used which are generally known to the consumer (e.g. "Made in ..."), or where the terms have as yet no equivalent in the official language(s) of the State where they are being sold, or again where the terms and expressions used on the label are easily understandable because they are similar in spelling to those in the or a language of the State in which the goods are marketed.

In *Peeters* (24), the Court of Justice confirmed that making it compulsory to use only the language of the linguistic region where the goods are marketed, without allowing for the possibility of using another language easily understood by purchasers or of ensuring that the purchaser is informed by other measures, is contrary to Article 30 of the EC Treaty\* and to Article 14 of Directive 79/112/EEC\* on the labelling, presentation and advertising of foodstuffs.

The Commission has long relied on the above principles when dealing with the complaints which it regularly receives on this subject, which principles the Member States are aware of. Thus, Germany recently amended its legislation on the labelling of foodstuffs, stating that indications in German may also be given in another easily understandable language, provided that the information to the consumer is not impaired.

Realizing the importance of this question, the Commission has adopted a communication on the use of languages in the marketing of foodstuffs (25) in which it interprets Article 30 of the EC Treaty\* and Article 14 of the abovementioned directive on the labelling, etc. of foodstuffs.

The Commission also adopted a more general Communication concerning language use in the provision of information for consumers in the Community (26). This communication surveys the existing provisions and lists a number of lines of thought which might be conducive to improving consumer information in the context of the internal market, without encroaching on Member States' competence as regards rules on the use of languages.

## G. Rules on advertising

84. National rules limiting or prohibiting certain forms of advertising or certain means of promoting sales (comparative or "knocking" advertising, advertising which emphasises temporary price reductions, door-to-door selling, sales, bargain offers, etc.) do not affect imports directly but are likely to restrict their volume since they influence the opportunities for marketing the imported products.

In *Yves Rocher* (27), the Court held that there was a conflict between Article 30 and the prohibition of price advertising in which, when the new price is highlighted, reference is made to a higher earlier price. The Court found that this prohibition was not justified on the grounds of

(24) Case C-369/89 [1991] ECR I-2971

(25) COM(93)532 final of 10 November 1993

(26) COM(93) 456 final, 10 November 1993

(27) Case C-126/91, not yet reported

consumer protection, since it would affect advertising which was not at all deceptive but which compared prices actually charged; such advertising could be very useful in helping the consumer to make his choice in full knowledge of the facts.

## H Monopolies and exclusive rights

85. Certain products can be obtained only from given sellers or categories of seller, who fulfil the statutory conditions for the exercise of the occupation in question, whose number or even geographical location is sometimes subject to the supervision of the authorities. For instance, the exclusive marketing rights which pharmacies enjoy have been described as sales monopolies by the Court of Justice (28). Such a monopoly is likely to influence the marketing opportunities for imported products and may, in some circumstances, prove to be in breach of Article 30 of the EC Treaty.\* However, the monopoly may be justified on the grounds of health protection.

A sales monopoly may also arise where the State reserves the marketing of a product for an authority, a public corporation or a private firm under the supervision of a public authority, which itself grants certain retailers the right to distribute the monopoly product.

In the light of recent Court decisions (29), the Commission is examining the compatibility with the Treaty of the current monopolies in the marketing of tobacco products in Spain, France and Italy. Several references for a preliminary ruling are currently before the Court of Justice. They concern the compatibility of the Italian tobacco monopoly with various provisions of the EC Treaty, including Article 30 in particular (30). The Commission will not fail to draw the necessary conclusions from the judgment which the Court will give in 1994.

### 2° Technical harmonization and standardization

#### A. Legislation adopted in the various sectors

##### a) *Agricultural products*

86. In the veterinary field, all the harmonization measures provided for in the White Paper programme have been adopted. The Council has asked the Commission to carry out on-the-spot checks in order to ensure:

- compliance with the Community rules as to the conditions in which products of animal origin may be produced and placed on the market;
- identical or equivalent production conditions and health and animal-health rules in third countries likely to export to the Community.

As regards plant health, measures have focused on two main objectives:

- checking that the new Community rules on producer registration, the issue of plant-health passports and inspection of plants and plant products from third countries have been properly implemented by the twelve Member States since 1 June 1993;
- obtaining information on the plant-health situation in third countries by means of fact-finding visits.

(28) See Case C-368/88 Delattre and C-60/89 Monteil [1991] ECR I-1487 and I-1547

(29) See Case C-202/88 Telecommunications terminals [1991] ECR I-1223, Case C-260/89 Elliniki Radiophonia Tileorassi [1991] I-2925, Case C-179/90 Port of Genoa [1991] ECR I-5889, Case C-18/88 RTT v GB-INNO-BM [1991] ECR I-5941 and Case C-27/92 LPO, not yet reported

(30) See Case C-387/93-1 Banchemo II

It should be stressed that the transfer of jurisdiction in these matters to Community level considerably increases the Commission's responsibilities.

### Veterinary legislation

**87. *Animal health*** - All the directives covering the veterinary inspection rules on trade and imports involving live animals have been adopted. Now that harmonization in this area has been completed, the Commission has introduced rules for the implementation of the directives and, in particular, specific conditions governing import of animals from third countries. Following the occurrence of diseases in the Community, the Commission has also had to take measures to restrict trade in and importations of livestock and livestock products, in particular with regard to foot-and-mouth disease, classical swine fever and African swine fever.

In December, on a proposal from the Commission, the Council adopted two directives amending the rules on intra-Community and third-country trade in live poultry and fresh poultrymeat in order to bring them into line with recently adopted legislation on the control of poultry diseases in the Community, in particular as regards Newcastle disease and avian influenza.

**88. *Public health*** - The harmonized rules on the health requirements with regard to the placing on the market and importation of livestock products (meat, meat-based products, minced meat, milk and dairy products and fishery products), have been implemented in the Member States.

**89. *Inspection*** - In accordance with the rules provided for in the White Paper, veterinary inspections at the Community's internal frontiers have been abolished. Inspections at the Community's external frontiers have been harmonized and strengthened so as to ensure compliance with public and animal health standards in the Member States. The Council has also, on a proposal from the Commission, adopted a proposal amending the rules on the financing of health inspections and checks in respect of fresh meat and poultrymeat, and introducing a fee for the inspection of such products imported from third countries.

**90. *Protection of animals*** - In December, on a proposal from the Commission, the Council adopted a directive on the protection of animals at slaughter. It replaces Community rules dating from 1974 and extends the scope of Community measures in this area by incorporating the provisions of the Council of Europe convention on the subject and by introducing rules on species not previously covered and on the slaughter of animals in special cases, such as for disease control purposes.

**91. *Scientific cooperation*** - Scientific cooperation with experts from the Member States is organized by the Commission within the framework of the Scientific Veterinary Committee set up on 30 July 1981. The Committee comprises three sections: animal health, public health and animal welfare. Its members are leading scientific figures. In addition to plenary sessions, numerous sub-groups meet frequently at the Commission's request.

The Commission carries out consultation of the profession via the Advisory Veterinary Committee, whose membership comprises representatives of agricultural producers, agricultural cooperatives, industry, commerce, workers' and consumers' organizations and the veterinary profession.

The legislative function in the veterinary and zootechnical sector is carried out within the framework of the Standing Veterinary Committee and the Standing Committee on Zootechnics. These committees meet at least five days a month and operate in the same way as regulatory committees.

**92. *Transposition*** - As regards the transposition of directives, the Member States were confronted - particularly in 1992 - with a very considerable amount of extra work. Even in Member States where special measures were taken to speed up the transposition work, there were major delays. Also, the complex nature of the measures to be incorporated (for example, the reorganization of veterinary and plant-health checks) considerably increased the delays which were already occurring before the end of 1992.

In the veterinary field it should be noted that there are marked differences between the Member States in the extent to which measures have been incorporated into national law. Three Member States often criticized for their slow transposition have made a major effort. Belgium, Luxembourg and Italy (thanks to the adoption by the Italian Parliament of a law permitting accelerated transposition specifically for directives relating to the single market) have succeeded in attaining a level of transposition similar to that of Denmark and the United Kingdom.

The directives concerned are, of course, those abolishing physical checks at internal frontiers and reorganizing checks, both at internal level and as regards imports from third countries, which are essential for the realization of the single market in the veterinary field. The transposition of these directives involves not only often complex legislative work <sup>(31)</sup> but also requires a complete restructuring of veterinary checks with regard to procedures, staffing levels and infrastructure.

Although formal transposition of the directives is still in progress in three Member States (France, Ireland and, on a few points of detail, the Netherlands), all the Member States have apparently taken all the practical measures necessary to ensure the proper functioning of the single market in this area, where the Commission has received very few complaints.

As regards the other veterinary directives it should be noted, in particular, that there have been considerable delays in the transposition by Ireland and the Netherlands of those relating to artificial insemination and reproduction. Having received no notification of transposition measures in respect of these directives, the Commission referred the matter to the Court, which censured the two Member States <sup>(32)</sup>.

#### Plant-health legislation

**93. Pesticides** - The Community regime, adopted under the White Paper programme, for the authorization of plant protection products, came into force in July 1993. The first stage of the ten-year collaborative programme between the Commission and Member States for the re-evaluation of existing active substances incorporated in plant protection products, provided for under this regime and for which detailed implementing rules were laid down by the Commission in December 1992, became operational on 1 August 1993. As an example of subsidiarity, the regime provides for Member States to authorise individual preparations under harmonised rules. Proposals for detailed uniform principles to be applied by Member States in evaluating these preparations were submitted to the Council in April 1993.

As a further step in the Commission's programme for the control of pesticide residues in agricultural products, the Council adopted two proposals fixing Community maximum residue levels in a wide range of commodities to assure their free circulation as well as a high level of consumer protection.

**94. Organic farming** - The new Community regime regulating organic farming in the Community came into force on 1 January 1993. Transitional arrangements have been adopted during 1993 to facilitate imports of such products from third countries offering satisfactory arrangements prior to the possible establishment of full equivalency with Community provisions.

Implementing measures were adopted at the beginning of the year to define certain outstanding technical provisions relating to organic production, necessary for the introduction of the regime in Member States. Further refinements were adopted during the year in the light of early experience of its operation.

<sup>(31)</sup> The Netherlands, for example, have had to amend and adopt 15 legislative acts in order to incorporate into national law Directive 90/675/EEC\* laying down the principles governing the organization of veterinary checks on products entering the Community from third countries

<sup>(32)</sup> The Court censured Ireland on 17 November 1992 for the non-transposition of Directive 87/328/EEC\* and the Netherlands on 2 August 1993 for the non-transposition of Directives 87/328/EEC\*, 88/661/EEC\*, 89/361/EEC\*, 90/118/EEC\* and 90/119/EEC\*. It is also due to give a ruling shortly on the non-transposition by Ireland of Directives 88/407/EEC\*, 88/661/EEC\*, 89/361/EEC\*, 90/118/EEC\*, 90/119/EEC\* and 90/120/EEC\*

**95. *Plant Health*** - After a transition period following the abolition of internal frontier controls on 1 January 1993, during which intra-Community trade continued on the basis of phytosanitary certificates with strengthened controls by Member States at destination, the new plant health regime, adapted fully to the requirements of the internal market concept, came into force throughout the Community on 1 June 1993.

A number of detailed application measures were adopted by the Commission during the year to facilitate the uniform implementation of the regime by Member States. These included detailed rules for movements of certain plants through or within a protected zone, and the specification of certain plants for consumption (potatoes and citrus-fruit), the producers of which or the warehouses should be registered.

The Commission also adopted a large number of derogation decisions to facilitate imports of certain plants and plant products into the Community from certain third countries. For the most part, these were adaptations of previous derogations, granted under the former plant health regime, made necessary by the requirements of the new legislation and the concept of the internal market.

**96. *Seeds and Propagating material*** - This field has been characterised by a high degree of harmonization for many years, thanks to Community legislative activity since the 1960's. Despite this, certain adaptations to the requirements of the single market concept, and other improvements have become necessary. Thus, during 1993 the Commission took measures to improve the regime related to the free movement of seeds of agricultural, vegetable and forestry crops satisfying the Community quality requirements essentially established by the early legislation. These included an acceleration of the procedure by which new varieties could be included in the Community common catalogue and benefit from free circulation within the Community.

The White Paper envisaged the extension of Community legislation to propagating material of fruit and ornamental plants to take account of recent technical and commercial developments in these fields. The relevant framework measures were adopted by the Council over 1991/1992 and during 1993 the Commission has adopted a first set of eleven implementing measures defining the quality - principally relating to plant health and genetic identity - of the material to be marketed within the Community.

**97. *Animal Nutrition*** - Similarly to the seeds and propagating material sector, animal nutrition legislation needed little adaptation under the White Paper programme. However, more recent technical and commercial developments have rendered necessary certain up-dating and improvements, which the Commission has actively addressed during 1993.

Thus, the Council adopted in September a directive establishing specific rules on feedingstuffs for particular nutritional purposes, commonly referred to as "dietetic feedingstuffs" and Directive 93/113/CEE\* setting up an interim regime for new categories of feed additives (enzymes and micro-organisms), pending amendments of the basic legislation in Directive 70/524/EEC\* to accommodate these categories on a permanent basis.

Experience of existing regimes has also shown the need to strengthen Community provisions in certain respects and the Commission has made proposals accordingly. On the one hand, it has proposed a revision of certain basic concepts of Directive 70/524/EEC\* concerning feedingstuffs additives, in particular the introduction of brand-specific authorization for antibiotics, growth promoters, coccidiostats and other medicinal additives. On the other, it has made proposals governing the organization of inspections of feedingstuffs by Member States. These seek to establish common rules and procedures for inspections carried out at external borders and at different stages of internal Community trade as well as improved co-operation between Member States, sanctions and a mechanism for the settlement of disputes.

**98. *Scientific cooperation*** - The scientific co-operation with experts of Member States is organised essentially through seven regulatory committees covering the different sectors of activity (33).

(33) i.e. Standing Committee for Seeds and Propagating Materials for Agriculture, Horticulture and Forestry, Standing Committee for Plant Health, Standing Committee for Feedingstuffs, Standing Committee on Organic Farming,

Apart from their legislative functions, these committees, particularly through their numerous dependent committees of experts and working groups, assure regular and intensive exchange of scientific and support of the development and application of Community legislation in these highly technical fields. For example, the Standing Committee for Seeds and Propagating Materials for Agriculture, Horticulture and Forestry oversees an annual Community programme of comparative trials for seeds and propagating material of the main agricultural plant species, conducted throughout the Community and visited during the growing season by the competent experts of Member States to harmonise technical methods of inspection used in Member States and to compare propagating material produced in the Community with those produced in third countries. A similar programme is developing for the sectors of fruit and ornamental plants, now subject to Community legislation.

Another form of scientific co-operation in the fields of animal feedingstuffs and pesticides is through the work of the Scientific Committees for Animal Nutrition and Pesticides respectively. These Committees, consisting of highly qualified scientists from Member States, give independent advice to the Commission in these fields on particular scientific and technical problems which in general may arise from the work of the abovementioned committees of experts of Member States.

99. *Transposition* - In the plant-health sector, there are few problems regarding the Community directives due to be incorporated into national law by 1 January 1993.

The directives on protection measures against the introduction into the Community of organisms harmful to plants and plant products and against their propagation within the Community were due to be incorporated into national law by 1 June 1993. So far, seven Member States (Denmark, Spain, Ireland, Italy, Luxembourg, the Netherlands and the United Kingdom) have notified transposition measures.

The Commission is following closely the transposition of these directives, since they constitute the legal basis for the reform of controls in the plant-health sector. Since the expiry of the transposition deadline it has therefore initiated infringement proceedings under Article 169 of the EC Treaty\* against all the Member States which have still not taken the necessary action.

#### b) *Foodstuffs*

100. The completion of the White Paper programme and the follow-up to the Sutherland Report constitute the framework for activities in the foodstuffs sector. Thus, during 1993, the Council adopted Regulation (EEC) No 315/93\* on contaminants in food, Directive 93/5/EEC\* on scientific cooperation, Directive 93/43/EEC\* on food hygiene, Directive 93/99/EEC\* on additional measures concerning the official control of foodstuffs, and Directive 93/77/EEC\* consolidating the Community rules on fruit juices. As far as food additives are concerned, the Council reached common positions on three Commission proposals, relating to colourings, sweeteners, and amendments to the framework directive (Directive 89/107/EEC\*) (34). The Commission adopted Directive 93/102/EEC\* amending Annexes I and II to Directive 79/112/EEC\* on the labelling of foodstuffs, Directive 93/45/EEC\* on the manufacture of nectars and five directives concerning materials and articles coming into contact with foodstuffs. It also put forward a proposal for a Regulation laying down a Community procedure for the approval of flavouring substances (35).

The Commission is also assisting the Member States in monitoring operation of the single market and in incorporating Community directives into national law. To that end, the second Community control programme, applicable in 1994 and aimed at coordinating public

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Standing Committee for Propagating Materials and Plants of Fruit Genera and Species, Standing Committee for Propagating Materials and Ornamental Plants, Ad hoc Committee on Cholera established by Regulation (EEC) 3185/91\*

(34) COM(92) 252; COM(93) 153

(35) COM(93) 609 final

controls, will shortly be introduced by the Commission on the basis of Directive 89/397/EEC\* on the official control of foodstuffs.

**101.** The interpretative Commission communication concerning the use of languages in the marketing of foodstuffs, adopted by the Commission on 10 November 1993 <sup>(36)</sup>, is intended to assist Member States in determining the linguistic requirements for economic operators and in assessing the concept of a language easily understood by purchasers as referred to in Article 14 of Directive 79/112/EEC\* on the labelling of foodstuffs.

**102.** The Commission, in accordance with the conclusions of the Sutherland Report, wishes to improve the coherence and transparency of rules on foodstuffs. It plans to present in mid-1994 a Green Paper on foodstuffs regulations, which would possibly be followed by a draft general directive.

**103.** At the Edinburgh Summit it was agreed that the "vertical" harmonization directives (on preserves, sugar, honey, coffee extracts, fruit juices, cocoa and chocolate, preserved milk and mineral waters), which were regarded as excessively detailed, should be rationalized so as to take into account only the essential requirements which products must satisfy in order to be able to move freely in the Community. The Commission is undertaking consultations and drafting proposals which are due to be presented to the Council at the beginning of 1994.

The Summit also agreed that it was not necessary to continue preparing a number of drafts harmonizing technical standards, particularly with regard to dietary foodstuffs. Accordingly, the Commission is currently preparing a proposal amending Directive 89/398/EEC\* on foodstuffs intended for particular nutritional uses.

**104.** The Commission has introduced a procedure for scientific cooperation with the Member States under Directive 93/5/EEC.\* This takes the form of a scientific partnership between the national institutes and the Scientific Committee for Food, centred on a pilot project on flavourings. The scientific support of the Member States should enable the foundations for Community rules in this area to be laid quickly.

**c) *Mechanical and electrical engineering, pressure vessels, medical equipment and measuring instruments***

**105.** Activities relating to the implementation and application of the directives covering these sectors were stepped up in 1993. For example, the Commission initiated a system for the exchange of experience between the certification bodies designated by the Member States for the implementation of the directives.

Another activity connected with implementation has been the distribution of implementation guides. These have included one for Directive 89/336/EEC\* on electromagnetic compatibility, available at the workshop organized by the Commission in October 1993, and another for Directive 89/392/EEC\* on machinery, distributed in June. In the medical field, the Commission has drawn up a guide on the operation of the system for the notification of equipment malfunctions, etc. <sup>(37)</sup>. Similar activities are in progress in the field of metrology through contributions to "Welmec" (Western European Legal Metrology Cooperation).

In addition, following the Sutherland Report, consultations have been started in each sector with experts in the Member States with a view to determining the needs and possible procedures for cooperation between the authorities responsible for market supervision.

**106.** The Commission is also continuing its activity aimed at ensuring the effective and correct transposition of the directives.

<sup>(36)</sup> COM(93) 532 final of 10 November 1993

<sup>(37)</sup> Directive 90/385/EEC\* on active implantable medical devices and Directive 93/42/EEC\* on medical devices

107. Also in 1993, a problem regarding the free movement of aerosol dispensers containing certain inflammable gases which had been the subject of a safeguard clause was resolved. The Commission, having judged that the clause was justified, took the measures provided for in Directive 75/324/EEC\* in order to amend the directive.

108. Legislative activity was continued and resulted in:

- the adoption by the Council of:
  - Directive 93/42/EEC\* concerning medical devices
  - Directive 93/44/EEC\* amending the directive on machinery;
- the adoption by the Commission of:
  - a proposal for a directive concerning pressure equipment <sup>(38)</sup>
  - a proposal for a directive on articles of precious metal <sup>(39)</sup>.

**d) Construction and construction products**

109. The year 1993 marked a crucial stage in the implementation of Directive 89/106/EEC\* on construction products.

In July the Standing Committee on Construction delivered a favourable opinion on the English versions of the six interpretative documents.

The documents form a link between the six essential requirements relating to construction works and technical specifications, i.e. the harmonized European standards and European technical approvals. Their adoption opens the way for the completion of the standardization programme for construction products. It will also facilitate the task of determining the choice of certification of conformity procedure for products and product groups.

At present, the directive has been incorporated into national law by ten Member States and the legislative procedure is nearing completion in the last two. The Member States' legislative texts are currently being examined.

The effective implementation of the directive, i.e. the placing on the market of construction products bearing the CE mark, will depend on the availability of harmonized technical specifications (European standards or technical approvals) and on the decision regarding the choice of conformity certification procedure.

**e) Motor vehicles**

110. The completion of the single market in this field involves the progressive replacement of a body of detailed technical rules, intended for the safety of users and third parties and for the protection of the environment in each Member State, by a single body of rules for the whole Community. This technical harmonization is in addition to the harmonization of administrative procedures undertaken through the introduction of a single system of type approval for vehicles, which will eventually replace all the existing national systems.

Technical harmonization, which began in 1970 with the adoption of the first specific directives (on noise levels and exhaust gases), was completed for private cars through the adoption, in June 1992, of the last three of the forty-five directives laying down comprehensive rules on vehicle design.

These rules, introduced progressively into the various national procedures, made it possible for a single EEC type-approval procedure to enter into force on 1 January 1993, in accordance with Directive 70/156/EEC\* as amended by Directive 92/53/EEC\*. EEC type approval is to finally replace the national procedures on 1 January 1996, and a group of representatives from

<sup>(38)</sup> OJ No C 246, 9.9.1993

<sup>(39)</sup> COM(93) 322 final

the competent authorities in the Member States and interested parties is responsible for providing a regular update on difficulties encountered during the current transitional phase.

The Commission will report in 1994 on the implementation of EEC type approval and propose any necessary improvements prompted by the conclusions of its report. It will also say what the prospects are for extending the system to vehicles other than private cars, this being an area where a special effort is currently being made.

111. At the same time as the above work, the Commission needs to amend the specific directives in order to keep pace with technological developments, particularly as regards emission reduction and the improvement of passive and active safety. It is also making sure that technical rules which may serve as a basis for the implementation of national measures other than type approval and registration do not create distortions which negate the benefit to the Community of the harmonization of technical and administrative rules.

Similar steps were taken with regard to two or three-wheel vehicles, drawing on the lessons learnt through the legislative work on cars and heavy vehicles. Directive 92/61/EEC\*, which introduces EEC type approval of two or three-wheel motor vehicles, is based on requirements due to be specified in twelve new directives, of which ten have since been adopted and one has reached the stage of a Council common position. The last proposal for a directive was adopted by the Commission on 30 November 1993<sup>(40)</sup>. EEC type approval of two or three-wheel motor vehicles is due to be introduced to replace the existing national procedures by 1 January 1997.

With regard to agricultural tractors, where EEC type approval has been operational since 1 January 1990, further work is needed in order to extend the scope of the approval so as to cover the majority of such vehicles and, to that end, to amend the technical rules already adopted, and also to increase the transparency of the Community rules.

In order for the three type-approval procedures to function smoothly, the Commission must ensure that they are properly implemented and avoid discrepancies by instigating cooperation between all those involved in their implementation: the authorities responsible for awarding type approvals, approved testing laboratories and decentralized authorities issuing registrations. Besides meetings of groups of experts and committees, the establishment of a computerized communications network will have a significant role to play.

#### *f) Pharmaceuticals*

112. The technical requirements regarding the testing and manufacture of medicinal products for human and veterinary use have been completely harmonized since 1993, as have the rules on labelling, advertising, wholesale distribution, issue on medical prescription and the transparency of national measures fixing prices and the level of reimbursement for medicinal products. An unofficial seven-volume consolidated version of these provisions has been prepared for some 2 000 European pharmaceutical firms and distributed by the Office for Official Publications under the title "Regulations governing medicinal products in the European Community".

113. In order to enable pharmaceutical firms to gain access more quickly to the single market, in June and July 1993 the Council adopted Regulation (EEC) No 2309/93\* and Directives 93/39/EEC\*, 93/40/EEC\* and 93/41/EEC\* on the future system of authorization for placement on the market and the establishment of a European Agency for the Evaluation of Medicinal Products. The new system for authorization for placement on the market is scheduled to commence operation on 1 January 1995.

Thus, from 1995, firms will have the choice between:

- a centralized procedure culminating in a single authorization for the whole European Community, reserved for certain new medicinal products and compulsory for biotechnology;

<sup>(40)</sup> COM(93) 494 final of 30 November 1993

- a decentralized procedure intended for the majority of medicinal products, based on mutual recognition of national authorizations and, in the event of disputes, binding Community arbitration.

In order to make the new system work, a European Agency for the Evaluation of Medicinal Products is being set up, comprising committees receiving technical and administrative support from a secretariat and substantial scientific support from the competent authorities in the Member States. Opinions delivered by the Agency to be enforceable by the Commission.

### **g) Chemical products**

114. The Commission's legislative work programme for dangerous substances and preparations and for fertilisers consists of harmonization measures to ensure a maximum of free circulation within the internal market.

**The harmonization measures on dangerous substances and preparations take the form either of limitations on marketing and use or rules of the classification, packaging and labelling of preparations.**

- Directive 67/548/EEC, as amended for the 7th time by Directive 92/32/EEC\* and Directive 88/379/EEC\* establishes common rules for the classification, packaging and labelling of dangerous substances and preparations. These rules, which have been progressively refined over twenty-five years, have also served as the model for similar legislation in many non-EC countries. Since 1981, the same directive also establishes a common system for the notification of new chemicals prior to their introduction onto the Community market. Under these harmonized procedures, manufacturers/importers need only notify in one Member State in order to have access to the entire Community market.
- Directive 76/769/EEC\*, as amended, provides a Community framework for limiting the marketing and use of certain dangerous chemicals. However, Community action or initiatives in this area are usually a posteriori responses to proposals from Member States and as notified under 83/189/EEC\*. This rather ad-hoc, reactive, approach to control measures will be improved following the entry into force of Council Regulation 793/93/EEC\*, which provides a Community framework for a systematic evaluation of all existing chemicals on the Community market.
- With regard to limitations on marketing and use there were three proposals to amend directive 76/769/EEC\* introducing new substances with the appropriate limitations into Annex I to this directive before the Council in 1993 (41). All three await an opinion of the European Parliament. Preparatory work has continued on one draft proposal to amend Directive 76/769/EEC\* (42). Discussions with Member States experts were pursued on the question of asbestos.
- With regard to dangerous preparations the services of the Commission are now beginning to re-examine Directive 88/379/EEC\* on the approximation of the laws, regulations and administrative provisions of the Member States relating to the classification, labelling and packaging of dangerous preparations. With the aim of ensuring a high level of protection for the environment the proposed directive will introduce a harmonized approach within the Communities to the marketing of preparations which have dangerous properties for the environment.
- With regard to fertilizers, the Commission has revised, restructured and complemented Annex I of Directive 76/116/EEC\* (43) in order to introduce new types of fertilizers meriting the label "EEC fertilizers". At the same time, the analytical method to be used for the control of "trace fertilizers" has been published (Directive 93/1/EEC\*).

(41) The 12th (PBBE's), the 13th (Cresote/solvents/CMT), the 14th (Nickel) and the 15th (flammable aerosols)

(42) The draft 15th Amendment (flammable aerosols) and the draft 16th Amendment (HCE)

(43) The Commission has adopted a proposal codifying Directive 76/116/EEC\*, as modified (see SEC(91) 1858 final)

- One group of products which have until now, not been covered by specific Community legislation is biocides, such as wood treatment products, fungicides, anti-fouling paints, disinfectants and so on. On 27 July 1993, the Commission put forward a proposal for a Council directive on the authorization of biocidal products (44).

115. Community legislation dealing with chemical products is based on the principle that it is the national authorities in the Member States which are the interface with industry, the Commission's role being to coordinate the position of the Member States and to oversee the continued evolution of the legislation in the light of scientific and technical progress and to introduce Community legislation only in order to assure the free circulation of goods under the criteria of highest possible protection of health and environment.

All Member States are full and active participants in the Community legislation dealing with chemicals, and problems relating to the transposition of Community legislation into national law are the exception. A more significant problem with the legislation is that of ensuring that sufficient resources are dedicated to control and compliance: the problem is compounded in those Member States where the regional governments have responsibility for effecting such controls and where the priorities may vary considerably between different regions. The Commission is actively working with the Member States to improve control and compliance programmes and, where appropriate, to co-ordinate concerted control activities.

#### *h) Toys*

116. As regards Directive 88/378/EEC\* on the safety of toys, the situation is altogether positive: all the Member States have incorporated the directive into national law and in only one case has the Commission had to initiate non-compliance proceedings.

Although it was among the first directives to be adopted under the new approach, its implementation has not given rise to major problems, so it can justifiably be said that it has achieved its aim as regards both the free movement of products and the market control machinery which it has introduced.

With regard to that machinery, during the period 1990-93 the safeguard clause was used eighty-five times. The Commission departments considered that almost 90% of cases were justified and informed the other Member States immediately. It was mainly imports from third countries (in Asia) which were concerned.

#### *i) Textiles*

117. As regards textiles (Directives 71/307/EEC\* and 72/276/EEC\*), all the Member States now have legal instruments designed to facilitate free movement.

It should be noted that the general situation remains satisfactory, even if certain Member States' legal instruments still need to be brought into line in order to ensure that the textile products available on the Community market comply with the directive.

In accordance with the transparency criterion, the Commission has also started the work needed in order to produce consolidated versions of the directives on textile products and the methods for their analysis.

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(44) COM(93) 351 final (OJ C 239 of 3.9.93)

*j) Cosmetics*

118. As regards the incorporation into national law of Directive 76/768/EEC\* relating to cosmetic products, although this is an old directive which has been regularly amended to take account of technical advances, the situation is not entirely satisfactory.

Some Member States' legislation still contains market control measures which are incompatible with it. Consequently, the Commission has initiated several infringement proceedings for non-compliance <sup>(45)</sup>.

The problems have arisen owing to the technical nature of the transposition of the directive and, more particular, the specific nature of the field which it harmonizes.

There are, however, other factors which make the cosmetics directive a disputed instrument from the point of view of transposition. These include the changes made in the light of technical advances and the amendments which the directive has undergone. This has resulted in the scattering of the subject over more than twenty Community texts. In order to resolve this problem, the Commission departments, at the indication of the Edinburgh European Council, commenced work in early 1993 on a consolidated version of Directive 76/768/EEC\*.

In order to achieve this objective, during 1993 the Council adopted several directives designed to protect consumers and effectively place the single market at their service. Further directives are in the course of being adopted or prepared.

119. The Council also adopted Directive 93/35/EEC\* of 14 June 1993, amending Directive 76/768/EEC\* for the sixth time. This is a major amendment which, among other things, introduces the following innovations:

- compilation by the Commission of an indicative inventory of ingredients employed in cosmetic products;
- the requirement for the function of the product and the name of the ingredients used to be marked on the packaging or, if this is not possible, enclosed with the product;
- the requirement for manufacturers and importers to keep accessible to the supervisory authorities concerned information on the identity, quality, safety for human health and the effects claimed for cosmetic products;
- a ban on testing on animals after 1 January 1998.

*k) Terminal equipment*

120. In the field of telecommunications equipment, on 29 October 1993 the Council adopted Directive 93/97/EEC\* supplementing Directive 91/263/EEC\* in respect of satellite earth station equipment. Identical certification procedures will therefore be used for satellite earth station equipment and telecommunications terminal equipment.

The terminal equipment directive was also amended by Directive 93/68/EEC\* harmonizing Community marking under the new approach; the CE mark used in Directive 91/263/EEC\* is now identical to that prescribed by the other directives, and the means of identification of the notified body involved in the certification procedure is now a number assigned by the Commission.

121. Although measures were due to be taken by 6 November 1992, four Member States have still not notified any text incorporating Directive 91/263/EEC\* on terminal equipment into national law. This situation is harmful to economic operators, among other things because the procedures for testing the conformity of terminal equipment and for awarding CE marking have not been introduced into national legislation in the countries concerned. The monitoring of transposition in accordance with the texts notified by the other Member States has revealed

<sup>(45)</sup> In this connection, France was censured by the Court of Justice for inadequate transposition of the Directive, in a judgment dated 5 May 1993 - Case C-246/91 Commission v France [1993] ECR I-2289

discrepancies resulting not only from the complexity of the text but also variations in interpretation. The Commission departments are working together with the Member States with a view to harmonizing effectively the measures to be implemented. The Commission is initiating infringement proceedings in those cases in which no measures have been notified or in the event of non-conformity of the measures taken by the Member States.

#### *l) Recreational craft*

122. The Economic and Social Committee having delivered a favourable opinion and Parliament having approved the text at first reading on 18 November 1992, the Council reached a common position on the Commission proposal for a Council directive on the approximation of the laws, regulations and administrative provisions of the Member States relating to recreational craft <sup>(46)</sup>.

#### *m) Energy efficiency*

123. Commission activity forms part of two programmes, one on energy saving (SAVE) and the other on alternative sources of energy (ALTENER).

A first series of measures concerns the establishment of technical specifications for products in order to promote energy efficiency and environmental protection. These measures have included the adoption of Directive 92/42/EEC on efficiency requirements for new hot-water boilers fired with liquid or gaseous fuels. This directive has not been incorporated satisfactorily into national law; there have been delays in most Member States owing to the introduction by the directive of the concept of efficiency at part load, which did not previously apply in the Member States. Further proposals are being prepared regarding refrigerators, air turbines and bio-fuels.

A second series of measures concerns comprehensive information for consumers on the energy consumption of products in order to encourage energy savings. The Council adopted a framework directive on the labelling of household appliances (Directive 92/75/EEC\*). This is currently being incorporated into national law; a number of Member States considered that this could be achieved only through implementation measures which have not yet been adopted. The Commission disputes this interpretation and has therefore initiated infringement proceedings against the Member States in question. Implementation measures are currently being prepared in accordance with the procedures established by the framework directive; the first Commission implementing directive will be on efficiency standards for refrigerators.

### **B. Standardization policy**

124. Standardization remains an important aspect of Community policy for the development and functioning of the internal market, and this has been reflected in the issue of new mandates and an emphasis on the following up of current standardization work undertaken in response to Community initiatives. So far, some 150 mandates have been drawn up under the various policies related to the internal market, of which some 20 were considered in 1993. As a result, the European Committee for Standardization (CEN) is currently undertaking over 3000 standardization work items related to New Approach Directives and other policies related to the internal market such as public procurement; the European Committee for Electro-technical Standardization (CENELEC) and the European Telecommunications Standards Institute (ETSI) are undertaking about 100 items related to the internal market. Transposition into national standards will follow their agreement in the European body. Substantial programmes of standardization have been presented during the year, in areas related to New Approach Direc-

<sup>(46)</sup> OJ No C 123, 15.5.1992

tives, and in areas relevant to public procurement such as the oil and gas industries; these programmes form a valuable tool for the promotion of coherence and the setting of priorities. Standardization work is not a rapid process, and a period of some five years is anticipated before completion of substantial parts of the programmes; however, further measures have been taken, particularly relating to the improvement of efficiency and the delivery of standards.

In certain areas of Community policy, such as air traffic control and defence procurement, it has become evident that it is necessary to take account of technical specifications drawn up by other bodies. In particular, mandates have been drawn up for standardization activities in these areas, inviting the European standards organizations to work in conjunction with NATO and with Eurocontrol.

**125.** Progress was made on the approval of the second modification to Directive 83/189/EEC\*; the impact of this modification for standardization is that it will include a change to the information procedure for national standardization activities that will make procedures more efficient and less bureaucratic.

Following the addition of ETSI to the annex of Directive 83/189/EEC\*, and in order to complete the recognition of ETSI as an European standardization body within the European standardization system, the Commission has formally requested the Member States to notify the national standards organizations which will carry out the national level work in ETSI standardization.

**126.** The 1992 Council Resolution on the role of standardization in the European economy (47), encourages the further use of European standards as an instrument of European integration and as a basis for the support of legislation, and calls for reference to standards to be used, where appropriate, in future Community legislation. Following this Resolution, opportunities for the broader use of standardization were considered, covering the use of standardization in support of Community policies under Article 118 A of the Community Treaty\*, dealing with health and safety at the work place, and Article 130 R\*, covering environmental measures, and Title XII of the Treaty on European Union concerning the development of trans-European networks.

**127.** To further these objectives, whether inside or outside the Community, and in order to facilitate trade, the Community has encouraged the work of the third country unit of CEN in providing information and ensuring the availability of European standards to third country users.

Negotiating directives were approved in September 1992, authorising the Commission to negotiate agreements with third countries on the mutual recognition of tests, marks and certificates of conformity. Exploratory talks with several countries have started. Since the principle of mutual recognition of conformity assessment goes above and beyond the Community's obligations under the GATT agreement on Technical Barriers to Trade, the negotiating directives specify that countries with whom the Community might conclude a mutual recognition agreement should be signatories to the GATT Agreement. In parallel, the Commission has been authorized to negotiate agreements with third countries in the more specific field of the mutual recognition of good laboratory practices.

Technical assistance in the fields of standardization, certification, methodology and quality assurance is also provided by the Commission to third countries. The services of third country unit of CEN are used in carrying out such technical assistance projects. The improvement of the technical competence of third countries in these fields should enable the establishment of Mutual Recognition Agreements with such countries to become a feasible option in the future.

**128.** Efforts to assist small and medium enterprises have been concentrated on providing a high level of information and assistance through the network of European Information Centres and defining the particular difficulties likely to be faced by the smaller economic operator.

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(47) OJ C 173 of 9.7.92

129. Support through standardization for the objectives of opening up public procurement contracts to competition has become of increasing importance, with the approach to completion of the programme of directives in this area, and a number of mandates have been issued relating to this field of Community activity, for example in railways, electrical power generation, and oil gas exploration and production.

130. A report to the Commission, the Council and the Parliament, on the development of European standardization, and particularly its wider use in support of Community policy, is under preparation.

### C. Quality, certification, marking and conformity policy

131. As part of the process of implementing the Community's technical legislation (in particular the "new approach" directives) and to facilitate the free movement of goods generally in accordance with the principles developed by the Court of Justice in *Cassis de Dijon* (48) and subsequent judgments, a certification policy has been put in place alongside standardization policy. This has had the effect of enhancing the overall consistency of conformity assessment, both between the various sectoral directives and in those areas where statutory and private systems coexist. As a result, operators are beginning to perceive the internal market as a unified economic area in which a product can be freely placed on the market under cover of a single certificate.

The Community is thus establishing, within the legislative framework, common principles and implementing rules for the certification procedures laid down in the directives, for the choice and notification of the bodies appointed by the Member States to implement those procedures and for the conditions in which the common CE conformity mark is to be affixed.

In the unregulated sectors, the Community has begun putting into place a European infrastructure with the aim of ensuring transparency equivalent to that achieved by the directives, in particular by promoting the same technical instruments.

132. These different developments are enabling the Community as a whole to establish a consistent, unified policy also as regards relations with non-member countries. Exploratory talks are currently being held with the Community's main partners to see what scope there is for signing mutual recognition agreements, thereby extending the logic of the single market beyond the confines of the EC.

133. The policy described above is first and foremost a programme of practical and technical measures designed to promote transparency at Community level and facilitate the steps to be taken by operators in order to gain access to the market. For over two years, work at the Commission has been moving towards a more ambitious policy which, while strengthening the cohesion of the internal market, will provide a genuine springboard for European businesses, enabling them to develop their activities from a stronger competitive base.

The aim is to evolve a genuine quality policy for the Community through a two-pronged approach:

- improving the quality culture of economic operators, *inter alia* through promotion activities;
- redirecting the various activities of public authorities and private services in the quality field towards a common goal under a programme bringing together all the necessary tools (finance, budget, infrastructure, etc).

(48) Case 120/78 [1979] ECR 649 - 20.2.79

### 3° Prevention and control procedures

#### A. Prevention of new obstacles

134. In the agricultural sector, the infringement proceedings initiated in 1991-92 for failure to comply with Article 8 of Directive 83/189/EEC\* laying down a procedure for the provision of information in the field of technical standards and regulations have had a positive impact on the Member States, which have become more aware of the need to apply the notification procedure more strictly and to submit all draft measures containing technical rules to the Commission before they are adopted.

As a result, the number of notifications has risen considerably, those Member States which had previously violated the directive having acquired the habit of systematically notifying any draft that falls within the ambit of this instrument. As a consequence, the number of infringement proceedings initiated fell sharply in 1993, providing tangible proof that the directive is being much better applied by Member States. Furthermore, most Member States demonstrated a conciliatory attitude, deferring to the Commission's views once infringement proceedings were initiated.

135. In other product areas too, the information procedure introduced by Directive 83/189/EEC\*, as amended by Directive 88/182/EEC\*, continues to prove its worth a basic instrument for the exchange of information and the prevention of barriers to trade.

Year	Notifications	Comments		Detailed opinions		Intention to propose	
		MS	COM	MS	COM	Art. 9(2)	Art. 9(2a)s
1990	386	224	172	104	168	14	5
1991	435	167	176	119	139	47	7
1992	362	184	165	66	121	19	25
1993*	385	104	80	64	88	4	5

\* The figures for 1993 are subject to amendment until March 1994

The statistics in the above table below show a marked increase in the total number of notifications between 1990 and 1991, followed by a decline in 1992.

The trend did not continue in 1993, when there was a slight rise. The stabilization of Member States' individual regulatory activity can be accounted for by their involvement in preparing for the completion of the single market and by the single market process itself, which makes for a harmonized approach in strategic areas.

However, certain problems came to light in the course of 1990 and 1991, and these prompted the Commission to send the Council on 27 November 1992 a proposal for a Directive amending for the second time Directive 83/189/EEC\* (49). The aim of the proposal is to extend and spell out more clearly the scope of the obligation to notify (inclusion of "other requirements" imposed on a product after it has been placed on the market, and inclusion of voluntary agreements, tax incentives and financial measures in the definition of de facto technical regulations), clarify certain rules of procedure (request for application of the emergency procedure), and increase the scope for applying standstill periods (adoption of national measures to be suspended indefinitely once the Council has reached a common position).

On 11 November 1993 the Council adopted a common position on the proposed directive (50), which is due to enter into force in July 1995. The common position is along the same lines as the Commission's initial proposal, with a few changes (e.g. a different definition of other requirements and shorter status quo deadlines).

(49) COM(92) 491 final; OJ No C 340, 23.12.92

(50) Sent to Parliament on 13 December 1993

## B. Exchange of information

136. Under Article 100b\* of the Treaty, the Commission drew up, in conjunction with each Member State, an inventory of the barriers that were still preventing completion of the area without internal frontiers.

The findings and operational conclusions of the exercise were set out in a communication to the Council and Parliament (51). Two main findings can be underscored:

- there remained a small number of barriers to the free movement of goods, for which it was difficult to determine whether an infringement of Article 30\* was involved or whether harmonization measures were really necessary at Community level;
- the contributions received from Member States were uneven and sketchy, and did not provide a basis for the Commission to propose that the Council declare specific national rules to be equivalent.

137. These two conclusions, together with completion of nearly all the work under the 1985 White Paper and elimination of controls at the Community's internal borders on 1 January 1993, prompted the Commission to envisage arrangements for dealing swiftly, effectively, transparently and consistently with cases in which a Member State refused to recognize that the national rules of another Member State were equivalent to its own.

The Commission therefore recently sent the Council and Parliament a proposal for a Decision establishing a procedure for the exchange of information (between the Member States and with the Commission) on all cases where a Member State takes steps to prevent, on grounds of non-conformity with its own (non-harmonized) national rules, the free movement of goods produced and/or marketed in another Member State (52).

## C. Early-warning procedures

138. In its December 1992 communication on the follow-up to the Sutherland report, the Commission undertook to draw up a communication on the procedures for dealing effectively with urgent problems. The communication was adopted by the Commission in December 1993 (53). It describes the machinery in place in the following areas: consumer products, foodstuffs, medicinal products, medical appliances, radiological emergencies, veterinary and plant-health controls, and the radioactive contamination of food and feedingstuffs.

The Commission concludes that the procedures examined generally fulfil their main objective, namely, the rapid transmission of data between Member States should a serious and immediate risk be detected. Evaluation of the various individual procedures has nevertheless induced it to envisage possible improvements to some of the systems in force, for example speeding up transmission of information; tightening up conditions for using the procedure, limiting it to genuinely urgent cases; greater precision in information to be supplied by national authorities; and more uniform use of early-warning systems by the Member States. The latter have been called on to contribute actively to discussions which the Commission intends to hold on the topic with a view to reaching concrete conclusions and proposing an overall improvement of the systems where necessary.

(51) COM(93) 669 final, 12 December 1993

(52) Proposal for a European Parliament and Council Decision establishing a procedure for the exchange of information on national measures derogating from the principle of the free movement of goods within the Community (COM(93) 670 final - COD 489, 15 December 1993)

(53) COM(93) 430 final, 16 December 1993

#### 4° Exceptions to freedom of movement

##### A. Article 36\* of the EC Treaty

**139.** A national rule that is held to be incompatible with Article 30\* of the EC Treaty may be justified for reasons to do with one of the legitimate objectives listed in Article 36\*. The measure must, however, be necessary and not excessive with respect to the legitimate objective pursued.

The Court of Justice confirmed this settled case-law in two recent decisions:

- in a judgment delivered on 25 May 1993 <sup>(54)</sup>, it deemed incompatible with Articles 30\* and 36\* of the EC Treaty the imposition of systematic checks on consignments of imported fish duly accompanied by a health certificate drawn up by the Member State of dispatch;
- in a judgment handed down on 8 June 1993 <sup>(55)</sup>, the Court held a Member State to be in breach of Articles 30 and 36\* for requiring that imported sterile medical accessories be subjected to tests or laboratory examinations that had already been carried out in the Member State of origin and the results of which could be communicated to the authorities of the Member State of destination.

##### B. Article 100a(4)\* of the EC Treaty

**140.** Relying on this provision two Member States have sought to exclude the application of Directive 76/769/EEC\* (approximation of measures relating to restrictions on marketing and use of certain dangerous substances) as regards the substance PCP (see Directive 91/173/EEC\*) and to maintain in force their own national laws. The Commission has issued a decision to one of those countries, Germany, confirming that it may continue to apply its national laws. France has commenced proceedings for annulment of that decision.

##### C. Article 115\* of the EC Treaty

**141.** In the past, authorizations granted under Article 115\* have allowed Member States to restrict or monitor indirect imports from other Member States, where such restrictions were necessary to give effect to a particular national import regime, and to avoid disruption of the Member State market for the product concerned. Under strict conditions, recourse to Article 115\* has therefore been used as a fall-back in cases where the common import regime had yet to be finalised. However, Article 7 A\* has required the dismantling of internal frontier controls and thereby implied the disappearance of the infrastructure which had traditionally been used to enforce Article 115\* measures.

In the light of this development, the Commission and the Member States began work at an early stage to curtail the use of Article 115\* and to press for the removal of remaining differences between national import regimes which are the root cause of Article 115\* measures. On the basis of stricter rules for the granting of Article 115\* authorizations laid down in Commission Decision 87/433\*, the Commission has ensured the gradual phasing-out of Article 115\* measures. The successful application of this strategy meant that the practice of using Article 115\* to protect separate national import regimes had come to an end by the time that physical frontier checks were abolished. The only Article 115\* measures which remained in

<sup>(54)</sup> Case C-228/91 Commission v Italy, not yet reported

<sup>(55)</sup> Case C-373/92 Commission v Belgium, not yet reported

force after 1 January 1993 were the authorizations granted to France and the United-Kingdom to restrict the entry onto their markets of bananas from non-traditional sources. These authorizations were granted as an exceptional interim measure to ensure stability on the banana markets of these Member States before the entry into force of the Common Market Organization for Bananas on 1 July 1993. Following the expiry of these measures, no further authorizations for surveillance or restrictions measures under Article 115\* have been granted.

## 5° General product safety

142. Directive 92/59/EEC\* on general product safety is intended to build up confidence on all sides in the satisfactory operation of the single market. To that end, it adopts a two-pronged (i.e. both preventive and corrective) approach.

On the one hand, it imposes on all economic operators a general safety obligation, i.e. an obligation to put on the market only products that are safe. This is supplemented by other obligations, including that of providing some form of product monitoring. The directive also imposes obligations on the Member States and outlines the means they must have at their disposal to ensure compliance with the general safety obligation.

On the other hand, it sets up a system for dealing with emergencies caused by products that constitute hazards to users. It incorporates therein the procedure provided for by Decision 89/45/EEC\* on a Community system for the rapid exchange of information on dangers arising from the use of consumer products, adding to it a Community procedure whereby the Commission can, under certain conditions, take emergency measures itself.

The directive applies to consumer products which are not covered by specific safety rules laid down in other Community instruments.

The directive does not come into effect until 29 June 1994. In view of the abolition of controls at the Community's internal frontiers, Council Decision 93/580/EEC of 25 October 1993 concerning the institution of a Community system for the exchange of information in respect of certain products which may jeopardize consumers' health or safety brought forward the introduction of the administrative mechanism for the safeguard clause provided for in Article 7.

## § 2. Special free movement arrangements

### A. Agriculture

#### a) *Creation of new market organizations for agricultural products*

143. The work programme to bring agricultural legislation into line with the requirements of the free movement of agricultural products was completed in good time, barring a few exceptions.

- Leaving aside a few amendments of minor importance, mention should first of all be made of the adoption of Regulation (EEC) No 404/93\* on the common organization of the market in bananas. This came into force on 1 July 1993.

The market organization provides for common quality and marketing standards, a scheme for encouraging the creation of producer organizations and aid to offset any loss of income sustained by producers. There are also arrangements for awarding a single premium to producers withdrawing completely from banana-growing. The arrangements for trade with non-member countries provide for the import free of duty of 857 700 tonnes of bananas from traditional ACP supplier countries and a quota of

2 million tonnes for imports from non-traditional ACP supplier countries and other non-member countries.

The new rules are being challenged through various actions brought before the Court of Justice and a request for examination by a GATT panel. An application for interim measures to stop the rules coming into force on 1 July 1993 was rejected by the Court, which has yet to give judgment on the substance of the case.

- The situation is similar for potatoes. Because of the existence of national market organizations, quantitative restrictions and barriers to the free movement of potatoes within the Community are still possible. To rule out any such risks, the Commission has put forward a proposal for a Council Regulation on the common organization of the market in potatoes <sup>(56)</sup>, which contains measures to encourage the creation of producer groupings and makes arrangements for trade with non-member countries. The proposal is making only slow headway in the Council owing to the wide gulf between those delegations opposed to the idea of regulating the sector and those which feel, on the contrary, that the Commission's proposal does not go far enough.
- Other agricultural products of lesser importance (honey, chicory, pineapples, coffee, non-wine vinegar, cork) are not yet covered by a common market organization. Steps have therefore been taken to bring them within the scope of Council Regulation (EEC) No 827/68\* on the common organization of the market in certain products listed in Annex II to the Treaty ("remnants" regulation). However, the Commission proposal <sup>(57)</sup> has met with reservations on the part of several delegations and is deadlocked at the Council.
- The existence of national market organizations in alcohol of agricultural origin (which is still the subject of a monopoly in one Member State) and of price differentials between Member States means that there is a risk that the free movement of this product might be hindered. Neither can the possibility of countervailing charges being applied under Article 46\* of the EC Treaty be ruled out.

The Commission is preparing a fresh proposal for creating a common organization of the market in this sector to replace the proposal that has been completely deadlocked for years at the Council.

#### *b) Transitional arrangements under the Act of Accession of Spain and Portugal*

144. In the Commission's view, completion of the single market by 1 January 1993 with regard to Spain and Portugal too was an overriding political commitment that could not be deferred until the date laid down by the Act of Accession for elimination of the accession compensatory amounts [31 December 1995, or even later in certain cases].

There were only two possible solutions for achieving the 1993 objective:

- retaining the arrangements and shifting controls from the border to the place of origin or the place of destination; or
- scrapping the arrangements before the date laid down in the Act of Accession.

Since the first solution did not make it possible to establish a system of control that would normally ensure individual supervision of movements, the Council, acting on Commission proposals, opted for the second solution for most of the existing arrangements, namely:

- abolition of the accession compensatory amounts for sugar and olive oil in trade with Spain and for rice, dried milk and olive oil in trade with Portugal (this was achieved through the early alignment of prices);
- introduction of a compensatory mechanism for fruit and vegetables;
- abolition of customs duties in intra-Community trade and of the fixed components protecting the cereals and rice processing industry in Spain and Portugal.

<sup>(56)</sup> COM(92) 185 final

<sup>(57)</sup> COM(91) 328 final

Termination of the arrangements has not, however, done away with the fundamental guarantees which the Act of Accession afforded to the producers concerned: major compensatory measures have been envisaged for them, namely aid for sugarbeet and sugar cane producers and the Spanish sugar industry; restructuring measures to assist French, Greek and Italian fruit and vegetable growers; a whole series of measures to assist Portuguese agriculture, in particular the extension and increase of existing aid to cereals producers and the introduction of a similar aid scheme for rice growers. In addition, an allowance for definitive withdrawal from milk production has been introduced, along with more favourable conditions for the suckler cow premium, aid to producer organizations and assistance for the agri-foodstuffs industry.

The second option was taken to a small extent in dealing with supplementary trade mechanisms (STMs). The quantitative nature of these mechanisms did not make it possible to evaluate precisely how much compensation had to be envisaged but did not involve any risk to the Community budget. The solution chosen was therefore to eliminate STMs wherever possible<sup>(58)</sup>, while retaining them, as part of a system of control applied chiefly at the place of destination, for a very few products, namely:

- as regards STMs protecting the Spanish market, live cattle, and milk in small packages;
- as regards STMs protecting the Portuguese market, live cattle, oranges and apples;
- as regards the market of the Ten, a very small number of fruit and vegetable products which are particularly sensitive (tomatoes, artichokes, melons, apricots, peaches, strawberries).

#### c) *Agri-monetary measures*

145. The Council introduced a new agri-monetary system with effect from 1 January 1993 (see Regulation (EEC) No 3818/92\*). Under this regime, monetary differences between the conversion rates used in connection with the common agricultural policy and real daily exchange rates are kept within a narrow enough band to avoid market distortions between Member States and therefore the need for monetary compensatory amounts (MCAs). MCAs were abolished from 1 January 1993, thereby eliminating the need for MCA-related border checks.

The principles established by the Council for the new regime are as follows:

- the ecu, to which a corrective factor is temporarily applied, is to be used as the unit of account for setting agricultural prices and amounts;
- conversions between the ecu thus adjusted and national currencies are to be made at rates close to reality:
  - the corrected central rate for the fixed currencies maintaining a 2.25% fluctuation margin between them within the European Monetary System;
  - a corrected rate close to the average market rate for the other, floating, currencies;
- falls in farm incomes following agri-monetary movements can be offset through increases in certain fixed amounts in ecus or through degressive aid.

Regulation (EEC) No 1068/93\* implementing the new agri-monetary system lays down the rules for adjusting agricultural conversion rates in line with movements in real exchange rates. It determines for each specific transaction the operative events for agricultural conversion rates and the conditions for advanced fixing of these rates.

146. Following the decision taken on 2 August 1993 to widen the fluctuation margins within the European Monetary System to 15%, all currencies are now following the rules laid down for floating currencies. This aggravates the risk of both upward and downward agri-monetary

<sup>(58)</sup> Particularly in the case of the STM protecting Spain for cereals, beef and veal and several milk products, the STM protecting Portugal for cereals, rice, milk products, beef and veal, pigmeat and poultrymeat, processed fruit and vegetables, flowers and ornamental plants, and the STM protecting the market of the Ten for several fruits and vegetables and for wine

fluctuations in all Community currencies. To mitigate some of the undesirable effects on the common agricultural policy, the Council decided to amend the basic agri-monetary regulation in order in particular to make agricultural conversion rates more stable and overcome certain difficulties.

During the period leading up to the Council decision, the Commission froze the automatic adjustment of agricultural conversion rates as a precautionary measure, while managing the system in such a way as to avoid deflections of trade.

## **B. Controls on transport**

**147. All controls on means of road and river transport at the Community's internal frontiers were abolished by Regulation (EEC) No 4060/89\* of 21 December 1989 and Regulation (EEC) No 3356/91\* of 7 November 1991 amending it. All these measures came into effect on 1 January 1992.**

Regulation (EEC) No 3912/92\* of 17 December 1992 extended these measures to means of transport registered or put into circulation in non-member countries, albeit without expressly shifting these controls to the Community's external frontiers, a measure that does not appear to pose any practical problems.

## **C. Dual-use goods and technologies**

**148. Export controls on intra-Community trade in dual-use goods and technologies pose a problem for the completion of the internal market. The Commission addressed this problem in a Communication<sup>(59)</sup> in January 1992 in which, amongst other points, it stated that such items should move as freely between Member States as they do within each of them. The Council subsequently established an Ad-hoc High Level Working Party to examine the problem.**

The Commission presented a proposal for a Council Regulation on 31 August 1992<sup>(60)</sup>. The objective of this proposal is to create the conditions under which intra-Community controls could be eliminated, by ensuring that all Member States apply effective export controls, based on common standards. In parallel to the examination of the proposal in the Ad-hoc High Level Working Party, work on the content of common lists of goods, destinations and criteria was pursued in the framework of informal inter-governmental meetings.

Much progress was made in both fora. However, despite intensive work, two deadlines were missed (31 December 1992 and 31 March 1993) and no agreement was reached during the course of the year. Discussions will continue in both fora with a view to reaching an agreement in the near future.

**149. In parallel to the work on Community legislation, it has been decided to develop a number of strengthening measures to improve national control systems, by means of workshops, training programmes and exchanges of officials. In addition, measures will be taken to reinforce administrative co-operation between national administrations, in particular, through the development of information networks.**

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<sup>(59)</sup> SEC(92) 85 final

<sup>(60)</sup> COM(92) 317 final

#### D. Cultural goods

150. In the light of the abolition of checks at internal frontiers it was felt that measures should be introduced to ensure that exports of cultural goods were subject to uniform controls at the Community's external borders and that goods qualifying for protection under Article 36 of the Treaty\* did not, as a result of a deflection of trade, leave the Community via a Member State other than that of provenance.

On 9 December 1992, following a proposal from the Commission, the Council adopted Regulation (EEC) No 3911/92 on the export of cultural goods,\* which provides in particular for the introduction of a system of export licences for certain categories of cultural goods specified in the Annex to the Regulation. On 30 March 1993, in order to ensure that the export licences provided for by the Regulation were uniform, the Commission adopted Regulation (EEC) No 752/93 laying down provisions for the implementation of the Council Regulation,\* namely rules governing the drawing-up, issuing and use of the form concerned and a specimen to which the licence is required to conform. Since the entry into force of both the Council Regulation and its implementing rules was tied to the adoption of the directive on the return of cultural objects unlawfully removed from the territory of a Member State both measures entered into force on 1 April 1993.

The purpose of these arrangements is to reconcile the principle of free movement of cultural goods in the single market and legitimate protection of national treasures. It is a particularly good example of the balance which must be achieved in order to ensure the success of the single market: abolition of checks at internal borders.

151. Directive 93/7/EEC on the return of cultural objects,\* which was adopted in March 1993, did not have to be transposed until December 1993 (March 1994 in the case of three Member States). Thus far it has not been transposed anywhere.

#### E. Weapons

152. Smooth implementation, throughout the European Community, of the procedures provided for in Directive 91/477/EEC\* with regard to the exchange of information between Member States presupposes a number of contacts between national administrations. The need for such contacts is now even greater, given that some Member States have transposed the directive and others have not. The situation gives rise to some confusion and a risk of misunderstanding between Member States, thereby causing difficulties for traders.

Aware of the importance of such administrative cooperation during this transitional period the Commission has convened meetings of experts to help solve the practical problems that have come to light and, thereby, foster better implementation of the directive.

#### F. Radioactive substances

153. Because of the health hazard posed by the ionizing radiation they emit, radioactive substances are subject to strict controls by the competent national authorities in accordance with Council Directive 80/836/Euratom\* laying down basic safety standards of radiation protection.

Until 31 December 1992, checks carried out by certain Member States at internal frontiers provided the competent radiation-protection authorities with information on radioactive substances entering their territory. In order to maintain the existing high level of control and protection without border checks the Council adopted Regulation (Euratom) No 1493/93\* requiring consignees of radioactive substances to provide the holder with a written declaration

of compliance with the national legislation applicable whenever they intend to receive radioactive substances from another Member State.

The Regulation applies to all radioactive substances, including radioactive waste. The latter is subject to the specific provisions of Directive 92/3/Euratom,\* which entered into force on 1 January 1994. As from that date the system of prior declarations provided for in the Regulation ceased to apply to shipments of radioactive waste.

## G. Explosives

154. The single market in explosives for civil uses will be completed on 1 January 1995 with the entry into force of Directive 93/15/EEC on the harmonization of the provisions relating to the placing on the market and supervision of explosives for civil uses.\*

The directive contains two types of provisions:

- those covering the placing on the market of explosives on the basis of the new approach. In September 1993 work began at the European Committee for Standardization (CEN) with a view to drawing up European standards which could be used as a basis for presuming conformity to essential requirements;
- arrangements governing the supervision of transfers of explosives and ammunition in the Community. The controls concerned are no longer performed as internal frontier controls but solely as part of the normal control procedures applied in a non-discriminatory fashion throughout the territory of the Community. In order to transfer explosives the consignee must obtain approval from the recipient competent authority. The latter verifies that the consignee is legally authorized to acquire explosives and that he is in possession of the necessary licences or authorizations. The person responsible for the transfer must notify the competent authorities of the transit Member State or Member States of movements of explosives through this or these States, whose approval must be obtained. Specific provisions governing the transfer of explosives are also provided for in the directive where special security requirements must be satisfied.

Although the directive will not be applicable in its entirety until 1 January 1995 Member States were required to bring into force the provisions necessary to comply with the rules on transfers of explosives by 30 September 1993. Transposition of the rules on transfers is, however, behind schedule in every Member State except Luxembourg. This is due above all to the fact that several ministries or levels of public administration have to take part in drawing up the transposition rules concerned.

## H. Drugs and precursors

155. The purpose of Council Directive 92/109/EEC on the manufacture and the placing on the market of certain substances used in the illicit manufacture of narcotic drugs and psychotropic substances\* is to establish intra-Community monitoring of those substances and, thereby, prevent their illicit diversion.

The directive, which was adopted in the run-up to the completion of the single market, is aimed at preventing any distortion of competition in lawful trade and ensuring uniform application of the rules laid down; it supplements Regulation (EEC) No 3677/90\* on control of international trade in precursors.

It lays down provisions on the monitoring of the placing on the market of scheduled substances, in particular on the documentation required in the case of transactions leading to the placing on the market of such substances, and on their marking. It also contains provisions on administrative cooperation between the competent authorities of each Member State.

The deadline for transposition was 1 July 1993. Thus far only Denmark and the United Kingdom have notified national implementing provisions. The consequences of the delay in transposition in the other Member States could well be serious. If Member State A makes placing on the market subject to possession of a licence and if, because of a delay in transposition in Member State B, licences are not available in the latter, Member State A will be unable to accept the placing on the market of products from Member State B.

## I. Shipments of waste

156. On 1 February 1993 the Council adopted Regulation (EEC) No 259/93 on the supervision and control of shipments of waste within, into and out of the European Community.\* The Regulation will apply with effect from 6 May 1994 and will replace Directive 84/631/EEC\* on the transfrontier shipment of hazardous waste.

It is above all the provisions of the Regulation which govern the transfer of waste within the Community that concern the operation of the single market. The fundamental issue is whether waste should be regarded as a product falling within the scope of Article 30 of the EC Treaty,\* and can therefore move freely, or whether it should be subject to special rules.

In this connection the Court of Justice of the European Communities has ruled that certain limitations of the principle of the free movement of goods are justified in the light of mandatory requirements related to the protection of the environment, provided that such limitations are proportionate to those requirements. It did not, however, give a ruling on the status of the waste <sup>(61)</sup>.

The Court later settled a point on which both the legal literature and practitioners had been divided when it stated categorically that *'waste, including non-recyclable and unusable waste, must be regarded as a product whose free movement, pursuant to Article 30 of the EC Treaty,\* should not in principle be prevented'*. The Court may well have fuelled further debate on this point, however, by stating that *'waste was a product of a special nature'* <sup>(62)</sup>.

The Commission's position in the light of those judgments is thus that, because of the effects it may have on human health and on the environment, waste cannot be regarded as a normal product and must, therefore, be the subject of rules at Community level.

The Regulation introduces a system of supervision and control of shipments of waste in order to ensure protection of the environment and human health. Under that system, shipments of waste are subject to prior notification to the competent authorities (of dispatch, transit and destination) and must be accompanied by a consignment note.

157. Generally speaking, shipments of non-hazardous waste for recovery do not fall within the scope of the control procedures applicable under the regulation. Such waste, known as "green" waste, is not, in principle, harmful to the environment and can move freely within the single market.

The Regulation also implements the basic principles of the Community's commercial policy on the management of waste, namely proximity, priority for recovery and self-sufficiency at Community and national levels. It is on the basis of these criteria, among others, that the competent authorities of the Member States may object to a given shipment of waste. The self-sufficiency principle does not apply in the case of waste for recovery. The arrangements applicable to recoverable waste are less strict than those governing waste for disposal, but such shipments too may be objected to, in particular on the basis of national plans for the management of waste.

<sup>(61)</sup> Case C-302/86

<sup>(62)</sup> Case C-2/90 Commission v Belgium - 9.7.92

Some time ago some producers of waste began calling it "by-products" or "secondary raw materials" in an attempt to evade the rules governing waste. This illustrates how difficult it is to define waste and draw a line between waste and products and, by the same token, determine at what stage in the recovery process waste ceases to be waste and becomes a product again.

**The fundamental issue is whether the rules governing waste cause undue problems to anyone engaged in recovery, and thereby prevent optimum operation of the market in recoverable waste.**

Everyone agrees that the disposal of waste must be subject to certain standards and controls designed to protect the environment and human health. Industry is, however, reluctant to extend those standards and controls to recoverable waste, which, hazardous or not, should be allowed to move freely. Even accepting the view - something the Commission has not so far done - that recoverable waste should be allowed to move freely will not resolve the question of defining it (producers will tend to classify all their waste as 'recoverable'), and the Community's current legislative framework, which regulates all types of waste, including recoverable, will have to be reviewed.

In the light of the controversy resulting from attempts to reconcile the principle of free movement of goods within the single market and the special arrangements for waste, the Commission has, in the context of the technical committee on the adjustment of the directives dealing with waste, set up a working group which, on the basis of a detailed study carried out at the Commission's request, will look into any aspect of the definition of waste which is raised by industry or by a Member State.

**158. The management of packaging and packaging waste plays a central role in the tension that exists between the respective requirements of free movement of goods and environmental protection, making this a priority issue as far as the Community is concerned.**

Accordingly, on 15 July 1992, in view of the mismatch between, on the one hand, Directive 85/339/EEC of 27 June 1985 on containers of liquids for human consumption\* and, on the other, the major but often divergent developments which measures adopted by Member States in this context represent, the Commission presented to the Council a proposal for a directive on packaging and packaging waste<sup>(63)</sup>. This is based mainly on quantified objectives - to be attained over a given period - in terms of recovery of packaging waste and minimization of its final disposal.

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## **Section 3 - Free movement of services and freedom of establishment**

### **§ 1 - Principle of freedom of movement**

**159. As far as services are concerned, the principle of freedom of movement in the Community makes it possible to widen the range of choice available to users, both consumers and firms, who can thus have access to less costly services which are more efficient or better suited to their needs. The principle has an effect, therefore, on competition and competitiveness. It also makes it possible to widen the range of opportunity in professional activity and thus has an effect on employment.**

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(63) COM(92) 278 final and COM(93) 416 final

The dynamic interpretation of Article 59 of the Treaty\* by the Court of Justice, in particular in *Säger v Denneweyer* (64), no longer allows a Member State to prohibit the supply, on its territory, of a service legally supplied in another Member State, on the grounds that service conditions there are different. Only imperative reasons of public interest can justify an exception to the principle of the free movement of services, and the exception must not exceed what is necessary to attain the desired objective.

It is a matter of urgency that the principles emerging from the Court's decisions should be consolidated by a general, coherent policy for their application, based on subsidiarity and thus avoiding all laborious harmonization of the various sectors involved except where required by imperative needs of public interest. The Commission is conscious of this and is also endeavouring to make businessmen, and the national authorities most directly concerned, more aware of the rights embodied in the Treaty's provisions on services.

For the Community to progress further towards fuller integration of the single market, efforts will have to focus in particular on the links between freedom to provide services and freedom of establishment.

## § 2 - Case-law

160. The principle of the free movement of services is solidly entrenched in many innovative decisions of the Court of Justice. As to establishment, in 1993 the Court, in *Kraus/Land Baden-Württemberg* (65), examined the conformity with Articles 48 and 52 of the Treaty\* of a provision of national law governing the use of foreign university titles. The Court found that such titles, even if they do not determine access to a regulated profession, can constitute an advantage for both joining and prospering in a profession.

The Court then ruled that these provisions did not admit of any national measure concerning the conditions of use of a supplementary university title acquired in another Member State which, even if applicable without discrimination as to nationality, is likely to impede or make less attractive the exercise by Community citizens of the fundamental liberties guaranteed by the Treaty.

The judgment therefore extends the scope of Articles 48 and 52\* to national measures which are applied without discrimination (66). Such measures will comply with Community law only if they pursue a legitimate objective which is compatible with the Treaty and are warranted for imperative reasons of public interest, and on condition that the rules in question will guarantee achievement of the objective pursued and do not exceed what is necessary for reaching that objective. In the case in point, the Court said that the objective of the German measure, i.e. to protect the public against the fraudulent use of foreign university titles, was legitimate.

It is for the national court to decide how to apply the principle of proportionality. However, the Court has taken the line that to satisfy the requirements of Community law, the sole objective of any prior authorization procedure must be to verify whether the title has been issued in a regular manner, is easily accessible and does not depend on the payment of excessive administrative charges. It must be possible to appeal to the courts against any decision to refuse authorization, and the interested party must be able to find out the reasons for such a decision. Lastly, the sanctions provided for in the event of non-compliance with the authorization procedure must not be disproportionate to the seriousness of the infringement.

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(64) Case C-76/90 [1991] ECR I-4221

(65) Case C-19/92 - 31.3.92

(66) It should be pointed out that the Court, in particular in *Säger v Denneweyer*, had already extended the prohibition on restrictions on the freedom to provide services to measures applicable without distinction

### § 3 - Regulated areas

#### A. Financial services

161. It is still a little early to draw conclusions about the functioning of the single market in financial services, since the basic directives, i.e. the "third generation" insurance directives and the one on investment services, will come into force only in 1994 and 1995 respectively.

162. By contrast, the second Banking Directive has been in force since 1 January 1993. Its application has not caused any major difficulties for the Member States, except that some provisions, in particular those on the supply of services, are giving rise to certain problems of interpretation which the Commission and the Member States are trying to clear up in the Working Group on the Interpretation of the Banking Directives (WPIBD), whose operation is described below, and in the Banking Advisory Committee.

The second Directive has been transposed by all Member States except Spain. The failure by one or more Member States to transpose the directive introducing a single passport is particularly damaging since the directives introduce innovative machinery for notification and cooperation which can only function effectively between countries that have fulfilled their obligations as regards transposition, and since their provisions do not have direct effect. At all events, it would be difficult for the companies concerned to make use of such direct effect, since it would have to be invoked against another Member State, which would be a rather novel situation. Lastly, the credit institutions of a country which has not transposed are penalized by comparison with their competitors since they cannot benefit from the provisions of the directive and can act only on the basis of the Treaty.

To remedy this situation, which constitutes an infringement, the Treaty provides the Commission with a range of instruments (Article 169\*). In addition, the Commission takes the view that a Member State which has not transposed the second Banking Directive may not, as a host country, obstruct the exercise of the freedom of establishment and the freedom to provide services by credit institutions established in a Member State which has transposed it.

163. The Commission has examined a great many cases of non-compliance either with the Treaty (Articles 52 and 59\*) or the directives, the most significant of which is probably the SIM, set up following the adoption by Italy of a law requiring Community intermediaries in securities to establish a company under Italian law prior to carrying on business in Italy, thus making it impossible to supply services and set up as a branch.

The Commission is monitoring the situation itself, as far as its powers and resources allow, but it relies considerably on economic agents themselves to draw its attention to any cases where the mechanisms introduced are not working. It is also determined to monitor actively and systematically the transposition of the directives in the financial sector, without however ruling out the possibility of assistance from outside experts in this task.

##### a) *Credit institutions*

164. As far as credit institutions are concerned, the Community's objectives are identical to those for the single market in the services sector generally, namely the completion of a large market within which all credit institutions must operate in the same way as in their respective national markets. Three principles underlie the creation of this large market: the single authorization, valid for the Community as a whole, supervision by the home country authority of activity anywhere on the territory of the Community and the mutual recognition of supervisory rules.

### Management of the common rules

165. The Commission is monitoring the transposition and implementation of all directives in force in the field of credit institutions. Monitoring transposition is of course more simple, since it merely involves comparing a national instrument with its Community "model". Monitoring implementation is more difficult and requires a detailed knowledge of the situation in the Member States. This type of monitoring depends partly on the vigilance of operators and their willingness to inform the Commission, and partly on the Commission's capacity to find things out for itself, which it does in all the appropriate bodies (Banking Advisory Committee, Working Group, etc.) and, where appropriate, by calling in outside experts. The current situation in the banking sector is satisfactory as regards both transposition and implementation.

The Commission has set up the Working Group on the Implementation of the Banking Directives, composed of representatives of the Member States and the Commission, whose purpose is to examine and, as appropriate, resolve all the problems of interpretation which the Member States encounter when applying the directives. If the Working Group agrees on a common interpretation, the Commission undertakes to publish it. If there is no agreement, the problem is referred to the Banking Advisory Committee, which delivers an opinion. If the Committee reaches agreement the Commission publishes the interpretation; if it does not, the Commission has the right to draw the necessary conclusions in terms of procedure and open proceedings against the Member States under Article 169 of the Treaty,\* or propose an amendment to the directive clarifying the point on which interpretations differ.

The Commission has also received many bilateral memoranda of understanding, which the majority of Member States have concluded with a view to implementing the new procedures introduced by the second Directive. A detailed analysis of these instruments has not yet been carried out, but the Commission will see that their substance does not threaten the exercise of the fundamental liberties. There is a risk that, since they are not transposition instruments properly speaking, they may contain practical provisions restricting the principles contained in national legislation.

### Partnership with the Member States

166. There has been cooperation with the Member States in the banking field, at institutional level, since 1979, when the Banking Advisory Committee was set up by the first coordinating directive (77/780/EEC\*). Another form of cooperation is the Commission's participation in the Contact Group of the banking supervisory authorities of the Member States, which was not set up by a Community directive but whose existence was recognized by Community instruments, and in the Subcommittee on banking supervision of the Committee of Central Bank Governors of the European Community.

These various bodies examine the problems caused by the creation of the single banking market with a view to working out solutions that can be the subject of national measures, in accordance with the principle of subsidiarity, or to putting forward to the Commission solutions which require new proposals for Council or Commission directives in accordance with the new committee procedures.

### Transparency of Community measures

167. The Commission is planning to consolidate the main directives adopted in the banking sector. This project could be completed by the end of 1994. The directives concerned will be the first and second coordination directives, and the directives on own funds, a solvency ratio, supervision on a consolidated basis, and large exposures (67).

(67) i.e. Directives 77/780/EEC,\* 89/299/EEC,\* 89/646/EEC,\* 89/647/EEC,\* 92/30/EEC,\* and 92/121/EEC\*

Commission initiatives and measures to ensure the development of the single market and overcome the problems encountered

168. The Commission has held discussions with banking representatives in the Committee of Credit Associations.

The purpose of these talks is to explain more fully to the representatives of the nine organizations involved the objectives which the Commission is trying to achieve through the various regulatory instruments which it draws up with the other Community institutions. The results of the discussions have generally been positive, since they show the banking circles concerned that the constraints which some of these instruments impose on them are offset by the opening up of a large market from which they will be able to benefit.

*b) Insurance*

169. In the insurance sector, the Community's objectives are akin to those for the single market in the services sectors as a whole: they seek to extend to operators all the freedoms in the Treaty.

The adoption in 1992 of the third insurance Directives (Directives 92/49/EEC\* and 92/96/EEC\*) marks the completion of the legislative process set out in the White Paper, except for a proposal for a directive on the winding-up of insurance companies, still being discussed at working group level in the Council. As with credit institutions, the three principles underlying the completion of the internal market in insurance are the single licence, valid throughout the Community, supervision by the home-country authority and mutual recognition of controls, coupled with minimum harmonization of the rules on prudential supervision.

170. In the separate sector of pension funds, the Community's objectives relate in particular to freedom to manage fund assets (freedom of an institution for retirement provision to make contracts concerning the management of fund assets with an institution belonging to one of the three categories of financial institution authorized in the Community to provide this service) and the abolition of certain restrictions on freedom of investment. Work has reached the stage of an amended proposal for a directive<sup>(68)</sup>, which is being discussed in the Council with a view to reaching a common position by the end of the year.

Management of the common rules

171. There are considerable delays in the transposition by certain Member States of Directive 90/618/EEC\* (motor insurance, freedom to provide services) and 90/619/EEC\* (second life-assurance Directive). The Commission has initiated infringement proceedings under Article 169 for failure to notify national implementing measures.

Assisted by a group of national experts, the Commission has examined the conformity of the Member States' instruments transposing Directives 72/166/EEC\* and 84/5/EEC\* (first and second Directives on civil liability in respect of the use of motor vehicles). The findings of the studies are in the process of being analysed at the Commission before procedures are initiated, where appropriate, for failure to fulfil obligations.

The Commission took part in the drawing-up by the Member States of a protocol implementing the third insurance Directives: the protocol, where the Commission is an observer, contributes indirectly to the monitoring of the transposition of the directives, which began in 1993 and will continue in 1994. As a result of the protocol, the supervisory authorities determined together the procedures for their cooperation, in direct application of the directives (procedures for approval, supervision, exchange of information, standard documents such as the solvency margin statement):

<sup>(68)</sup> COM(93) 237 final, OJ No C 171 of 22 June 1993

### Monitoring the operation of the market

172. A study is also being done on the practical application of the second non-life insurance Directive (88/357/EEC\*) and of Directive 78/473/EEC\* on Community co-insurance. These studies will make it possible for the Commission to evaluate the real market impact of the directives.

More generally, pending the entry into force of the third-generation Directives (third life and non-life Directives), contacts have been increased with economic operators (insurance companies and intermediaries) and consumers. Similarly, the Commission has organized a meeting which will take place in the near future of the Insurance Committee on the problems of interpretation that may arise with the entry into force of the third life and non-life Directives in July 1994.

### Partnership with the Member States

173. There has been an effective partnership with the Member States since 1992 in the Insurance Committee, which was set up by Directive 91/675/EEC\*. The Committee assists the Commission in the exercise of its implementing powers and in the new proposals which it plans to put to the Council, as regards the coordination needed in this sector. In the course of 1993 its work primarily involved the prudential supervision of insurance groups and financial conglomerates.

This is supplemented by the Commission's participation in the conference of supervisory departments in the Member States of the European Community, at which the protocol on the implementation of the third Directives was drawn up.

### Transparency of Community measures

174. The Commission is preparing a draft consolidated text of the three generations of insurance directives; this will be presented in 1994. It is also taking part in the preparation by Eurostat of service company statistics, pursuant to Council Decision 93/326/EEC.\*

### Commission initiatives and measures to ensure the development of the single market and overcome the problems arising

175. As regards initiatives and measures undertaken, the Commission published a working paper on the cross-border affiliation of migrant workers to a pension scheme linked to an occupational activity (pension fund)<sup>(69)</sup>; it is holding discussions with the industry through the representative federations at Community level.

As regards proposed initiatives and measures, the Commission is studying the feasibility of a trans-European IT network between insurance supervisory authorities (a multiannual Community measure supporting the implementation of trans-European information technology networks for the exchange of data between administrations: the IDA programme). It is also studying how to improve cooperation with the industry with a view to a voluntary measure for operators concerning the standardization of nomenclatures and variables in the management of insurance activities and the improvement of the quality of information on insurance services, in particular with regard to statistics on service companies.

### **c) *Stock Exchanges and Securities***

176. The freedom of establishment and the freedom of provide services in the securities field took a decisive step forward with the adoption by the Council on 10 May 1993 of the Investment Services Directive (ISD). As a result of this directive, which to a certain extent is the

<sup>(69)</sup> Working Doc. XV/2040/92, rev. 1

mirror image of the Second Banking Co-ordination Directive, non-bank investment firms will need to be authorised only in the Member State where they have their registered office. That authorization (European passport) will then allow the firm to undertake the relevant investment activities not only in its home Member State but also in all other Member States either through branches or on a cross-border basis.

An important necessary condition for investment firms to be given the European passport under ISD is that the firm has an adequate amount of start-up capital for the type of investment business it intends to engage in. The minimum amount of start-up capital, as well as other rules concerning the minimum amount of on-going capital, are laid in the Capital Adequacy Directive (CAD) which was adopted by the Council on 15 March 1993.

In order to adjust the ISD, as well as the corresponding directives in the banking and insurance fields, to the lessons learned from the BCCI case the Commission adopted on 28 July 1993 a proposal which would allow financial supervisors to carry out their task more effectively.

The ISD will also be completed by a directive on investor compensation. A proposal on the subject has been adopted by the Commission on 22 September 1993 (70). Its main aim is to place the operation of investor compensation schemes on a home Member State basis, both in respect of services and branch businesses.

177. In the specific sector of Stock Exchanges, the proposed directive amending the Council directive on listing particulars, which would allow a much easier multi-listing in the Community, is being discussed by the Council (71).

178. Finally, in order to expand the investment products available to investors in the Community, as in the case of multilisting, the Commission adopted on 9 February 1993 a proposal amending the Council directive on Undertakings for Collective Investment in Transferable Securities (UCITS) [forms of unit trusts]. The proposal basically consists of an extension of the scope of the existing directive in order to include money markets funds and units of other UCITS (72).

#### *d) External relations*

179. A series of agreements (EEA and Europe agreements) have been concluded which include sections on financial services. A number of others are in negotiation (e.g. Russia) or in preparation (Israel, Turkey).

Uruguay Round negotiations were successfully concluded on 15 December 1993. As an important outcome of these negotiations, financial services are part of the General Agreement on Trade in Services (GATS). Thus, a wide range of activities in the banking, securities and insurance sector will be subject to multilateral rules, which are enforceable through international dispute settlement procedures. Based on most favoured nation treatment, conditions for new access to financial services markets and operations in those markets as well as fair and non-discriminatory treatment will be laid down by the GATS.

However, during a period of six months after the entry into force of the GATS, all signatories are allowed to improve, modify or withdraw all or part of their commitments without compensation; at the conclusion of that six months period they may also request a "most favoured nation" (MFN) derogation or invoke listed MFN exemptions on a permanent basis.

It is only at the end of the six months transitional period that the European Union has to decide whether it will continue to apply Article 9 par. 4 of the second banking directive. This and similar provisions for insurance and investment services intend to ensure that Community banks and financial companies are guaranteed reciprocal treatment in third countries. For this purpose, the Commission reports to the Council on the treatment accorded to Community

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(70) COM(93) 381 final

(71) COM(92) 566 final of 23.12.92

(72) OJ C 59 of 2.3.93

financial firms in third countries as regards establishment, the carrying on of activities and the acquisition in third country financial services companies; the first report covering 27 countries was submitted to the Council in July 92 (73). The Commission may initiate negotiations where necessary or even take concrete measures such as temporary suspension of Member State decisions regarding market access of firms governed by the law of the third country in question.

The Union will continue its liberal policy in financial services and negotiations, bilateral or multi-lateral, will be conducted so as to reflect this policy.

## B. Transport

180. In the field of transport, where fairly considerable difficulties and delays were encountered, the Council finally completed the task of implementing the single market by **adopting all the measures in the White Paper**. The last measure recommended in the White Paper was the establishment of a definitive system under which non-resident carriers may operate domestic road-haulage services (cabotage); political agreement on this was reached in June 1993. At the end of October 1993 the regulation was adopted by the Council (Regulation (EEC) No 3118/93\*).

The 1992 programme concentrated on the known priorities. Some problems of minor importance were slightly neglected. These include taxi services, security transport, ambulances, transport for own account and the hire of motor vehicles.

### a) Air transport

181. In July 1992 the Council approved four Regulations (74) which together ensure that the internal market became operational in air transport on 1 January 1993. The key objective of the Community's air transport policy is to create the conditions allowing air carriers to make use of existing market opportunities and to widen the choice for air travellers without being hampered by regulatory constraints. The Single Market environment allows air carriers to restructure their operations towards an enhanced efficiency and, thereby, to increase competitiveness vis-à-vis non-Community air carriers.

To this end the so-called Third Aviation Package containing Community rules on criteria for issuing operating licences for air carriers: access to intra-Community air services and on air fares plays a key role in ensuring, on the one hand, a liberal operating environment and, on the other hand, fulfilment of a number of specific air transport objectives.

The Commission's services co-operate closely with Member States on the implementation of these rules. To this end the Advisory Committee on market access as established under Article 11 of the Council Regulation n° 2408/92\* has an important role to play.

In future, the Commission initiatives in relation to economic rules for the air transport market will concentrate on air services to and from the Community. In an internal market context it is basically unacceptable that air carriers established in a certain Member State cannot operate out of another Member State to non-Community countries.

### b) Road transport

182. The essence of the Community policy in the field of road transport is, on the one hand, the liberalization of border crossing operations and of cabotage and, on the other hand, the harmonization of the technical, social and fiscal conditions of competition. In order to

(73) "Treatment accorded in Third Countries to Community credit institutions and insurance companies" - Document XVI/4005/92 of 22 June 1992

(74) Regulations (EEC) n° 2407/92\*, 2408/92\*, 2409/92\*, 2410/92\*

obtain a viable system it appeared necessary to also harmonise the conditions for access to the profession of road haulage.

**183.** In so far as the liberalization and harmonization of access to the market is concerned, the objectives are achieved. On 25 October 1993, the Council adopted Regulation (EEC) N° 3118/93\* liberalizing cabotage operations for road transport. Gradual progress will be made towards the achievement of freedom to provide services in this area. As from 1 January 1994, the quota will cover 30 000 cabotage authorizations valid for a period of two months to be allocated among the Member States, it will be increased annually by thirty per cent, starting on 1 January 1995; the definitive cabotage liberalization will come into force on 1 July 1998. It will be recalled that passenger transport (cabotage) was already liberalized in 1992 through Regulation (EEC) No 2454/92\*.

In this context, the importance should be emphasised of the two Council Regulations (75) on access to the market by which the freedom to provide international transport services was realised. The common rules on access to the market will only apply to international operations in relation to third countries after the Community has concluded with third countries the appropriate agreements. To that extent the Commission submitted to the Council a proposal for Community negotiations with a large number of third countries and more recently, for negotiations with Switzerland.

The Commission intends to elaborate proposals in relation to the improvement of the existing common rules on the use of hired vehicles in road transport and of the conditions for access to the profession.

The Commission intends to make in due course a proposal on the liberalization of international passenger transport by taxis with a view to completing the freedom to provide services in the road transport sector.

**184.** The Community continues to pursue the objective of achieving as through a harmonization as possible of the conditions of competition in the social and technical fields and in the taxation of training costs - an important area as far as the proper functioning of the internal market is concerned.

As regards social provisions, the strict, uniform application of the rules on driving time and drivers' rest will have to be reinforced.

As to road transport taxation and charges, the Council adopted Directive 93/89/EEC\* on the application by Member States of taxes on certain vehicles used for the carriage of goods by road and tolls and charges for the use of certain infrastructures. This measure will be followed by initiatives aimed at charging users fully for infrastructure and external costs.

### **c) Maritime transport**

**185.** The Council maritime transport Regulation (EEC) N° 4055/86\* of 22 December 1986 ensures the freedom to provide services between Member States and between Member States and third countries and has removed, over a three stage period, the last of which expired on 1 January 1993, existing restrictions for Community ship owners - either by unilateral measures or through bilateral cargo-sharing arrangements - and prohibits cargo-sharing in future agreements with third countries, unless under specified special circumstances in the liner sector.

A first report of 1 August 1990 from the Commission to the Council on the implementation of four Regulations in the field of maritime transport (Regulations (EEC) No 4055/86\*, 4056/86\*, 4057/86\* and 4058/86\*) showed that unilateral national restrictions still existed in three Member States and that most Member States had not yet adapted a number of bilateral agreements.

(75) Council Regulation (EEC) No 881/92\* on international road haulage and Council Regulation (EEC) No 684/92\* on international passenger transport by road

A second report on Regulation (EEC) No 4055/86\* was presented to the Council on 25 November 1992. The Commission has initiated Article 169\* proceedings against those Member States which have not eliminated unilateral restrictions and will shortly initiate proceedings against Member States which have not yet adapted bilateral agreements in accordance with Regulation 4055/86\*.

186. The Council Regulation (EEC) No 3577/92\* was adopted on 7 December 1992. The text of the Regulation was the result of a delicate compromise between the Member States resulting from the different situations of the cabotage trades in the Northern and the Southern Member States. The following are the principal features of the Regulation.

The beneficiaries of the Regulation are Community ship owners having their vessels registered in, and flying the flag of, a Member State, provided that they comply with all conditions for carrying out cabotage in that Member States, including ships registered in Euros once that Register is approved by the Council. The condition that ships fulfil all conditions to carry out cabotage in the Member State of registration shall not apply until 31 December 1996.

The Regulation has introduced the following mechanisms:

- specific manning conditions which for mainland cabotage and for cruise services will be the responsibility of the Flag State except for vessels under 650 GT and which for island cabotage shall be the responsibility of the Host State;
- the possibility for Member States to conclude public service contracts or impose public service obligations as a condition for the provision of cabotage services to shipping companies participating in regular services with the islands;
- a safeguard clause by which Member States may request the Commission to adopt safeguard measures in the case of serious disturbance of the internal transport market due to cabotage liberalization (in the case of an emergency unilateral temporary safeguard measures may also be adopted by Member States), and finally
- a number of temporary derogations for specific cabotage trades in the five southern Member States which will allow sufficient time for a gradual adaptation to the liberalization.

#### *d) Waterway transport*

187. Community policy in the waterways sector is directed towards increasing the efficiency and attractiveness of the waterways to users. In the light of the increased traffic generated by the Single Market there is likely to be growing pressure on all modes of transport and hence it is vital that available capacity is used efficiently. In the waterways sector there exists a chronic imbalance between supply and demand which the Community has attempted to rectify by introducing a scrapping action (Council Regulation (EEC) No 1101/89\*). This action has been instrumental in affecting a major improvement but its results have been compromised by the severe drop in traffic that the waterways have suffered due to economic recession in the Community. The Commission has to maintain its efforts to modernise the industry and to this end the continuation of measures to reduce over-capacity, by removing vessels and limiting access to new vessels on a temporary basis, is being considered. Other actions that are underway include the widening of Community provisions concerning technical matters and the crewing of ships plus the conclusion of a multilateral agreement with non-Member States to facilitate the development of trade.

#### *e) Rail transport*

188. The railways rather like the waterways are a mode of transport with considerable potential in certain sectors e.g. long distance passenger and freight movement. The railways are also generally considered to be more environmentally friendly than road transport. For this reason the Commission considers that further measures to encourage the development of railways should be undertaken. These measures include action in the field of high speed passenger trains, where much progress has already been made in the development of a comprehensive

Community plan (to be incorporated in the Trans-European Network programme) and in combined transport. For the latter a programme for the development of Pilot Actions (PACT) was launched in 1992 and is proving to be successful. Future action in relation to opening access to the rail system will be set out in a memorandum to the Council in 1994 but prior to that a number of proposals will be sent to the Council to support the implementation of Directive 91/440/EEC\* by establishing conditions for the granting of licences to railways undertakings and laying down conditions for access to infrastructure.

**f) External relations**

**189.** As vital transport activities extend beyond the Community's external frontiers, the European Community is now called upon to adopt a common position vis-à-vis third countries on external transport relations. Although some good initial results have been obtained in the last two years, the external dimension of transport policy has yet to be finalised.

- The Community has concluded transit agreements with Switzerland and Austria aimed at regulating road transport through these countries and promoting concluded transport alternatives. These agreements entered into force on 1 January 1993 (Austria) and 22 February 1993 (Switzerland):
- The Community has also concluded exchanges of letters of transit in the context of the Europe Agreements with Hungary, Rumania, Bulgaria, the Czech and Slovak Republics. Exchanges of letters regarding infrastructure improvements in these countries have also been concluded.
- A Transport Agreement has been concluded with Slovenia (1 September 1993) which establishes mutual freedom of transit and establishes certain priority routes of common interest.
- The Commission is at present in multilateral negotiations with a number of Central and Eastern European countries regarding market access in inland waterways. It has proposed market access negotiations with a number of Central and Eastern European countries in the area of road transport and also, in road and air transport, with Switzerland.

**C. Telecommunications**

**190.** In the field of telecommunications services, the Commission continued to implement the objectives set out in 1987 in the 'Green Paper on the development of the common market for telecommunications services and equipment' (76), which relate both to the development of integrated services and the preparation of a common strategy for setting up Community-wide services networks.

**191.** Monitoring transposition and the application of the existing directives has proved a complex and difficult task. A few years after its implementation, Directive 90/388/EEC\* on competition in the markets for telecommunications services is still being applied partially or incompletely in certain Member States, particularly Greece and Italy. With regard to open network provision (ONP), all the Member States have notified their national measures for implementing the ONP framework Directive (90/387/EEC\*). However, the process of transposing the ONP leased lines Directive has only just begun. Implementing measures were to have been adopted by 5 June 1993; so far, six Member States have notified an instrument transposing the directive. As regards the frequencies Directives, the majority of Member States have notified their national transposition measures, which are being examined at the Commission for compliance.

(76) COM(87) 290 final of 30 June 1987

It must be pointed out that the delays currently being experienced concerning the transposition and application of the Community instruments are often caused by too restrictive an interpretation of some concepts in the directives' liberalizing provisions - e.g. the definition of "voice telephony service" in connection with Directive 90/388/EEC\*. The precise extent of this notion has been a source of ambiguity in several Member States when transposing the directive. To improve this situation, Commission departments hold bilateral discussions with national authorities. If the outcome is not positive, the Commission has had - or reserves the right - to initiate an infringement procedure against the Member States concerned for improper application of the Directive in question.

In addition, the administrative structures in certain Member States are sometimes ill-suited to Community requirements. The Commission gives assistance to those Member States which request its help concerning the technical problems of transposition or application. In this connection, seminars will be held to facilitate cooperation between national and Community authorities.

192. Following the initiative launched by the Commission (77), a wide-ranging debate has been started on the development of telecommunications in the Community between now and the end of the century. The Ad Hoc High-Level Committee of National Regulatory Authorities established for this purpose helped to draw up the Commission's communication to the Council and European Parliament on the review of the situation in the telecommunications services sector (78). The Council, in its resolution of 22 July 1993, approved the Commission's intentions concerning the timetable to be followed for the introduction of a future regulatory framework for telecommunications services and called on the Commission to draw up, by 1 January 1996, the necessary amendments to the existing regulatory framework so that all public telephony services can be liberalized by 1 January 1998 at the latest, except in Greece, Spain, Ireland, Luxembourg and Portugal, which have, if necessary, a longer transitional period. It is envisaged that new instruments will be adopted and certain existing directives amended. Among current proposals for directives, attention should be drawn to two instruments which will be adopted very shortly: the directive on open network provision and voice telephony and the directive on the mutual recognition of national licences. One of the major amendments which the Commission must put forward in preparation for launching the second phase of liberalization concerns Directive 90/388/EEC.

#### D. The media and commercial communication

193. The objective being pursued with regard to the media and commercial communication is to ensure that consumers and operators can benefit fully from the opportunities afforded by the single market. The implementation of the fundamental principles of the single market in these sectors is particularly important since, as well as making economic development possible, they facilitate dissemination and awareness of the Community's cultural variety.

194. Thus, the restrictions on the free reception or retransmission of television channels in the Community were abolished by Council Directive 89/552/EEC\*, which provides, for the areas coordinated by it, the legal framework for the free movement of television services in the Community.

The principal objective of the directive is to ensure the free movement of television broadcasts in the Community. To this end it provides for the coordination of certain rules concerning advertising, sponsorship, the protection of young people and the right of reply; it also encourages the distribution and production of European audiovisual programmes by providing that television channels are to keep "a majority proportion" of their transmission time for broadcast-

(77) Commission communication of 21 October 1992 entitled "1992 Review of the situation in the telecommunications services sector" (SEC(92) 1048)

(78) COM(93) 159 final

ing European works and 10% of that time or their programming budget for works created by independent producers (Articles 4 and 5).

Specific provision is made for the Commission to submit regularly a report to Parliament and the Member States on the application of these measures for encouraging the television broadcasting of European works and independent productions, on the basis of contributions communicated by the Member States themselves. The first of these was due in late 1993.

The Commission has initiated infringement procedures against all the Member States under Article 169 of the EC Treaty\* on account of the various problems of transposing Directive 89/552/EEC\* into national legislation (which should have happened by 3 October 1991) or, in one case, for failure to notify national implementing measures. The procedures reflect (a) the concern to encourage Member States to transpose faithfully and completely in all sectors covered by the directives so as to provide economic operators with a high level of legal certainty and (b) the complexity of the audiovisual sector.

The main difficulties encountered as regards transposition are due to the increasingly complex nature of television broadcasting in an increasingly international technological context. A number of controversial situations which arose because the directive had been incompletely or incorrectly transposed showed that there was a need in 1993 for a common Community legal framework in this area.

195. The lack of legal certainty in the matter of copyright was removed with the adoption of Directive 93/83/EEC\* on satellite broadcasting and cable retransmission. Potential restrictive effects concerning access to ownership of the media were identified in the Commission's Green Paper on pluralism and media concentration in the single market (79) and could be the subject of a Community measure. Following the consultation process which it has started, the Commission will adopt a position on this matter in early 1994. Lastly, the inconsistencies in the rules at national level and the lack of transparency which may affect the commercial communication sector will be the subject of a green paper which should be completed by the middle of 1994.

The positive effects of these measures (e.g. viewers can increasingly watch channels from other Member States) should also be felt to a greater extent by the other media as consumer demand rises, operators evolve European strategies and the technology develops.

#### E. Protection of personal data

196. Intra-Community flows of personal data are increasing very significantly, by virtue of the completion of the single market. These flows are the necessary corollary to the free movement of goods, persons, capital and services. Similarly, recent examples show that Community requirements, in particular as regards combating customs fraud (80), are likely to give rise to numerous transfers of personal data.

197. Despite the progress observed in recent years in certain Member States which have either adopted legislation on the subject or have acceded to the Council of Europe Convention of 21 January 1981, there are still considerable discrepancies between national legislations. Different solutions have been adopted as regards, for instance, extending the scope of protection to manual files, informing persons concerned, processing sensitive data, the transfer of data to third countries, the procedures for notifying processing operations to the national supervisory authorities or the powers of the latter.

These differences may give rise to obstacles to the free movement of personal data within the Community. They could lead a Member State, in the public interest as recognized by the Court

(79) COM(92) 480 final of 23 December 1992

(80) See the amended proposal for a Council regulation on mutual assistance between administrative authorities of 1 September 1993 (COM(93) 350 final)

of Justice, to object to the movement of the data on account of inadequate protection in the Member State of origin or destination.

These distortions of competition may also appear between economic operators in the Community, some of whom are subject to the burdens imposed by protective legislation depending on the Member State in which they are established. In this respect, it is particularly important to prevent the emergence of "data-processing havens", seeking to capitalize on the absence or insufficiency of protection in a particular part of the Community.

**198. Harmonization of national legislation, in order to create a high level of protection, equivalent throughout the Community, will make it possible to eliminate, for the benefit both of people whose data are processed and of economic and social operators, the potential hazards contained in the current situation for the proper functioning of the single market.**

Community action in this field was initiated in September 1990 when a set of Commission proposals<sup>(81)</sup> was put forward, all of which were aimed at protecting people's privacy by various means, in particular the harmonization of national legislation. Parliament and the ESC wanted certain amendments, most of which were introduced in the amended proposal submitted by the Commission on 15 October 1992. For its part, the Council is actively reviewing this proposal with a view to the adoption of a common position during 1994.

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## Section 4 - Free movement of capital

**199. After goods, services and individuals, the free movement of capital is the fourth of the fundamental freedoms enshrined in the EC Treaty. It is a necessary condition for optimum allocation of resources in the Community and the creation of an integrated European financial area.**

In line with the White Paper programme, the Community adopted in 1988 Directive 88/361/EEC\* on the free movement of capital, which provides for full liberalization of all types of capital movement between Community residents. It provides the basis for creation of the European financial area; it has been fully implemented in all Member States.

Under the directive, Member States had to do away with any remaining barriers to the free movement of capital by 30 June 1990.

Some exceptions to that rule are possible, however:

- the directive allows certain types of short-term capital movement to be restricted in exceptional situations (Article 3). Member States have never availed themselves of this possibility despite several periods of tension on European foreign-exchange markets;
- some restrictions are allowed for prudential or supervisory reasons. Rules on investments by entities, such as insurance companies or pension funds, exist and are covered by Article 4 of the directive;
- most of the temporary exemptions granted to certain Member States by Articles 5 or 6 of the directive have come to an end. Only Greece is still allowed to restrict certain types of short-term capital movement until 30 June 1994 (Directive 92/122/EEC\*).

**200. Harmonization of taxation, and in particular the taxation of savings, as mentioned in Article 6(5) of the directive has not yet made much headway. The Commission put forward in 1989 a proposal for a directive on withholding tax levied on interest payments, but this has yet**

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(81) COM(90) 314 final; COM(92) 422 final

to be adopted by the Council. The lack of harmonization in the company taxation field is likewise perpetuating certain distortions in capital movements between Member States.

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## Section 5 - Public procurement

### § 1 - Introduction

201. Public procurement, i.e. the contracts awarded by public authorities and by entities operating in the water, energy, transport and telecommunications sectors (i.e. utilities), constitutes a powerful economic policy instrument: in 1990, these contracts were worth ECU 305 billion, equivalent to around 8% of Community GDP, or 55% of total public purchasing, which stood at ECU 595 billion (approximately 14% of Community GDP).

Public procurement in the single market will be genuinely opened up only if all firms have a fair chance of winning these contracts. To achieve this goal, the Community has put into place a legislative framework covering public works, supply and service contracts.

The aim was not to create an exhaustive set of rules, but to spell out, through a number of procedural requirements, principles already enshrined in the Treaty. Monitored by the Commission and interpreted by the Court of Justice, this legislation has already given rise to a philosophy and a case-law that usefully supplement the initial instruments.

The adoption and implementation of the legislative framework created by the directives is not, however, enough on its own effectively to open up public procurement in the single market. The Commission has consequently taken and is maintaining a number of additional measures to improve transparency.

### § 2 - Community law on public procurement

202. The sources of Community law on public procurement are the principles enshrined in the EC Treaty and the directives implementing those principles.

#### A. Principles laid down in the EC Treaty

203. Several provisions of the Treaty are relevant to public procurement:

- the ban on discrimination on grounds of nationality (Article 7(1)\*);
- the ban on restrictions on the sale of goods (Article 30\*), a ban which also applies to any measure having "equivalent effect", this being interpreted by the Court of Justice as including any national measure capable of hindering, directly or indirectly, actually or potentially, intra-Community trade (82);

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(82) Case 45/87 Dundalk pipeline [1988] ECR 4929; Case C-21/88 Du Pont de Nemours [1990] ECR I-889; Article 177\* of the EC Treaty

- freedom of establishment, i.e. the right of nationals of a Member State to establish themselves in other Member States (Articles 52 *et seq.*);
- for nationals of the Member States, freedom to provide services in other Member States (Articles 59 *et seq.*). This principle was applied by the Court in its judgment in a case concerning data-processing contracts <sup>(83)</sup>.

## B. Public procurement directives

204. To supplement the general obligations laid down in the Treaty, the Community has developed a comprehensive set of directives designed to ensure transparency in competitive tendering for all types of public contract. The aim of the directives is not to harmonize all the national rules on public procurement, but merely to coordinate national contract award procedures for contracts above a given threshold and ensure that minimum standards of fairness are applied.

### a) Traditional sectors

205. In the case of works and supply contracts, the basic directives, adopted in 1971 and 1977 and repeatedly amended<sup>84</sup>, were recently consolidated into two instruments: Directive 93/36/EEC\* for supply contracts and Directive 93/37/EEC\* in the case of works contracts. For public service contracts, a specific directive (92/50/EEC\*) came into force on 1 July 1993.

With the exception of services, for which some specific rules apply, the different types of contract are now subject to similar requirements in the three directives. The rules require the publication of tender notices in the Official Journal, lay down the conditions in which contracting authorities may opt for the three types of procedure allowed (open, restricted and negotiated procedures), ban all forms of discrimination and spell out the criteria to be used for selecting tenderers and awarding contracts.

### b) Water, energy, transport and telecommunications

206. For a variety of political and legal reasons, these sectors were excluded from the scope of the traditional directives. Directive 90/531/EEC\* brought them within the scope of the Community rules, but introduced much more flexibility into the requirements regarding transparency and competitive tendering:

- a call for competition may be made here through publication of either a tender notice, or a periodic indicative notice, or a notice of the existence of a qualification system;
- contracting entities have a free choice between open, restricted and negotiated procedures.

### c) Remedies

207. The directives on contract award procedures are supplemented by a further two directives governing the remedies that must be available to firms that consider themselves harmed by decisions of contracting entities.

(83) Case C-3/88 Commission v Italy [1989] ECR 4035 - 5.12.89

(84) Directive 71/305/EEC\* concerning the coordination of procedures for the award of public works contracts, amended by Directives 89/440/EEC\* and 93/37/EEC\*; Directive 77/62/EEC\* coordinating procedures for the award of public supply contracts, amended by Directives 80/767/EEC\*, 88/295/EEC\* and 93/36/EEC\*

### C. Transposition of the public procurement directives

#### a) *Means used*

208. The third paragraph of Article 189\* of the Treaty provides that "a directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods".

Member States thus theoretically have a great deal of discretion, but their room for manoeuvre is limited by the case-law of the Court of Justice, which requires them to create a clear legislative framework in the area in question so that all persons concerned can ascertain the full scope of their rights and, where necessary, rely on them before national courts (85).

It has been known for national implementing measures not to reflect the spirit of the directives and not to have the requisite binding force. This makes it necessary for the Commission to vet thoroughly each national implementing measure, which the Member States have to communicate on adoption.

The main difficulties which the Commission encounters in carrying out this essential monitoring task are failure to communicate the national measures in question and the large number of (often partial and/or incomplete) legislative and regulatory instruments adopted.

#### b) *Failure to transpose directives: the principle of "direct effect"*

209. If they are to be applied, the directives have to be transposed by the national authorities. It can happen, however, that the necessary measures are not adopted by the specified deadline. In such cases, the Court has ruled that the principle of "direct effect" may be applied; this principle was relied upon inter alia in *Beentjes* (86) and *Fratelli Costanzo* (87). The Court here established the general principle whereby a provision of a directive that is clear and unconditional can have direct effect.

Where the provisions of a directive cannot have direct effect, the Court established in *Francovich & Bonifaci* (88) the principle that Member States must grant individuals compensation for loss or injury they have sustained through an infringement of Community law due to the non-transposition or faulty transposition of a directive.

#### c) *Difficulties in transposition*

210. Transposing the public procurement directives is generally a difficult task. Since adoption of the first directives, the Commission has had to initiate formal infringement proceedings against Member States for failure to fulfil their obligations under the EC Treaty in over 52 cases. These proceedings are brought under Article 169\* of the Treaty on account of either late or incorrect transposition. Most proceedings are terminated before the matter is referred to the Court of Justice, but 25 cases are so far still pending.

It should also be borne in mind that the Member States which were the last to join the Community occasionally have longer periods in which to transpose the directives; that the deadlines for transposing the most recent directives have not yet expired; and that the directives on procurement by utilities and on remedies are complex instruments which are consequently more difficult to transpose and will give rise to further infringement proceedings.

(85) Case C-339/87 [1990] ECR I-851; Cases C-13/90, C-14/90 and C-64/90 [1991] ECR I-4327

(86) Case 31/87 [1988] ECR 4635 (case brought under Article 177\* of the EC Treaty)

(87) Case 103/88 [1989] ECR 1839

(88) Joined Cases C-6/93 and C-9/90 [1991] ECR I-5357 (cases brought under Article 177\* of the EC Treaty)

### § 3 - Case-law

211. The judgments and rulings handed down by the Court of Justice of the European Communities and by the national courts have clarified and thrown light on a number of points that had caused interpretation problems.

#### A. Case-law of the Court of Justice

212. Among the many cases brought before the Court of Justice, those most relevant to public procurement have clarified the points set out below.

- In *Beentjes* the Court took the view that the term "the State" had to be interpreted in functional terms and stated that any body *"whose composition and functions are laid down by legislation and which depends on the authorities for the appointment of its members, the observance of the obligations arising out of its measures and the financing of the public contracts which it is its task to award, must be regarded as falling within the notion of the State, even though it is not part of the State administration in formal terms"* (89).
- The Works and Supplies Directives allow contracting authorities to award contracts by negotiated procedure in exceptional circumstances, and in particular in cases of extreme urgency. The Court of Justice requires these derogations to be interpreted strictly and has refused to allow the negotiated procedure where the Member State concerned did not provide proof of extreme urgency (Case 199/85) and where the situation could have been foreseen by the contracting authority (90).
- In the *Transporoute* case (91), the Court stressed that a firm could not be ruled out on the ground that it did not have an establishment permit for the Member State in question.
- The directives allow contracting authorities to eliminate tenders that are obviously abnormally low in relation to the subject-matter of the contract. Before awarding the contract, however, the contracting authority must request the tenderer to provide details of his tender and must allow him reasonable time to furnish additional explanations. The Court therefore took the view that automatic exclusion using mathematical formulae was unlawful (92).
- The directives allow contracting authorities to define technical specifications by reference to suitable standards and lay down the order of preference to be followed. The Court therefore decided that reference to national standards was not justified where there was an international standard affording equivalent guarantees (93).
- The directives provide for the contract to be awarded after the suitability of candidates has been checked against a list of criteria relating to their economic and financial standing and their technical knowledge and ability. The contracting authority must state which of the criteria listed it is to apply and any references or evidence other than those mentioned in the directive that it wishes to be furnished (94). Consequently, *"the authorities awarding contracts can check the suitability of the contractors*

(89) Case 31/87, paragraph 12

(90) Case 194/88 R *La Spezia* [1988] ECR 5647; Case C-24/91 *Complutense University of Madrid* [1992] ECR I-1989

(91) Case 76/81 [1982] ECR 417 (case brought under Article 177\* of the EC Treaty)

(92) *Milan football stadium case*

(93) Case 45/87 *Dundalk pipeline* [1988] ECR 4929

(94) *Joined Cases 27, 28 and 29/86 CEI and Others v Association Intercommunale pour les Autoroutes des Ardennes* [1987] ECR 3347 (cases brought under Article 177\* of the EC Treaty)

only on the basis of criteria relating to their economic and financial standing and their technical knowledge and ability" (95).

- The Court of Justice has ruled on several occasions that no preference may be given to national or regional firms. This means that a concessionaire cannot be required to entrust a proportion of the work to firms in a particular region (96), and participation in a contract cannot be reserved for certain groups of firms (see the "lottery computerization" case (97)).
- The Court held in a recent judgment that although the Works Directive "makes no express mention of the principle of equal treatment of tenderers, it is none the less true that the obligation of observing that principle goes to the essence of that directive" (98).
- The Court can suspend not only an unlawful decision, but also contracts awarded under such a decision. In the "lottery computerization" case, the Court ordered Italy to take all the necessary measures to suspend the legal effects of the decision taken by the Minister for Finance, as well as performance of the contract concluded with Lottomatica (the company chosen to run the system), because the award procedure had gone ahead despite the Commission's objection to the maintenance of a clause reserving the contract for Italian public enterprises or their subsidiaries.

## B. National case-law

213. There are wide disparities between the Member States as regards the possibility of seeking review of decisions taken during contract award procedures and as regards the outcome of such review. The specific provisions adopted by the Community are intended to ensure a minimum degree of uniformity among review procedures in the different Member States.

In view of the fact that the directives on review procedures have not yet been completely transposed, that they entered into force only recently and that there is no systematic feedback to the Commission on the thrust of decisions taken by national courts or review bodies, it is too early at this stage to take stock of any national case-law.

## § 4 - Commission practice

214. Where they consider themselves harmed by a decision taken by a contracting entity, firms wishing to enforce their rights are free to seek review from the competent national court or body and/or lodge a complaint with the Commission, although the latter course of action is not a precondition for instituting legal proceedings. Complaints can be dealt with in confidence, and no fee is charged.

Many proceedings are thus initiated by the Commission; most of them do not end up at the Court of Justice because a satisfactory solution is found at a relatively early stage. These cases have helped the Commission shape its thinking.

(95) Case 31/87, paragraph 17

(96) Judgment of 3 June 1992 in Case C-360/89 Commission v Italy (not yet reported)

(97) Case C-272/91 R [1992] ECR I-457

(98) Judgment of 22 June 1993 in Case C-243/89 Storebaelt (not yet reported)

## A. Number and type of cases dealt with

215. Judging by the number and type of complaints lodged with the Commission, it is fair to say that firms are increasingly aware of the problems they can encounter when bidding for public contracts. They are showing much more interest than in the past in contracts put up for tender in other Member States; they appear to be better informed of their rights and to have grasped the fact that they can turn to the Commission to see that those rights are upheld.

Complaints concerning purely formal breaches of the rules are being overtaken by cases concerning more basic infringements springing from differences of interpretation of the directives themselves. But much still remains to be done, particularly in the water, energy, transport and telecommunications sectors, to persuade injured parties that it is in their interest to challenge discriminatory practices rather than to keep silent.

## B. Main points

216. The main thrust of the Commission's thinking can be summed up by the points listed below.

- In connection with several infringement cases concerning in particular the rebuilding of slaughterhouses, the Commission was able to comment on the concept of a work and the ban on splitting a contract up into lots in order to evade application of the directives. After publication by the Member State concerned of a circular spelling out what constitutes a work and illustrating this with a number of examples, the Commission was able to declare the matter closed.
- In several infringement cases dealt with by the Commission, the contracting authority, acting in pursuance of a national law, required firms to be on a trade register in its own country. In the Commission's view, however, while registration on a list of approved contractors may be required in a Member State, membership of an official register of approved contractors in another Member State should be recognized and taken into consideration.
- Tenderers are occasionally required to comply with additional requirements that are not allowed by the directives. This is the case, for example, where the contractor has to use products of a particular origin, agree to economic compensations, indicate the number of hours of labour to be used in the country of the contracting authority and elsewhere, or state the nature and value of the products developed through domestic R&D and the nature and value of products for which reference to a national standard is important, or again where personnel working on site have to have a command of the local language.  
The Commission was able in all cases to have the disputed clauses deleted.
- Whenever clauses that discriminate against firms in a different Member State or a different region have come to the Commission's attention, it has acted to have them removed. Such clauses are often included in the tender specifications in one or other of the following forms: indication of the proportion of the works carried out in the region, reduction of the minimum guarantee for domestic firms, the obligation to reserve a minimum proportion of the work for regional firms, the obligation to use exclusively materials produced and supplied by plants located in the province where the works are to be performed, the application of a mark-up coefficient to products originating in other Member States, and the granting of preference to firms with real, personal or economic links with the region where the works are to be performed. The non-discrimination principle also makes it possible to tackle clauses that discriminate between firms in the same Member State.

In all these cases, the Commission succeeded in having the offending clauses deleted from the tender notice and a circular explaining the situation issued by the government in question.

- As far as technical specifications are concerned, the Commission has also, by initiating infringement proceedings, succeeded in ensuring that contracting authorities define their requirements in an objective and non-discriminatory fashion. References to national technical rules or to specific makes of product have been banned. In exceptional cases, the Commission allows reference to be made to a specific make, provided that such indication is followed by the words "or equivalent".
- As regards the method of submission of tenders, the Commission has banned the practice followed by some contracting authorities of requiring hand delivery only, on the grounds that it discriminates against firms in other Member States and deters them from bidding for contracts.
- The directives exempt contracting authorities from the advertising rules and allow them to apply the negotiated procedure inter alia where special security measures are involved or protection of the Member State's essential security interests is at stake. The Commission has adopted a strict interpretation of these exceptions and rejected their use in one case where a Member State was purchasing patrol boats and harbour surveillance equipment and in another case involving the purchase of furniture for a permanent representative's office and a consulate.
- On the means of proving a firm's economic and financial standing, the Commission has taken the view that requiring banker's references issued by a credit institution established in the country of the contracting authority is incompatible with the letter and the spirit of the public procurement directives and with Article 59\* of the EC Treaty. This is because such a requirement hinders the operations of contractors based in other Member States.

The Commission has likewise deemed incompatible with Community law the behaviour of certain contracting authorities, which reserve the right to refuse tenders where the firm to which a contract could have been awarded was unable to offer a guarantee or bond provided by a credit institution approved in the Member State where the works were to be carried out.

The Commission's action put an end to these practices.

## § 5 - Measures to promote transparency

217. The Commission has not confined itself to legislative action or challenging infringements; it has taken other measures to improve transparency, in particular to do with the training of purchasing officers and businesses, standardization of the information published in tender notices and improvement of the information available on public procurement.

### A. Training

218. The idea of a wide-ranging programme of information seminars for all those concerned by public procurement was conceived in 1988. A total of 308 seminars were held in 1992 and 1993 (154 for contracting authorities and 154 for businesses), attended in all by nearly 50 000 purchasers or businesspeople from all Member States, to whom the main provisions of Community law on public procurement (articles of the Treaty and directives) were presented, in particular through a videocassette covering the main aspects of Community policy.

219. The need to follow up information sessions with genuine training for the staff directly concerned became very quickly apparent. Clearly, however, it is not for the Commission to turn

itself into a training agency; it therefore showed great interest in the development of such activities at national level through structures set up on a cross-sectoral basis, such as the association "Verso l'Europa", launched in Italy on 31 October 1992 with Community support. The Commission will endeavour to assist any similar initiative in other Member States.

## B. Standardization of information published in tender notices

220. To make information on public contracts easier to translate, transmit, read and understand, the Commission is promoting the use of standard forms for the notices that have to be published under the directives. The first set of them was published in 1991<sup>(99)</sup>. The forms to be used by the entities covered by Directive 90/531/EEC\* were published at the end of 1992<sup>(100)</sup>; the remaining ones are due to appear shortly.

The ultimate objective is to amalgamate all the forms and accompany them with a computerized user's guide that can be operated in conversational mode.

221. The use of a single vocabulary for describing the subject-matter of notices published in the Official Journal will reduce considerably the risk of mistranslation and will boost transparency, since it will mean that all potential tenderers will receive the same information. The Commission has therefore developed a Community Procurement Vocabulary (CPV). The provisional version of this nomenclature, which incorporates the Classification of Products by Activity (CPA), was very favourably received by the trade associations. The definitive version of the CPV will be published in early 1994 in the 'S' Supplement to the Official Journal, as an appendix to a Commission recommendation.

## C. Improving the supply of information on public procurement

222. Better information is one of the key conditions for opening up public procurement in the single market. This can be achieved by improving the systems for the transmission or exchange of information and also the quality of the information itself.

223. The Commission has decided to carry out a study to identify the contracting authorities and entities that fall within the scope of the public procurement directives, with the twofold aim of ensuring that they indeed fulfil their obligation to advertise in the Official Journal all contracts exceeding the thresholds that they put out to tender and offering contractors, suppliers and service providers access to a list of all their potential customers. The study should begin before the end of the year.

224. The time it takes for information to be transmitted to the Publications Office and for the latter to publish it in printed form, in the Official Journal, considerably slows down dissemination among those concerned. The Commission and the Publications Office are therefore looking into the possibility of introducing electronic data interchange (EDI) between computers belonging to independent firms.

The feasibility study begun in 1992 has shown that a number of conditions must be fulfilled before EDI can be introduced in public procurement<sup>(101)</sup>. These conditions appear at present to be met in certain countries, where pilot studies will be launched. Their findings will enable the final decision to be taken in full knowledge of the facts.

<sup>(99)</sup> Appendix to Commission recommendation 91/561/EEC of 24 October 1991 on the standardization of notices of public contracts (OJ S 217, 16.11.91)

<sup>(100)</sup> OJ S 252, 30.12.92

<sup>(101)</sup> The advisory committees were informed of the study by documents CCO/92/76 and CC/92/75 and of its findings by documents CCO/93/21 and CCO/93/24

#### D. The SIMAP project

225. Tender notices published in the Official Journal are only the tip of the iceberg as regards the information needed by the different parties involved in contract award and performance. A study carried out at the Commission's request has shown that the quality and reliability of existing information could be enhanced through a structure feeding validated data into the system. The study also revealed that it could be advantageous to broaden the range of data available on public contracts by creating a genuine information system.

The information system for public procurement (SIMAP) should meet this twin objective. It would comprise a number of data entry points which would collect the mandatory information from contracting entities and forward it to the Publications Office for publication. The data entry points would be organized on geographical and/or sectoral lines and would ensure that the mandatory information was circulated in an organized and standardized fashion. Thanks to their contacts with the contracting entities, they would also help to reduce the number of contracts above the thresholds which go unadvertised. Along with the data entry points, service providers would process the additional and associated information and would act as interfaces with businesses.

The SIMAP project could shortly enter into a test phase in which pilot projects would be carried out with a few information providers in different countries that already have the necessary technological infrastructure (hardware, software and organizational set-up). The decision to launch these pilot studies was to be taken before the end of 1993.

#### E. Other back-up measures

##### a) *European standards*

226. Whenever it becomes apparent that a European standard would be desirable in a particular area, the Commission asks the relevant bodies to begin preparatory work. Many mandates were thus sent recently to the European Committee for Standardization (CEN), requesting it for example to draw up specifications for attestation systems to certify compliance with public contract award procedures, harmonized qualification criteria for the construction industry and various technical requirements in the rail transport sector and for other utilities.

It is essential that contracting entities use commonly accepted standards in defining their technical requirements if they are not to apply discriminatory specifications, which would undermine the opening-up of public procurement.

##### b) *Assessment of economic impacts*

227. The Commission is endeavouring to gauge the impact of its decisions on the behaviour of purchasers and vendors and on the structure of the economic sectors concerned. This effort will be stepped up and the findings disseminated through the creation, within the Advisory Committee for Public Procurement, of a monitoring network linking the Member States and the Commission. The Commission is keen to involve the Member States extensively in this work and to play an active role in the monitoring network, which was set up at the end of December 1993.

## § 6 - Small and medium-sized enterprises

**228.** Because of their lower level of resources, whether financial, material or human, the amount of preparation required and the importance of obtaining reliable partners located in the markets targeted, constitute particularly serious problems for SMEs. Measures have already been put in hand to further improve the already high level of specialized assistance available for European Information Centres and to assist with the search for suitable partners utilizing the BC Network. Training and knowledge on the rules of public procurement in some national administrations must be improved. In regard to the degree of preparation required of managers even before attempts are made to submit bids, action needs to be taken by them in a number of fields and in a coordinated fashion. Therefore, a convenient and practical management guide will be prepared in all community languages.

## § 7 - External aspects

**229.** In parallel with the conclusion of the Uruguay Round, negotiators agreed on 15 December 1993 a new Agreement on Government Procurement which will open up to internal competition government purchases worth several hundred billion of ECU each year.

The new agreement, which will enter into force on 1 January 1996, supersedes the current Code which has been in force since 1981. Under the present Agreement, the Member States of the European Union and other Parties (United States, Japan, Canada, EFTA...) opened up procurement of supply contracts by central Government agencies. The new agreement will also cover services, including public works, procurement at the sub-central level (e.g. regional and municipal level) and procurement by certain public utility sectors (water, energy, transport). The new Agreements expands by some ten-fold the current coverage.

The new Agreement will reinforce rules guaranteeing fair and non-discriminatory condition of internal competition. Challenge procedures will also be available. The rules and procedures of the new Agreement are in line with EU Directives on public procurement. The internal market in public procurement and the opening of some of the biggest procurement markets in the world marks enormous progress in making the market work and in stimulating competition.

**230.** All non-regulated sectors are open for public procurement from third countries as they are for Member States on a reciprocal basis.

In the regulated sectors of water, energy, transport and telecommunications the Community is committed to general and reciprocal opening of public procurement. Under the new GATT Code, the EU has achieved major opening up of certain of these sectors in third countries.

However where there is no effective and comparable access for enterprises to third countries markets, article 29 of Directive 90/531/EEC\* for the moment provides that any tender for the award of a supply contract may be refused if the proportion of products originating in third countries with which the Community has not concluded a multilateral or bilateral agreement as defined in Council Regulation (CEE) No 802/68\* of 27 June 1968 on the common definition of the concept of originating products exceeds 50 % of the total value of the products making up the tender. Where there are equivalent tenders from the Community and third countries, preference is to be given, within certain limits (a price difference not exceeding 3%) to the Community tender.

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## Section 6 - Energy

**231.** At the same time as it has been implementing the Treaty rules, and in particular the rules on the free movement of goods and on competition, in the energy sector, the Community has been pressing ahead with legislative work in the fields of gas and electricity.

With the directives on electricity and gas transit and price transparency a first step towards the completion of the internal market for gas and electricity has been achieved. Progress is being made in the realm of energy standardization. In 1992 the Commission made further proposals with a view to creating the internal energy market <sup>(102)</sup>. Following the amendments of the European Parliament, the Commission has modified its proposals in December 1993. Below a summary of the progress to date and on the present proposals is given. For more details see the second progress report on the internal energy market <sup>(103)</sup>.

### § 1 - Progress to date

#### A. Electricity transit

**232.** Directive 90/547/EEC\* on transit of electricity through transmission grids was adopted on 29 October 1990 and entered into force on 1 July 1991. Under the directive, electricity transmission utilities are required to notify the Commission and the national authorities concerned of any request for transit in connection with contracts for the sale of electricity of a minimum of one year's duration, to open negotiations on the conditions of electricity transit and to inform the Commission and the national authorities concerned of the conclusion of a transit contract, as well as of the reasons for the failure of the negotiations to result in the conclusion of a contract in the 12 months following communication of the request.

To date, a first transit contract has been notified to the Commission and a committee of experts has been set up with the task to advise the Commission on determining the rules for operation of transit and where necessary to conciliate the entities negotiating transit.

The directive has been implemented by eleven Member States.

#### B. Gas transit

**233.** The same rules apply for the gas transmission utilities in the Community as regards the transit of natural gas (Directive 91/296/EEC\*).

To date, there has been no request for transit nor has the conclusion of a transit contract been notified as yet. A committee of experts to conciliate the conditions of transit if requested by the entities concerned is being set up.

The Commission is preparing a relevant decision in order to update the list of eligible entities annexed to the directive and qualifying for transit (both offshore and onshore). This update should also contribute to the transposition of the directive into the national law of the five Member States which have not yet implemented the directive.

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<sup>(102)</sup> COM(91) 548 final of 21 February 1992

<sup>(103)</sup> COM(93) 261 final of 2 July 1993

### C. Price transparency

234. Council Directive 90/377/EEC\* came into effect on 1 July 1991. The directive has been transposed by eleven Member States. The directiveset up a Community procedure ensuring price transparency to final industrial consumers of gas and electricity. While safeguarding the confidentiality of contracts, EUROSTAT is publishing regularly, twice a year, the relevant data which are communicated to the Statistical Office of the European Communities. There is a particular problem with several Member States being unable to provide adequately breakdowns of consumers by category and volume as required under the directive. But the Commission is working with these Member States to resolve this issue. The relative economic efficiency of utilities cannot be measured simply by comparing prices, as so many factors can influence actual prices - such as taxes, levies, subsidies and even cross-subsidies among different consumers. However, an examination of the published data shows that consumers face a wide range of different prices, with some locations up to 3 or 4 times in ECU the price in other Community locations. Certain locations and indeed Member States are clearly generally cheaper for gas or electricity. On the other hand, some Community locations and indeed Member States are generally more expensive, for both gas and electricity. These comments are included in a draft Report from the Commission to the Council.

### D. Standardization

235. In June 1992 the Commission adopted a Communication <sup>(104)</sup> which reports progress on energy standardization to the Council and suggests further action. Progress has been reported in the various fields: oil quality, oil and gas exploration and production equipment, electricity quality, electricity transport and distribution equipment, gas quality, gas transport and distribution equipment, solid fuel quality, energy efficiency, renewable forms of energy, nuclear power generation and nuclear safety, protection of the environment. This communication presents to the Council the Commission's strategy for future work with a view to completing the internal market.

## § 2 - Pending Proposals

### A. Electricity and gas

236. The adoption of the legislation on transit and price transparency was only a beginning. For the integration of the gas and electricity markets to proceed **additional proposals were necessary** concerning the fundamental relationship between supplier, transporter, distributor and consumer of grid-bound energies.

The Commission made its proposals in February 1992 <sup>(105)</sup>. These proposals were modified in December 1993, following the amendments of the European Parliament, made after the first reading of 17 November 1993.

The main changes were as follows:

- the introduction of negotiated instead of a regulated third party access to the network;

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<sup>(104)</sup> SEC(92) 724 final

<sup>(105)</sup> COM(91) 548 final

- the introduction of tender procedures for new electricity production and transport capacities as alternatives to the transparent and non-discriminatory licensing system proposed by the Commission;
- the strengthening of the references to public service obligations;
- the establishment of a work harmonization programme for the good functioning of the internal market in gas and electricity.

At the Energy Council of 22 December 1993 amended proposals were referred to Coreper.

## B. Exploration of oil and gas

237. On 22 December 1993 the Council reached a common position on the proposal for a directive on the conditions for granting and using authorizations for the prospecting, exploration and extraction of hydrocarbons<sup>(106)</sup>. The proposal seeks to ensure non-discriminatory access to, and exercise of, the activities concerned under conditions which encourage greater competition in this sector.

The agreement is based on the principle that Member States have sovereignty and sovereign rights over oil and gas resources situated in their territory. For reasons of national security, Member States may deny access to and prevent the exercise of the activities of prospecting, exploration and exploitation of hydrocarbons in their territory by an entity which is effectively controlled by a third country or by third country nationals.

Member States will have to ensure that there is no discrimination between entities as regards access to and exercise of the activities concerned. In this connection, the proposal contains common rules intended to ensure that the procedures for granting authorizations are open to all entities possessing the necessary (technical and financial) capabilities.

The conditions under which authorizations are granted must be announced in advance to all entities taking part in the procedures. A number of provisions are included to ensure that state involvement in the relevant activities is based on transparent, objective and non-discriminatory criteria. Under certain conditions, existing laws, regulations and administrative provisions reserving the right to obtain authorizations to a single entity will have to be abolished before 1 January 1997.

The directive is to enter into force on 1 July 1995. Derogations are provided for in the case of certain new authorizations granted by Denmark before 31 December 2012.

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## Section 7 - Intellectual and industrial property

### § 1 - Industrial property

238. Significant progress has been achieved in this area thanks to the adoption of the directive harmonizing certain aspects of national legislation concerning trade mark law, the introduction of a supplementary protection certificate for medicinal products, and the Community protection of geographical names and designations of origin. Harmonization work is also continuing with the proposals on industrial designs and models and the proposal for a directive on the legal protection of biotechnological inventions. On the latter, political agreement paving

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<sup>(106)</sup> COM(92)110 final

the way for adoption of a common position was reached in the Council meeting on 17 December 1993.

**239.** On 20 December the Council adopted Regulation (EC) No 40/94\*, introducing the Community trade mark. This constitutes a single instrument of protection, valid throughout the Community, obtainable by making a single application and giving the same rights everywhere. It will coexist with national trade marks, and economic operators will have the choice between it and them, depending on their needs and interests. Implementing measures are necessary if the Community trade mark is to have its full effect, and the Commission hopes they will be adopted during 1994.

The Commission considers that the Agreement relating to Community patents<sup>(107)</sup> should come into force as soon as possible. The Member States which have still to ratify it should therefore make every effort to do so, so that it can be in effect before 1994 is out.

The Commission also hopes for fruitful and speedy discussion by the other Community institutions of its proposals for the legal protection of industrial designs and models. Their adoption will provide a higher level of protection, through both national registration and a single one valid throughout the Community. As with the trade mark, economic operators will have the choice between being protected by a national design or model, or a Community one.

## § 2 - Copyright and neighbouring rights

**240.** Copyright and neighbouring rights account for an annual turnover of the order of ECU 150-250 billion, or 3-5% of the Community's gross domestic product.

Following publication in 1988 of a "Green Paper on copyright and the challenge of technology"<sup>(108)</sup> and several months of consultations with interested parties, the Commission has prepared a working programme which identifies the measures which need to be taken if the internal market is to be completed in this sector<sup>(109)</sup>. The programme seeks to strengthen the protection of copyright and neighbouring rights in order to protect and promote creativity in Europe, a creativity that is being increasingly challenged by the development of new technologies which represent both an opportunity and a challenge for intellectual creation owing to the possibilities for the dissemination and reproduction of works which they permit.

**241.** Harmonization measures are proposed on the basis of a high level of protection in order to ensure that the territorial aspects of intellectual property rights do not hinder the free movement of goods and services and do not give rise to distortions of competition in the internal market.

The harmonization measures already adopted concern the legal protection of computer programmes, rental and lending rights, the main neighbouring rights, broadcasting by cable and satellite, and harmonization of the term of protection for copyright and certain neighbouring rights. The measures still pending concern the legal protection of databases. A number of questions are being considered with a view to determining whether any further measures are necessary.

As in the past, the adoption of any new measures will continue to serve a dual purpose, namely harmonization of the internal market and a strengthening of the level of protection.

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<sup>(107)</sup> Agreement relating to Community patents, concluded in Luxembourg on 15 December 1989 - Agreement 89/695/EEC (OJ No L 401, 30.12.89)

<sup>(108)</sup> COM(88) 172 final of 10 December 1988

<sup>(109)</sup> Follow-up to the Green Paper - working programme of the Commission in the field of copyright and neighbouring rights". Document COM(90) 584 final of 17 January 1991

### § 3 - Other measures

242. Other intellectual property rights which fall neither within the province of industrial property nor within that of copyright have formed the subject-matter of harmonization measures. This is the case, for example, with the protection of semiconductor topographies, which has been harmonized since 1987.

In order to improve the existing mechanism <sup>(110)</sup> and to take account of the provisions concerning action at frontiers of the GATT under TRIPS (trade-related aspects of intellectual property rights), the Commission has presented a proposal for a Council Regulation laying down measures to prohibit the release for free circulation, export or transit of counterfeit and pirated goods <sup>(111)</sup>.

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## Section 8 - Company law

243. The EEC Treaty provides for the **right of establishment of Community companies**, i.e. companies incorporated under the law of a Member State and having their registered office, central administration or principal place of business within the Community. Right of establishment means that companies are mutually recognized in all Member States and can thus do business throughout the Community, not only directly, but also by setting up subsidiaries or branches. Companies from one Member State which establish themselves in another Member State cannot be subjected to different formalities from those prescribed for national companies.

244. The Treaty also requires that **national laws be harmonized** and specifies what instruments are to be used for that purpose. Harmonization is intended firstly to make it easier to exercise the right of establishment, and secondly to limit the risks which that right may carry where Member States' laws are widely divergent as regards the protection of shareholders, creditors and third parties in general. As economic integration has progressed, however, it has proved necessary to do more than just harmonize laws: uniform instruments of cooperation and integration between European enterprises have had to be created in order that those enterprises might benefit more from the formation of a single market and thus be able to face up to global competition.

Harmonization work began when the Community was founded, and a real core of Community company law has evolved. Companies can operate in the Community in a more uniform legal environment, which makes it easier for them to avail themselves of the right of establishment. Shareholders participating in a company either as investors or as managers enjoy equivalent protection. The same holds true for a company's creditors. The harmonization, coupled with the toughening, of disclosure requirements has done much to bring about more transparent conduct of companies' affairs. At present the harmonized law applies only to companies with share capital and covers certain fields such as the registration of companies, company capital, internal mergers and demergers, "one-man" companies, the drawing-up, auditing and disclosure of annual and consolidated accounts, and the approval and qualifications of auditors. In addition, a Regulation has been adopted on the setting-up of European economic interest groupings.

The harmonization of company law is, however, not complete and must continue where the need for it exists under Article 54 of the Treaty.\* The Council still has to adopt a position on

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<sup>(110)</sup> Council Regulation (EEC) No 384/86 - See also the Commission report to the Council and Parliament on the functioning of the system set up by Council Regulation (EEC) No 3842/86, SEC(91) 262 final of 15 February 1991

<sup>(111)</sup> COM(93) 329 final of 13 July 1993 (OJ C 238 of 2.9.93)

Commission proposals concerning the structure of public limited companies (fifth Directive), cross-border mergers of public limited companies (tenth Directive), and takeover bids (thirteenth Directive). The Commission is considering the possibility of revising the latter proposal following the undertakings given at the Edinburgh summit. In the accountancy field the Commission has now sent to the Council a proposal for a directive on raising the thresholds below which derogations may be granted in respect of the drawing-up and auditing of the accounts of small and medium-sized enterprises.

245. The Copenhagen European Council called on the Council to adopt rapidly the last remaining internal market proposals. These include the European Company (SE). At present, companies from different Member States still cannot merge without resorting to complex and costly arrangements. The tax regime applicable to such mergers was for its part the subject-matter of a directive in July 1990. The creation of the SE would afford companies which so wish the opportunity of restructuring more easily by way of cross-border mergers. It would also enable companies which so wish to transfer their headquarters within the Community without having to be wound up and re-formed. The free movement of companies would be a logical corollary of the free movement of persons, services, capital and goods.

246. The adoption of the statutes for the European cooperative society, European mutual society and European association, and the corresponding provisions on the role of their employees will enable such entities to merge and to set up holding companies and subsidiaries. Harmonized statistics are being prepared in order to improve the economic assessment of the cooperative, mutual and non-profit sector. A European mechanism for financing the sector has been created: Soficatra (Société financière d'initiative industrielle par les cadres et travailleurs), a sort of European investment company which provides equity capital and quasi-equity capital.

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## Section 9 - Taxation

### § 1 - VAT. Operation of the transitional regime. Cooperation between administrations

247. Despite the fact that the relevant Community legislation was adopted by the Council in the period from December 1991 to December 1992 (112) VAT formalities at frontiers within the Community disappeared on 1 January 1993. The effective implementation of the principles of the new VAT regime by 1 January 1993 required a significant effort on the part of both the Member States and business. The fact that all Member States were operating the new regime on 1 January 1993 thus represented a very real achievement.

248. The crossing of a border between Member States no longer gives rise to a VAT charge. As a result the structures for declaration, payment and examination of goods at those borders have become redundant. Travellers may now buy goods in any Member State on a VAT paid basis and return with them to their own country without further VAT charges or formalities (with the exception of the purchase of new means of transport). Business may move goods freely throughout the Community without formalities or VAT payment on the crossing of intra-Community borders. Nevertheless businesses must account for VAT on purchases made in other Member States as the Council could not agree to the application of an origin-based tax system without a transitional period during which tax continues to be accounted for in the coun-

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(112) Council Directives 92/680/CEE\*, 92/77/CEE\* and 92/111/CEE\*, Council Regulation (CEE) No 218/92\*

try of destination of goods. Thus businesses must ensure that where they sell goods to business customers in other Member States their customers possess VAT registration numbers and that the goods are transported to those customers outside the Member State from which they are sold. There are reporting obligations, but these take the form of periodic returns and not declaration by means of consignment declarations as was the case previously. This has considerably eased the burden on business operators. The replies to the EIC questionnaire <sup>(113)</sup> confirm that the new tax regime has been well received and has not posed any major problem.

**249.** The successful operation of the new VAT regime depends on an increased degree of co-operation between the tax authorities of the Member States. Despite an extremely tight timetable the Member States and the Commission were able to set up a working management structure (based on the existence of central liaison offices in each Member State and a standing committee which meets regularly in Brussels) and a computer network for information exchange (VIES).

**250.** The new VAT regime is transitional in nature and will, in principle, be replaced by an even simpler system in 1997 as a consequence of commitments entered into by the Commission and the Council. In this context the work of the Commission from now until the end of 1994 will need to concentrate on two areas.

- Firstly, initial experience with the working of the transitional VAT regime has revealed a certain number of issues where legislative action may be advisable to further simplify the workings of the regime. It must however be realised that some of the difficulties currently faced by businesses and administrations stem from the nature of the transitional system itself. As a result it can be expected that these difficulties will not be solved until that regime is replaced by a definitive regime.
- Secondly, the Commission is committed to bringing forward proposals for a definitive VAT regime by December 1994. These proposals will take into account the experience of the working of the transitional VAT regime but will be based on the principle of aligning domestic and intra-Community transactions for VAT so as to create an origin-based VAT system that offers the maximum benefits in terms of simplification and reduced administrative charges. This will also require further development of administrative co-operation between tax administrations to take into account of the increasing interdependence of national tax authorities. In the latter context it will be important to ensure the smooth operation of the Mattheus programme as well as training seminars, both designed to provide officials with a better understanding of the practices and working methods of different tax administrations in the Community. Finally the Commission will continue to monitor and examine in detail national implementing measures to ensure that Community law is being properly applied.

## § 2 - Excise duties

**251.** As was the case for VAT the Community legislation on the general excise regime for storage and movement of goods liable to excise duty within the internal market, together with the relevant legislation on excise duty structures and rates on mineral oils, tobacco products and alcoholic beverages was adopted in 1992 <sup>(114)</sup> only after long and difficult negotiations.

The new regime, which does not include a transitional phase like that which applies for VAT, has done away with formalities and duty charges linked to the crossing of intra-Community borders. Travellers are free to purchase as they wish on a duty-paid basis although Member States may apply indicative limits aimed at identifying commercial as distinct

<sup>(113)</sup> EIC document - Single Market Questionnaire - Results - p. 7

<sup>(114)</sup> Council Directives 92/12/CEE\*, 92/78/CEE\* and 92/108/CEE\*; Council Decision 92/510/CEE\*; Commission Regulations (EEC) No 2719/92\* and 3649/92\*

from private transactions and Denmark can apply specific limits to spirits and tobacco products during a transitional period. For commercial traffic the principle of payment in the country of destination is maintained. However a Community wide suspension regime based on authorised warehouses ensures that administrative obligations are minimised.

Initial experience with the new excise regime has been positive although a certain number of problems have come to light. Further monitoring of the system is essential and it is envisaged that some legislative amendments may be required to simplify the working of the regime. The Commission is also committed to reviewing a number of specific issues including notably the Community minimum rate levels. Essential work will be to ensure that the new Community legislation is being correctly and consistently applied as well as identifying areas where improvements to the system justify legislative action.

### § 3 - Direct taxation

**252.** Because there is only limited harmonization in the area of direct taxation, the tax regimes in force in the Member States continue to influence substantially the opportunities for benefiting from the internal market.

At present, national tax arrangements very often place a worker or a self-employed person carrying on his activities in a Member State other than that in which he is resident at a disadvantage. The principle of the free movement of persons may be affected, and cases will accordingly have to be settled by the European Court of Justice.

On 21 December 1993 the Commission adopted a recommendation, not yet published, inviting Member States to give non-resident workers the same tax treatment as residents, if their income in the State in which they work makes up at least 75% of their total taxable income. The aim here is to prevent any situation where their other income is insufficient for them to benefit fully from the tax allowances granted in their country of residence.

**253.** As far as businesses are concerned, efforts continue to do away with the double taxation of cross-border activities. For want of the adoption of the proposals for directives abolishing withholding taxes on interest and royalty payments between companies from different Member States and of the directive on the taking into account by companies of losses incurred by their permanent establishments or subsidiaries in other Member States, which were presented by the Commission to the Council at the end of 1990, companies, and in particular SMEs, are unable as yet to benefit fully from the internal market. They are often taxed more heavily and have to bear higher administrative costs than in the case of a purely national activity. The Commission has presented proposals so as to at least extend the benefits of the directives of 23 July 1990 to all companies.

**254.** Taxation is, of course, only one factor among many determining the competitiveness of businesses. It is particularly important, however, in the case of certain service sectors, notably financial services.

The attractiveness of a life assurance product is in most Member States determined by the tax regime applicable to it: the deductibility of premiums may be crucial. Such deductibility may depend, however, on the domicile of the insurance company and non-residents may be automatically placed at a disadvantage. Freedom to provide services and the European passport are therefore being jeopardized. The Commission will favour pragmatic solutions based on closer cooperation between government departments and insurance companies in the various Member States.

The tax authorities will have to be supplied with the necessary information for the application of the same fiscal treatment to insurance contracts taken out by their residents, irrespective of the place of establishment of the Community insurance company. At the same time, the implementation of a system for the recovery of fiscal debts throughout the Community will be examined.

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## Section 10 - Payment systems

255. Following its March 1992 working document on "*Easier cross-border payments: breaking down the barriers*" (115), the Commission started, in consultation with its two advisory groups, to implement and encourage the actions necessary to improve the transparency, cost, speed and reliability of cross-border payments.

As for remote cross-border payments, the Commission announced on 29 July 1993 (116) the results of an independent study into the transparency and performance of cross-border transfers. The results of this study, whose aim was to assess the implementation of self-regulatory guidelines by the banking industry, were judged disappointing and not sufficient for the smooth functioning of the internal market. Appropriate consultation with interested parties represented in the two advisory groups (central banks, banks, consumers, retailers and SMEs) was held in the course of September and October 1993. The Commission welcomed initiatives taken by some banks to improve cross-border payment facilities, including those of some European Automated Clearing Houses planning to link up their systems. However, it reasserted the need for further technical improvements of cross-border payment systems.

On 14 December the Commission announced (117) its intention to allow a further period of grace for the achievement of improved transparency and performance of remote cross-border payments. It said that a second study, to measure the results achieved, would be carried out early in 1994 and that it would take its final decision in July 1994.

256. In the course of September 1993, the Commission also received the results of other studies concerning more technical aspects of payment systems.

For instance, the results of a study of the official requirements in the twelve Member States for reporting cross-border transactions for Balance of Payments statistics were deemed to provide appropriate guidance in the context of the present debate on ways of simplifying and harmonising part of all these national procedures.

The results of a further study on the national laws pertaining to credit transfers provide a valuable contribution to the discussions within a working group of Governmental and central bank experts created at the beginning of 1993. The mandate of this group is to study the legal obstacles standing in the way of efficient and secure cross-border credit transfer systems, and to remove these obstacles in creating an appropriate "Legal Framework" for cross-border transfers.

257. With regard to card payments, the Commission continued its efforts to ensure the application of Recommendations 87/598/EEC\* and 88/590/EEC\*. As to the first, wide ranging and thorough negotiations between the credit sector and retail organizations have been undertaken. Consensus has been reached on a number of points, however, the parties still need to reach agreement on a number of outstanding issues.

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(115) SEC(92) 621 final

(116) P(93) 670

(117) IP(93) 1128

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## Section 11 - Back-up policies

### § 1 - Consumer policy

258. The primary objective of the second three-year action plan in respect of consumer policy is to place the internal market at the service of consumers. In order to achieve this, the Community must consolidate the existing legislative groundwork, in particular by ensuring that texts currently in force are implemented and that the Council (and, as necessary, Parliament) adopts the texts proposed by the Commission on which it has not yet reached a consensus, and by preparing new measures.

With a view to attaining this objective, during 1993 the Council adopted a number of directives intended to protect consumers and place the internal market at their service. Other directives are being adopted or prepared.

Thus, among the measures adopted during 1993 are Directive 93/13/EEC\* on 'unfair terms in consumer contracts', the purpose of which is to facilitate the establishment of the internal market and protect consumers when they purchase goods and services under contracts governed by the legislation of Member States other than their own, by removing unfair terms.

Other matters still awaiting a Council (and Parliament) decision are the proposals for directives on time-sharing, on which a common position was adopted by the Consumer Affairs Council meeting on 19 November 1993, and on distance selling.

Still with the aim of placing the internal market at the service of consumers, the Commission has also started work on the following measures:

- initiatives on consumer access to justice (possible legislative implications arising from consultations on the Green Paper);
- initiatives on guarantees and after-sales service for consumer goods (possible legislative action arising from consultation on the Green Paper);
- preparation of a directive on transparency of cross-border offers of mortgage credit [to be modelled on Directives 87/102/EEC\* and 90/88/EEC\* (consumer credit), in particular the indication of an overall effective annual rate and a single method of calculation];
- in the field of transparency of banking services, completion of the harmonization of existing legal rules by transforming Recommendation 90/109/EEC\* into a binding instrument;
- amendment to Directive 85/577/EEC\* (contracts negotiated away from business premises) with a view to harmonizing the calculation of the cooling-off period of seven days and reviewing the exemptions.

### § 2 - Competition

259. Competition policy continues to make an effective contribution to the completion of the internal market, one of whose mainstays it is. The abolition of internal frontiers is the Commission's principal objective, which it pursues both by banning the conclusion between undertakings of restrictive agreements intended to compartmentalize the market and by controlling concentrations, monopolies and state aid.

- The policy of dismantling monopolies is one of the Commission's priorities. In the telecommunications sector in particular, the very reasons for these monopolies are being rendered obsolete by technological progress. On 22 July 1993 the Council adopted a resolution on a review of the telecommunications sector and the need for new developments in this market. It approved the Commission's proposal for the opening to intra-Community competition of international voice telephony services by 1 January 1998.
- With regard to control of state aid, if every Member State were free to defend its own industry through competitive subsidies, it is unlikely that the enterprises which survived would be the most efficient. For example, the approach selected by the Commission for enterprises which have chronic overcapacities consists in approving aid only in return for participation in the global effort to reduce capacity and in a serious restructuring plan to ensure the viability of the industry in a European rather than national context. This approach is being followed in particular in the restructuring of the steel sector.
- As regards control of concentrations, the Commission carried out a detailed examination of the first three years of application of Regulation (EEC) No 4064/89\* and held wide-ranging consultations with the Member States and interested parties, who all appreciated the advantages of a "one-stop-shop" with common operating rules throughout the Community and a rapid decision-making procedure. It decided not to propose a revision of the Regulation before 1996 but undertook to improve the transparency and efficiency of the procedures through the publication of explanatory notes on various legal and technical questions and of a new communication on concentrative and cooperative joint ventures. However, with a view to assisting enterprises to adapt to the internal market, the Commission approved the communication designed to facilitate cooperation between cooperative joint ventures and also approved the proposals for more rapid procedures.

260. In the field of rules applicable to undertakings, Articles 85 and 86 of the EC Treaty\* have for a long time been used as powerful instruments for opening and unifying markets. The Commission's policy on distribution is particularly worthy of mention. Agreements here may be such as to improve the efficiency of distribution, at the price, however, of territorial clauses which may mean that the single market is divided. The Commission's consistent practice is not to exempt such agreements from the ban, except insofar as they do not restrict trade between Member States to an unacceptable degree. This policy has been confirmed this year by the decisions concerning the distribution of perfumes and by initiatives on motor-vehicle distribution.

261. In 1993 the Commission energetically pursued initiatives to increase competition in the field of transport. Here, as elsewhere, completion of the large market involves the creation of competitive structures. Many cases were dealt with, in particular in the air and maritime sectors.

262. In its bilateral agreements with trading partners, the Community seeks to insert competition rules with a degree of detail and of harmonization with its own rules depending on the degree of economic integration sought. The EEA Agreement signed on 2 May 1992 contains a full set of competition rules identical to Community rules.

The Commission is also seeking to strengthen, in both bilateral and multilateral forums, the so-called "positive comity" approach in which a country whose exporters are the victims of anti-competitive practices in another country can ask this other country to apply its own competition rules in order to remedy the situation. A provision to that effect has been included in the EC-US Agreement of September 1991.

Article 24(2) of Council Regulation (EEC) No. 4064/89\* requires the Commission to report, initially after one year and then periodically on the treatment as regards concentrations accorded to Community undertakings by non-member countries. Failing to have obtained the necessary input yet, the Community has not been able to fulfil this requirement.

### § 3 - Small and medium-sized enterprises

263. In line with the "*Commission's Second Report on Administrative Simplification Work in the Community*" (118) and the resulting Council Resolution (119), the Commission is continuing its work to minimise all necessary administrative, legal and financial burdens on enterprises, particularly SMEs, emanating from Community legislation. This includes consolidation of the Commission's business impact assessment system and the improvement of its consultation procedures with business organizations.

264. Small and medium-sized enterprises will be unable to take full advantage of the single market if their activities are constrained by a shortage of finance. Not only are SMEs in the Community generally less well capitalized than their counterparts in the United States and Japan, but moreover considerable financing gaps exist. This is why the Commission has taken the initiative to establish a Round Table of high personalities from the banking sector asking them to examine the relationships between banks and the smaller business customers, which appear to be giving rise to problems in a number of Member States.

265. Excessive payment periods and late payment are a real problem for small and medium-sized enterprises in the Community. Conditions of payment, i.e. contractual terms, delays and interest on late payment, vary considerably from country to country, and the legal procedures involved are different too. The result is that SMEs have major financing problems. The Commission will be taking steps to improve this situation.

266. The Community co-finances private projects on transnational cooperation based on the use of new technologies in commerce and the distributive sector. A research programme on distribution, whose objectives are continually being reviewed, allows strategic information on commerce and distribution in the internal market to be collected and disseminated. At the same time, consultation of trade organizations and governments has been institutionalized in the Committee on Commerce and Distribution (CCD) and the Group on Internal Trade (GCI).

267. Very few enterprises are handed down to a second generation of entrepreneurs and a tiny minority of those that survive to the third generation. The difficulties of transferring businesses therefore considerably weaken the fabric of SMEs. To remedy this situation, fiscal pressure must be reduced, international double taxation of business transfers must be abolished and the mobility of SMEs improved, thus enabling them to relocate their head office within the Community and change freely from one type of company to another. The Commission is currently examining whether a recommendation on this question should be addressed to the Member States.

268. Conscious of the integrating and dynamic role played by tourism, the Community has an action plan to assist tourism (Decision 92/421/EEC\*), established for three years from 1993. This plan, which takes into account tourism activity overall, is intended to contribute to improving the quality and competitiveness of the supply of Community tourism and to promote awareness and satisfaction of demand. The keystone of the plan is strengthening cooperation at Community level between economic operators and the different levels of administration. The aim is to integrate tourism into Community policies and to support and develop specific measures to promote the diversification of tourism activities, to take transnational measures and to improve the promotion of European tourism on international markets. The aim is essentially for overall measures to achieve better information for tourists and economic operators, support for showpiece projects capable of being transferred to different Community regions and general improvement of the quality of services and facilities for tourists.

(118) SEC(92) 1867 final of 27 October 1992

(119) OJ C 331 of 23.12.92

## § 4 - Environment

269. There is no inherent conflict between the completion of the internal market and the fight against environmental degradation. They are and should be mutually supportive. This special relationship is already recognised in the Single European Act (Article 100 A paras. 3 and 4) and is reinforced by Article 2 of the EC Treaty\* where it is clearly stated that the completion of the internal market will be a key instrument to reach inter alia "a sustainable and non-inflationary growth respecting the environment". Both challenges stem from the same features of our present pattern of economic development: an inefficient use of human and environmental resources and an inadequate valuation of pricing of these resources. This has led to distortions in competition and to an over use of environmental resources.

Short-term economic gains at the expense of economic partners and of the environment should be replaced by an attitude which constitutes the basis for greater efficiency and competitiveness, both at EC level and internationally, for a more sustainable economic pattern in the long run.

270. The Community environment policy is at a very important juncture. Following the UNCED agreements, and in accordance with the Treaty on the European Union and with the Fifth EC Environment Action Plan "Towards Sustainability", an integrated approach will have to be developed in order to ensure that the most effective policy is applied to enable a move towards a more sustainable path of social and economic development in the Community and the world at large.

This is not only vital for the environment itself but also for the long-term success of the internal market and Economic and Monetary Union. Their success is dependent on the sustainability of the policies pursued in the fields of industry, energy, transport, agriculture, regional development and tourism, which are in turn dependent on the capacity of the environment to sustain them. Many environmental issues such as climatic change, acid pollution and waste management can only be tackled by an interplay between the main economic actors and sectors, not only through the use of legislation (normative standards and other measures) but also by using an extended and integrated range and mix of other instruments such as industrial standards and or certification systems, voluntary schemes, economic instruments etc.

This interplay can best be achieved within a Community framework, without which there is a risk that actions taken will fail to have their full impact or that the integrity of Community achievements such as the internal market will be jeopardized.

This framework, however, should not be designed or felt to be a strait jacket but should rather be supportive in its function. It should be flexible enough to encourage all concerned to accept their responsibilities and to develop and apply an optimal mix of instruments tailored to their local and regional circumstances but without creating unnecessary and unjustified distortions. Such a framework will ensure that we move towards sustainable patterns of economic and social development.

## § 5 - Social dimension of the internal market

271. The development of the internal market, which aims to construct a large and very powerful economic entity within which progress and prosperity are assured, must be accompanied by the progressive introduction of a genuine and effective social dimension. That is the aim of the Community's social policy, which is centred on the "Community Charter of the Fundamental Social Rights of Workers" and on the social action programme (120).

(120) "Community Charter of the fundamental rights of workers", Luxembourg, OOEPEC, 1990  
Social Action Programme: COM(89) 568 final, November 1989

The Commission has presented almost all the proposals in the social action programme. However, it should be noted that progress on implementing the programme has matched neither the Commission's aspirations nor its efforts.

In 1992 and 1993 the Council did adopt a number of directives, such as that on the protection of pregnant workers and workers who have recently given birth or are breastfeeding, the one on collective redundancies, and a series of directives in the field of the health and safety of workers, covering temporary or mobile work sites, safety and/or health signs at work, medical treatment on board vessels, the extractive industries and biological agents.

In the field of labour law, the Council reached agreement on a common position for the directive to reorganize working time. In addition, a directive on the labelling of tobacco products was adopted to reinforce measures to combat smoking, which is a cause of cancer.

Lastly, the Council, which noted the success of 1992 as the European Year of Safety, Hygiene and Health Protection at Work, declared 1993 to be the European Year of the Elderly and of Solidarity between Generations.

272. In 1993 the employment situation in the Community deteriorated further and the unemployment rate is now more than 10% of the working population of the twelve Member States.

With a view to dealing with this situation, the Commission proposed a "Community-wide framework for employment", the aim of which is to initiate collective and concerted action by Community institutions and the Member States. This must make for economic growth which will create jobs. The reform of the European Social Fund adopted in July 1993 has the same aims, including implementation of instruments to facilitate the adaptation of workers to change in industry and the way goods are produced.

With regard to solidarity with the most disadvantaged, the Commission adopted a new medium-term action programme to combat social exclusion and promote solidarity.

273. In a number of respects, 1993 was a decisive year for the future of Community social policy.

- The new provisions of the Social Chapter will apply before the entry into force on 1 November 1993 of the Treaty on European Union. This means extending Community competences and the possibility of using new procedures to achieve the social dimension.
- In addition, the publication of the Green Paper on social policy will give rise to a wide-ranging debate in the Community so that all interested parties can give their views on the future, the contents and the objectives of Community social policy. The principle of subsidiarity will be one of the basic principles of the new Community social policy, which will be unveiled in 1994 with the publication of a White Paper containing proposals, initiatives, measures and, above all, priorities for the Community in the social field.

## § 6 - Community structural measures

274. The Single Act laid down the objectives not only of completing the internal market but also of achieving economic and social cohesion, on the grounds that the continued existence of economic and social disparities within the Community was likely to jeopardize the success of the internal market. For this reason the structural funding allocated by the Community plays a decisive role both in significantly supporting economic activity in the less-favoured countries and regions and in creating the conditions for them to really make good their structural shortcomings.

There were three major developments here in 1993:

- On 30 March, the Council adopted Regulation (EEC) No 792/93\* establishing a cohesion financial instrument, pending its replacement by the Cohesion Fund provided for in

Article 130d of the EC Treaty\* as amended by the Treaty on European Union. On 21 December 1993 the Commission put a proposal to the Council for setting up the Fund (121), with a budget of 15.15 billion ecus (at 1992 prices) for 1993-99. The Fund is to aid environmental and transport infrastructure projects in the Community's four least-favoured Member States: Greece, Spain, Ireland and Portugal.

- On 16 June, the Commission adopted the '*Green Paper on the Future of Community Initiatives under the Structural Funds*' (122). Completing the Fund's traditional activities, these initiatives will allow the Community to make a specific and focused response to problems which threaten the livelihood of its citizens, or frustrate their ability to break into the virtuous circle of rising prosperity offered by the internal market. The Commission has gathered contributions from many interested quarters and presented its approach on new Community initiatives at the beginning of 1994.
- On 20 July, the Council adopted six amended regulations governing the Structural Funds for the period 1994-99 (Regulations (EEC) No 2080/93 to No 2085/93\*). Funding for the period amounts to 141 billion ecus, or one third of the total Community budget. This makes the Structural Funds the major instrument of the policy for economic and social cohesion, as an expression of intra-Community solidarity.

## § 7 - European area in education and training

275. Under Articles 126 and 127 of the EC Treaty\*, as amended by the Treaty on European Union, Community action on education and training is aimed at contributing to the promotion and gradual formation of a European education and training area which will accompany and balance the completion of the internal market. This European area is to enable each European citizen to determine his education and training by making full use of all the opportunities offered by the Community for fulfilment in his working life.

276. The results and achievements of EC education and training programmes were presented by the Commission in its review of 5 May 1993 (123) concerning the period 1986-92. The review was intended to provide a useful backcloth to the new proposals based on Articles 126 and 127 of the EC Treaty\* which the Commission was to present to the Council by the end of 1993.

The rationalization of the action programmes announced by the Commission must increase the contribution made by training programmes to the functioning of the internal market by structuring Community action around two principal objectives: first, improving the quality of vocational training systems and, second, developing the capacity for innovation in measures on the training market. The strengthening of cooperation between those involved which these two major objectives will mark a new phase in the building of an open training and qualification area in the Community.

EC action programmes on vocational training, in particular Petra, Force, Eurotecnet and Comett, provide actors in the internal market with major opportunities for exchanges of information on the process of obtaining and validating qualifications, for cooperation on the definition of profiles and methodologies for analysing needs. In this way a European area is being created that is characterized by greater transparency and a converging and upward trend in the standard of qualifications.

(121) COM(93) 699 final, 21 December 1993

(122) COM(93) 282 final, 16 June 1993

(123) COM(93) 151 final, 5 May 1993

## § 8 - Community research and technological development policy

277. Community action on research and technological development involves the establishment of close cross-border links between institutions in the public sector and in industry.

Activities to stimulate training through research and researcher mobility are included in the specific programme for Human Capital and Mobility, under the Third Framework Programme (1990-1994), whose aim is to increase the quality and quantity of the Community's human resources in research, by increasing the mobility of researchers between Member States and so improving their training. In the period spring 1992-January 1994, some 1 700 researchers were thus helped to move within the Community.

For the future, Community efforts to promote training through research and cross-border mobility of researchers constitute the Fourth Activity of the Commission proposal for the Fourth Framework Programme in research, technological development and demonstration (1994-1988) (124). This programme, which is in the process of being adopted, aims to extend this effort and support the implementation of other Community policies for the period 1994-98. Community R&TD activities in the fields of precompetitive research, measurement and testing, and mobility of researchers, are making a noteworthy contribution to the completion of the internal market. For example, research in the harmonization of measurement and testing has directly contributed to the implementation of standards and legislation, in particular on food-stuffs, agricultural products and the environment.

The number of research projects supported by the directives covering these questions has increased fivefold in six years.

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(124) COM(93) 276 final:

- Proposal for a Council Decision concerning the fourth framework programme of the European Economic Community in the field of research, technological development and demonstration (1994-98)
- Proposal for a Council Decision concerning a framework programme of Community activities in the field of research and training for the European Atomic Energy Community (1994-98).