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THE COMMUNITY INTERNAL MARKET

- 1993 Report -

(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.

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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

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.

(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

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 ⁽³⁾ 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.

⁽³⁾ 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 ⁽⁶⁾ and the Green Paper on access to justice for consumers and the settling of consumer disputes in the single market ⁽⁷⁾. 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).

⁽⁶⁾ OJ No C 334, 9.12.93

⁽⁷⁾ 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.

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

