

COMMISSION OF THE EUROPEAN COMMUNITIES

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COMMUNICATION FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN PARLIAMENT

THE OPERATION OF THE COMMUNITY'S INTERNAL MARKET
AFTER 1992
FOLLOW-UP TO THE SUTHERLAND REPORT

1. On 26 October 1992 the Commission received the report of the group chaired by Peter Sutherland analysing the problems that the Community will face in managing an area without internal frontiers. The purpose of this communication is to encourage urgent deliberations within the different institutions and Member States and to inform them of the steps the Commission intends to take as a follow-up to the 38 recommendations set out in the report.

2. Given the short time that has elapsed since the report was presented to the Commission, this communication constitutes no more than an initial, rapid response which, although it does not cover all the aspects involved, is justified by the approaching deadline of 31 December 1992.

3. The Commission considers that, with this report, the group has carried out its mandate in full by presenting a set of recommendations focusing on improvements in the transparency of Community rules and on measures to strengthen the mutual confidence that exists between national systems. Implementation of these recommendations will make it possible to secure in full the credibility of the internal market in the eyes of firms and consumers and to reinforce the economic effects of the internal market, as well as its political dimension, through the efforts to secure administrative and judicial cooperation.

4. The central message of the report is to underscore the shared responsibility of the Commission and the Member States in managing the single market. For its part, the Commission is determined to assume all its responsibilities and to exercise its prerogatives in full. However, the legitimate expectations of businesses, consumers and, more generally, individuals will be fully met only if the Member States themselves assume their share of responsibilities. In practical terms, this means that:

- the Community and national authorities must take the budgetary and administrative measures necessary to ensure the requisite resources for the needs of administrative cooperation, monitoring and transparency;
- the local or national authorities must take the organizational measures necessary to ensure that Community legislation is applied in a consistent manner, that administrative structures are adapted to the recognition of approvals and conformity certificates, and that appropriate training is provided for the monitoring and implementing bodies.

5. In welcoming favourably the main lines of the strategy for the management of the Internal Market presented in the report which are based on transparency, cooperation and decentralisation of application, the Commission would draw the attention of both arms of the budgetary authority to the implications this strategy will have for the budgetary and administrative priorities of the Community and the Member States; administering the rules will depend not so much on legislative instruments as on monitoring arrangements, assessment measures and rapid communication. In order to bolster confidence in national systems, the Member States must endeavour to improve administrative infrastructures, in terms of equipment and especially skill training, and the Community will have to be attentive. Finally, the development of partnership and cooperation will require budgetary resources for the establishment of the necessary instruments. The Commission will not be able to exercise its functions as guarantor of the operation of the Internal Market unless it is in a position to make its own contributions.

6. The Commission will implement the guidelines laid down in this communication in close cooperation with the Member States and with Parliament and the Council. It therefore welcomes the initiative taken by Parliament's Committee on Economic and Monetary Affairs in paving the way for a debate on the operation of the internal market as well as the Council resolution of 10 November 1992 on this matter as necessary contributions to the forthcoming discussions. Implementation of the recommendations of

the Sutherland report concerns everyone, each at his level of responsibility. This holds the key to a better awareness, understanding and application of Community obligations.

7. Reflecting the spirit of partnership that must be strengthened between itself and the Member States, the Commission intends to call on the services of the senior national officials responsible for coordinating work on the internal market in order to keep track of the implementation of this communication.

8. This communication is based on the observation, also made in the Sutherland report, that the Commission is now embarked on a phase of administering the existing body of rules on behalf of consumers and firms and the entire population of the Community. Behind the technical nature of those rules lie essential objectives such as protecting health, safety, the environment or fair trading. The rules must, therefore, be applied in the light of those objectives. Moreover, the dismantling of frontier controls creates an obligation to manage the Community area on the basis of solidarity that extends beyond the rules adopted and thus requires a cohesive strategy for reinforcing the Community's working methods.

9. The report is confined strictly to applying the instruments for completing the internal market in the light of three specific considerations:

- the report explicitly disregards capital and the free movement of persons and, while most of its recommendations can be applied to goods and services alike, some are more specifically concerned with the free movement of goods;
- the purpose of the report was not to examine the external implications of the internal market; however, where the Commission is concerned, the management of the internal market has implications for the administration of the external frontiers, for the exercise of new negotiating responsibilities resulting from the existing corpus of Community law and policy, and for the application of the Community rules governing the European Economic Area, which has been set up with the EFTA countries;
- finally, it was not the mandate of the group to cover the necessary development of consumer and environment policy taking as a base a high level of protection in the context of the effective and balanced achievement of the Internal Market.

10. In the context of the proposals of the report and in order to ensure the proper functioning of the internal market, the Commission will place emphasis on a number of major points covered by recommendations made by the Sutherland group:

- Improvement in the transparency of Community rules and of their implementation: The development of Community legislation in recent years makes it imperative and urgent to take the different initiatives advocated in that report. This is a matter as much for the Community as for the Member States, which, if they are to fulfil their obligations satisfactorily, must provide clear information on the relevant procedures.

The Commission welcomes the recommendation that an annual report on the internal market should be published, this also being in line with a request made by Parliament. This report, which will follow on from the ones published each year since 1986 on the implementation of the White Paper, will extend to the whole of the operation of the single market and will cover not only the situation as regards the decision-making process but also the transposition and implementation problems in the Member States. More generally, it will contain an assessment - in the light of the objectives pursued - of the problems encountered in applying the rules. The first report of this kind will be published in the second half of 1993. It will serve as a basis for the deliberations of the other institutions and national parliaments on the main guidelines and priorities of the Commission.

Strengthening of the partnership with the Member States: While the Commission has a responsibility as guardian of the Treaty and as guarantor of compliance by the different parties with their Community obligations, the performance and especially the management of those obligations fall within the shared responsibility of the Commission and the Member States. It is important, therefore, that the Member States should make available to the Commission the scientific capability necessary to provide a more secure framework for the development and implementation of the basic instruments drawn up by the Council in accordance with objective and recognized criteria;

Strengthening of control rules, notably in the field of public procurement, to ensure correct and balanced implementation in all the Member States: The control arrangements must rely primarily on the national courts, whose role as judge in the application of Community law must be reinforced in the interests of effectiveness where firms, consumers and individuals are concerned.

I. PREPARATION OF COMMUNITY LEGISLATIVE INSTRUMENTS

(a) The recommendations set out in the report

11. The report advocates working methods that will ensure both the proportionality of the legislative approach and the transparency of the process:

(i) *Analysis of the reasons and criteria for intervention*

- *All proposals for Community action should be based on a wide-ranging analysis of its political, social and economic impact, comparing the advantages and disadvantages of intervention and of non-intervention. This analysis should be based on the five criteria of need, effectiveness, proportionality, consistency and communication. (Recommendation 1)*
- *The Commission needs to develop a policy towards the choice of market regulation techniques, based on their appropriateness for particular objectives. (Recommendation 2)*
- *The Commission needs to continue to exercise its powers under the Treaty when action is required at Community level in circumstances where uncoordinated action by Member States could materially jeopardise the operation of the Internal Market. (Recommendation 3)*

(ii) *Coordination of the legislative work*

- *The activity of the existing Scientific Advisory Committees within the Commission and Council framework should be strengthened and coordinated in order to ensure the overall scientific consistency of Community legislation. Such advice should be publicised whenever appropriate. Such an approach should be based on the guidelines for cooperation between national administrations, discussed in Section IV of the report. (Recommendation 17)*
- *To avoid contradictions very often caused by an excessively sectoral approach the Commission needs to subject its initial work and its adoption of proposals to assessment by a legislative coordination unit. This assessment would ensure the consistency of each proposal with existing legislation and check that the five analytical criteria (Recommendation 1) had been properly applied. Other Community institutions need to take action in parallel. (Recommendation 15)*

(iii) Publication of legislative intentions and procedures for consulting interested parties

Wide and effective consultation on Commission proposals is essential. The Commission needs to introduce a better procedure for making people aware, at the earliest possible stage, its intention to propose legislation. Background analysis, particularly the consideration of subsidiarity and proportionality, should be made available; and discussions should be held with a wide range of interested partners. (Recommendation 8)

(b) Implementation of the report

(i) Reasons and criteria for intervention

12. When it comes to applying the principle of subsidiarity in connection with the exercise of its right of initiative in preparing legislative proposals, the Commission will simply refer to the communication it sent to the Council and to Parliament on 27 October 1992. There is no need here to go over all the matters dealt with in that communication, apart from a number of essential features relating to the establishment and operation of the internal market, due regard being had to the criteria suggested in the report:

- Need for action: Any legislative initiative aimed at establishing the internal market must be based on an analysis of the impact on the operation of the Community market of the obstacle to be removed by that initiative. The fact that implementation of Article 8a comes within the exclusive jurisdiction of the Community does not dispense with the need for such analysis and for an assessment of the justification for action at Community level that takes account of the importance of the obstacle to be removed;
- Effectiveness and proportionality of the action taken: In drafting its proposals, the Commission will ensure that the arrangements for taking action are, at all times, consistent and concordant with the objectives being pursued, in the interests of maximum effectiveness and an appropriate level of intensity. The panoply of instruments available is broad enough: mutual recognition of national rules based on the Treaty or secured through secondary legislation; optional or total harmonization of laws; control of transfers between Member States in accordance with national rules and regulations; recourse to non-compulsory methods (standardisation...).

(ii) Coordination of the legislative work

13. Where the organization of its departments and activities is concerned, the Commission will endeavour to come up with, and unveil, by mid-1993 the most effective solutions for avoiding the drawbacks associated with excessive fragmentation of its legislative activities. Such coordination is essential to the consistency - including in the scientific field - of the entire body of Community legislation and its interface with national legislation. Similar action is needed in the Council, Parliament and the Member States in order to safeguard against the risks of inconsistency.

(iii) Publication of legislative intentions and procedures for consulting interested parties

14. As it announced at the Birmingham European Council on 16 October 1992, the Commission will undertake wider-ranging consultations than in the past, notably by making more systematic use of consultation documents (green papers). It also promised in particular to look into the procedures for publishing its legislative intentions in the Official Journal of the European Communities when it sets about preparing a proposal that is to be sent to the Council and when no urgency is involved. The details published would include the objectives pursued and the grounds for the initiatives planned, as well as the findings of the preliminary analyses carried out in the light of the aforementioned

principles, and interested parties would be invited to make known any observations or comments they might have.

15. It is important, however, to point out that the entire single-market exercise has been underpinned by an unrivalled communication strategy. It must not be forgotten that the process was set in train by a White Paper which mapped out a detailed work programme and that regular progress reports have been drawn up, over and above the two provided for in Article 8b of the Treaty. Under the work programme, green papers on "television without frontiers" (1984), telecommunications (1987), copyright (1988), satellites (1990), standardization (1991) and postal services (1992) have been published following wide-ranging consultations and hearings with interested parties both inside and outside the Community. Lastly, the Commission, in carrying out its activities, is assisted by groups and committees on which, in some instances, trade organizations are represented. On account of the impact assessment regarding the consequences of its proposals for businesses which it has for many years attached to these proposals which may have a significant impact on businesses, the Commission aims to avoid imposing any unjustified burdens on businesses, and in particular small and medium-sized enterprises (SMEs). It plans to reinforce this arrangement in order to improve the transparency and effectiveness of the Community's internal working procedures, in keeping with the announcement which it made in its second report on administrative simplification in favour of businesses and in particular SME's.

II. APPLICATION OF COMMUNITY LAW

(a) The recommendations set out in the report

16. The application of Community law requires that the relevant legal instruments should not only be interpreted correctly and in a convergent manner but also correctly transposed into national law and correctly implemented:

- *The Commission should provide legal assistance of an informal nature to the Member States during the transposition of directives to avoid discrepancies and contradictions between national legislation. (Recommendation 12)*
- *Member States need to take more systematic action to promote awareness of their transposition legislation, to give publicity to their inspection, monitoring and certification structures and, in general, to inform consumers and business about the rights and obligations created by Community legislation. (Recommendation 13)*
- *Details of relevant sanctions should be notified to the Commission along with the notification of national transposition of Community legislation. (Recommendation 30)*

(b) Implementation of the report

17. The Commission provides Member States at all times with informal assistance in performing their obligations; it organizes exchanges of information and experience on an increasingly regular basis. However, such assistance should not result in the Member States being relieved of their responsibilities as regards the transparency of, and provision of information on, the transposition measures they adopt and especially on the manner in which they implement those measures and ensure that the administrations themselves or consumers and firms comply with them. It is only if the Member States carry out these responsibilities that the Commission will be able to ensure that such information reaches all consumers and firms in the Community.

18. This is because it is important that the results of such bilateral or multilateral work should be disseminated; they are not embodied in legal instruments but may determine the

behaviour of all the Member States and, in particular, are of direct concern to firms and consumers. A number of steps will be taken by the Commission:

- it will make available to the Member States, in an appropriate form, all the transposition measures adopted and will provide information on the administrative arrangements for implementing Community instruments;
- in January 1993 it will publish the first edition of the guide to the "new approach" for eliminating technical barriers to trade; this practical guide has been prepared in cooperation with the Member States and will be supplemented during 1993 and regularly updated to reflect the experience acquired by the different parties involved (Member States, taxable persons, users/consumers, and the Commission itself).

19. Lastly, the Commission agrees with the analysis made in the report according to which national systems of sanctions form an integral part of the measures transposing directives into national law. It will, therefore, inform the Member States that they must include in the transposition measures notified to the Commission the national procedures for monitoring the implementation of Community instruments and for imposing sanctions in that connection. It will also pay attention to this aspect in the continuous monitoring of the way in which the instruments adopted to date are being implemented.

III. ORGANIZATION OF A PARTNERSHIP WITH THE MEMBER STATES

(a) The recommendations set out in the report

20. The report advocates a permanent partnership with the Member States:

(i) *In order to ensure that Community rules are implemented:*

- *Member States should ensure a close and permanent contact with the Commission's units which handle alleged infringements of Community law. This would facilitate a more rapid, partnership-based, resolution of cases handled by the Commission. (Recommendation 20)*
- *A cooperative approach to the enforcement of internal market legislation should be extended and intensified urgently as the single most important way of reinforcing mutual confidence between Member States and the Commission. (Recommendation 31)*
- *There needs to be a permanent framework for administrative partnership, based on groups of contact points, between the Member States and the Commission to deal with the application of internal market rules. The Commission should, urgently, make a proposal to the Council and Parliament which :*
 - *lays down operational guidelines for administrative cooperation, including their application in a rapid response procedure ; and*
 - *as appropriate, embodies them in a fully binding institutional framework for administrative partnership. (Recommendation 32)*
- *The system of contact groups will need to be properly staffed and funded by the Commission and Member States. (Recommendation 35)*

(ii) To handle urgent problems

- *An early communication should be sent by the Commission to the Council and Parliament on the exercise of Community powers to handle urgent and serious consumer problems. (Recommendation 33)*
- *The Commission should establish a coordination unit to ensure that, whenever urgent and serious consumer problems arise, effective communication takes place among Member States, between the Commission and Member States, and within the Commission itself. Such a unit should have the power to identify which Commission department is in the lead and to check the operation of particular systems. (Recommendation 34)*

(iii) To ensure transparency of implementation

- *National and Community enforcement guides should be drawn up for groups of directives, and a summary of them should be made public. They should cover, at the minimum, all directives not yet in force. (Recommendation 37)*
- *The Commission should assist the building of market confidence :*
 - *by securing the agreement of Member States to the mutual recognition of national systems for the accreditation of product certification bodies, and*
 - *by proposing the development of harmonised methods for investigations by enforcement authorities. (Recommendation 38)*

(b) Implementation of the report*(i) To ensure the implementation of Community rules*

21. The Commission already endeavours to see to it that complaints, infringements and problems in transposing directives are dealt with in a rapid and non-contentious manner at regular meetings with the Member States. This approach will be strengthened and extended since, in addition to forestalling dispute procedures, it makes the Member States aware of the need to legislate at national level from a Community perspective.

22. A large number of directives provide for cooperation and information-exchange mechanisms. It is important that the operational arrangements for such mechanisms should be transparent and that the work of the competent officials designated in the Member States should be organized on the basis of networks. To promote this, the Commission will, in mid-1993, publish an initial guide of the operating mechanisms for such exchanges of information in those areas in which directives have been in force for a long time, the purpose being to permit an assessment of the period of evolution that will be needed in the areas recently harmonized.

23. The establishment of a network of contact points between Member States' administrations responsible for implementing the operational rules of the internal market and between those administrations and the Commission is necessary if similar procedures are to be introduced; this must not call into question the division of responsibilities and powers within each Member State but, on the contrary, must ensure the transparency of the organizational arrangements in each Member State. Accordingly, the Commission will take the following initiatives:

- it will present to the Council before June 1993 proposals on the guidelines for administrative cooperation in the different areas of the single market on the basis of an analysis of the existing mechanisms in those different areas and an examination

of the ways in which Community rules are applied in the Member States; when it comes to putting it into practice, such cooperation will need the full support of all the Member States and the Council will, therefore, have to adopt very clear guidelines;

- it will encourage the establishment between Member States of data-transmission networks for ensuring that cooperation between the different public administrations is effective; several initiatives have already been taken in this connection under the 1992 budget and the Commission will shortly be presenting a package of proposals for establishing an overall and consistent strategy for developing and managing data-transmission networks between administrations primarily in the internal market field;
- it will provide back-up for such administrative cooperation in the form of programmes for exchanges of officials.

(ii) To handle urgent problems

24. The Commission has already adopted early-warning mechanisms and has recently proposed that they be extended; in addition, most directives provide for such mechanisms. It is important, therefore, not to create any duplication of effort over and above that existing at the moment. On the contrary, steps must be taken to ensure that these mechanisms operate satisfactorily, if necessary by setting up a central office within the Commission. In all events, the quality of these networks will depend as much on the way they are organized and on the technical operational back-up for them as on the quality of information they will handle and hence on the use Member States will make of them. For this reason, the Commission will publish in the first quarter of 1993 a communication reviewing all the existing mechanisms and providing for the transparency that is necessary if they are to function effectively.

25. The Commission shares the concern expressed in the report as regards the essential needs for cooperation that will arise in the wake of the dismantling of frontier controls; these needs transcend the fields covered by the directives and concern not only the protection of health and safety but also the protection of fair trading. The Commission will, therefore, set up, together with the Member States, a "crisis unit" to handle urgent problems that cannot be tackled under the existing mechanisms and to monitor the proper functioning of the other mechanisms. This "crisis unit" would permit a dialogue between the Member States as well as with the Commission, as advocated in the report. In the interests of effectiveness, the Commission will, for its part, have to take the necessary organizational measures.

(iii) To ensure transparency of implementation

26. In the Commission's view, the report highlights an important problem regarding the need for greater transparency of implementation. The expression used in the report ("enforcement guide") corresponds more to implementation programmes since the clear objective is to link together the Member States and the Commission with a view to applying, with all the necessary resources, the internal market legislation in an effective manner. In the light of the analysis to be carried out in each area of the single market (see point 23), the Commission will propose a method whereby the Member States present implementation programmes for each of those areas. In this way, consumers and firms would be informed of the efforts undertaken with the necessary financial resources and would have the assurance that progress was being made towards establishing cooperation mechanisms (common training, Community investigation programmes, data-transmission systems).

27. Similarly, the Commission must encourage any initiative that helps, through trans-European organizations, to foster mutual understanding. This already happens in the case

of European standardization, which broadly underpins implementation of the legislation by developing, for example, European standards for analysis, measurement and inspection. It is in this spirit too that the Commission is promoting cooperation between laboratories, certification bodies and accreditation agencies within the EOTC (European Organization for Testing and Certification). Such cooperation will have to be stepped up with a view to concluding voluntary mutual recognition agreements. The hope too is that the accreditation networks will work together as a single network and, ultimately, merge.

28. As regards methods of the control of the conformity of goods on the market, the Commission is prepared to enter into discussions with the Member States in order to foster mutual understanding and awareness of the mechanisms and structures in each of them. This aspect will be one of the matters dealt with in the communication on administrative cooperation referred to in point 18.

IV. ACCESS TO JUSTICE AND JUDICIAL COOPERATION

(a) The recommendations set out in the report

29. The report places particular emphasis on the need for the Community, in exercising its responsibilities as the guardian of the Treaty, to look at the conditions governing the access to justice for those subject to the law in order to ensure the application of Community law and the development of judicial cooperation:

(i) *Improvement of access to justice*

- *The Commission and the Member States should, in close liaison, respond to the need to provide informal advice on redress for breaches of Community law to those who request it. (Recommendation 18)*
- *When giving advice, the Commission and Member States should point out the advantages of taking disputes involving the application of Community law before national courts. (Recommendation 19)*
- *More effort needs to be made to improve knowledge of Community law on the part of lawyers and judges in the Member States. (Recommendation 24)*
- *Doubts about the effective protection of consumers' rights need to be overcome. The issues should be given rapid consideration by the Community. (Recommendation 22)*
- *The Commission should issue an interpretative communication about the implications of the recent Francovich and Bonifaci judgement for consumers, businesses and the Member States. (Recommendation 25)*
- *Alleged infringements by authorities in the award of public contracts need to be firmly and rapidly dealt with. To enable Community legislation on remedies in this field to be really effective, consideration should be given to the appointment of a mediator in each Member State who would be independent of the complainant and the awarding authority. (Recommendation 27)*

(ii) *Judicial cooperation*

- *The Community needs to review the way in which the rights of individuals to obtain redress for breaches of Community law are provided across the Community. (Recommendation 21)*

- *An urgent examination is required of the difficulties faced by those who - despite the provisions of the Brussels Convention of 1968 - wish to execute, in one jurisdiction, a civil order which has been made in another. (Recommendation 23)*
- *The Community needs to initiate progress towards greater comparability of treatment in legal disputes. A way forward could be to consider the implications of the different approaches of the various jurisdictions to the key concepts of "damage" and "compensation". An effort to clarify their meaning, at least for the purposes of Community law itself, could constitute a useful first step. (Recommendation 26)*
- *Penalties and sanctions should be imposed with the aims of the Community in mind. (Recommendation 28)*
- *Judicial cooperation between Member States should aim at an approximation of sanctions in respect of breaches of Community law. Such cooperation should enhance the free movement of goods but avoid it benefitting Member States which have the least stringent system of sanctions. (Recommendation 29)*

(b) Implementation of the report

(i) Improvement of access to justice

30. The provision of information for individuals on ways of seeking redress is a matter primarily for the Member States. The Commission concentrates its efforts on keeping the Member States informed; however, it has already, in a number of publications, informed firms, consumers and individuals directly about the means of redress available to them. However, the Commission intends to encourage parties to take disputes before national courts, notably where they involve individual measures taken by an administration. The Commission will, in accordance with the principle of subsidiarity, examine what can be done to improve access to justice.

31. Even so, if such action is not to run counter to the objectives of consistency of, and compliance with, Community rules, a certain number of conditions must be met:

- proper information must be provided on the means of redress at national level and the consequences associated with such redress; the Commission will look into ways and means of providing consumers and firms, particularly SMEs, with satisfactory information on the means of administrative and judicial redress in a particular area available in all Member States. These technical comparisons might encourage convergence of the different systems;
- the competent national bodies, the legal profession and consumer bodies must be correctly informed of the rights stemming from Community rules, and appropriate training must be provided. The Commission will, therefore, look into the details of a training programme that would supplement current initiatives concerned with the teaching of Community law;
- finally, as recommended in the report, it is necessary that the uncertainties regarding the effectiveness of the protection of the rights of consumers should be removed. The Commission will proceed to the analyses which such a recommendation requires.

32. On the basis of the Francovich judgement, the Commission will prepare a communication on compensation for damage caused to individuals by breaches of Community rules in cases where the conditions laid down by the Court are met. With that

judgment, the Court has reinforced its case law by allowing an individual compensation for damage resulting from the non-transposition of a Community directive.

33. In the particular case of public procurement, without prejudice to the national means of redress and to the steps Member States must take with regard to control, notably preventive control, and cooperation, the Commission will examine the report's recommendation that an independent "mediator" should be appointed whom consumers and firms could contact with a view to dealing with complaints lodged during the publication and award procedure for a particular contract, without this adversely affecting future tenders. In consultation with the two Advisory Committees dealing with public procurement, the Commission will issue in the first quarter of 1993 a communication on the follow-up to this recommendation, possibly together with a proposal.

(ii) *Judicial cooperation*

34. The Commission fully subscribes to the view expressed in the report to the effect that it is essential for consumers and firms to be able to seek redress before the courts in their own country in the event of breaches of Community law. However, as stated in the report, the harmonization of national civil and criminal procedures is difficult to imagine on account of the differences in legal and administrative cultures. In the Commission's view, therefore, it is necessary to take further the analysis and comparison of national procedural rules and in particular the definitions of the concepts of damage and compensation in order to determine whether the differences existing between Member States are such as to create serious obstacles to the operation of the internal market. The examination will be extended to the systems of sanctions applied in Member States as part of the monitoring of the application of Community law. The results of these different deliberations, which go far beyond the area of the Internal Market, will be set out in a communication to the Council and to Parliament.

35. The Brussels Convention represents an appreciable simplification of the procedures for the execution and recognition of judgments and, according to the information at the Commission's disposal, consumers and firms are increasingly having recourse to the mechanisms introduced under the Convention. Even so, the Commission is prepared to examine with the Member States to what extent it would be possible to improve its operation further; this examination could be based on the Member States' replies to a detailed questionnaire already drawn up for this purpose by the working party responsible, within the framework of European Political Cooperation, for cooperation in civil matters. Within the same framework and pending the entry into force of the Treaty on European Union, the Commission will look into the possibilities of extending the scope of the Brussels Convention to other fields. It would though stress the importance of rapid ratification by all the Member States of the San Sebastian Convention, under which Spain and Portugal became party to the Brussels Convention.

V. **IMPROVEMENT IN THE QUALITY OF EXISTING LEGISLATIVE INSTRUMENTS**

(a) **The recommendations set out in the report**

36. The report advocates a series of initiatives for making Community rules more accessible:

- *Contradictions and inconsistencies arising from the rapid pace of internal market legislation and posing serious obstacles to its operation need to be removed. The European institutions need to give the highest priority to their removal. (Recommendation 14)*

A more systematic and sustained effort should be devoted to accelerate the legislative consolidation of Community law. This needs to be matched by a similar effort on the part of the Member States to ensure that the transparency of their transposed legislation has a similarly high priority. (Recommendation 10)

The Commission needs, as a matter of priority, to take account of the obvious limits to transparency entailed by the use of directives to harmonise national laws, and to consider an approach to Community legislation as follows :

- *as a first step, to use directives as a means of harmonising national laws, taking account of their particular characteristics ;*
- *subsequently, where progress over several years has enabled a satisfactory degree of approximation to be achieved, to convert these directives into directly applicable regulations, thereby giving consumers, businesses and enforcement authorities a single point of reference for Community legislation. (Recommendation 11)*

The real impact of Community legislation, and of the principle of mutual recognition of national rules where legislation has not been harmonised, should be assessed periodically by the Commission, in close consultation with all the parties concerned, to check their effectiveness and their compatibility with the proper functioning of the internal market. (Recommendation 16)

During the next few years the Commission should undertake surveys to examine the nature, extent and importance of direct and indirect obstacles to the internal market as they are perceived by consumers, business and enforcement authorities. (Recommendation 4)

(b) Implementation of the report

37. The Commission has already attempted to achieve consistency in respect of the directives adopted under the "new approach", in the shape of its proposal on conformity marks and the decision on certification modules. It will continue its ongoing analysis of legislation with a view to taking any initiative that might help to improve consistency.

38. The Commission has already given its views on the question of consolidation and announced, in the seventh report on the implementation of the White Paper, two initiatives relating to legislative and declaratory consolidation;¹ these will have to be given a new dimension in view of the importance attached to such action by the Sutherland report:

- the Commission will, with effect from 1 January 1993, provide access via the INFO 92 database to the Community's internal market legislation, in consolidated form;
- besides the proposals which will be announced in its work programme for 1993, the Commission will publish in February 1993 a programme of legislative consolidation, although the launch of such a programme requires a clear

¹ The purpose of legislative consolidation is formally to substitute a new instrument for existing instruments, while declaratory consolidation is the publication, in a consolidated form, of the existing instruments that remain the sole legally authentic references.

commitment from the different institutions that they will not reopen discussions as to substance;

- for the instruments it adopts itself, the Commission will endeavour, whenever necessary, to consolidate them as and when they are amended.

However, the Commission is not alone in this consolidation exercise. The Member States have their own share of responsibility since they must transpose Community instruments into national law. The efforts to achieve transparency at Community level must make their effects felt at national level: the Member States should, therefore, allow consolidation at Community level to be accompanied by equivalent transparency at national level or by any other information initiative. For its part, the Commission will encourage initiatives designed to publicize implementing measures taken by Member States and, in so doing, to bring them to the notice of all consumers and firms.

39. The directive is the preferred instrument for harmonization and has shown itself to be particularly suited to approximating quite divergent national provisions. However, the Commission does agree with the statement in the report to the effect that a single legal rule is important for users in cases where the application of Community law has already resulted in a satisfactory degree of approximation of national systems. It will, therefore, be certain to undertake an in-depth analysis of the advantages associated with the use of regulations, subject to the conditions spelt out in the report and in so far as the field in question is amenable to such an approach.

40. The Commission will also bring in methods for managing mutual recognition in order to facilitate its use by SMEs in particular:

- by publishing interpretative communications of Community law based on the experience gained in connection with Articles 30 et seq.;
- by proposing, in the light of the lessons derived from the inventory drawn up pursuant to Article 100b, a mechanism for encouraging the transparency of mutual recognition that will benefit consumers and firms.

41. The Commission is in full agreement with the report when it states that there should be regular monitoring and assessment of the legal instruments used, in both the harmonized and the non-harmonized fields. This is because it has to ensure that these instruments are effective in terms of the objectives set. Accordingly, it will carry out and publish such assessments, either in the reports provided for by the directives or on its own initiative.

42. The overall operation of the internal market must be such as to ensure that the objectives underlying the establishment of the single market, namely the international competitiveness of businesses and the contribution to strengthening economic and social cohesion, are still pursued. The Commission will, therefore, have to ensure monitoring of the economic and industrial effects of the internal market and will arrange for a study to be carried out; in view of the deadlines for implementing all of the legislation and integrating it into business strategies, it would not seem expedient to envisage such a monitoring exercise before 1996.

VI. INFORMATION AND COMMUNICATION

(a) The recommendations set out in the report

43. The report calls for the development of an information and communication strategy:

- *The Commission needs to develop a communication strategy, involving all the Community institutions, national administrations and other non-governmental organisations in a systematic and coordinated way. This strategy would set the key objectives (starting with those areas where the lack of information is greatest) and organise the resources which are available at Community and national level. (Recommendation 5)*
- *Consumers and firms are entitled to know about their legal rights and where they can find out about new regulations and laws, for example by means of illustrative and explanatory material such as brochures, manuals, interpretative notices, guides and databases. (Recommendation 6)*
- *Without excluding the possibility of information provided directly by the Commission (e.g. as in the case of toy safety) nor its role in coordinating and promoting such activity in the Community, it is for the Member States to take prime responsibility in improving information for consumers and business. (Recommendation 7)*
- *The Commission should produce an Annual Report for the Council and the Parliament on the Operation of the internal market which summarises clearly the progress made and difficulties encountered. Significant developments in legislative policy and in legal doctrine should be described to allow consumers and firms to keep fully abreast of major developments. (Recommendation 36)*
- *The Commission should, in collaboration with the Council and Parliament, initiate a wide-ranging discussion on the rules and procedures for formally ensuring the transparency of the entire Community legislative process. This discussion is urgently needed and its follow-up must include specific action to ensure the free flow of information to the citizen. (Recommendation 9)*

(b) Implementation of the report

44. In this field too, the report rightly highlights the division of responsibilities between the Commission and the Member States as regards the dissemination of information on Community rules and their implementation; since each party has a share of management responsibility, each must also assume its share of responsibility for an information strategy. The Commission cannot act on its own, even supposing that it had the means to do so. It must, therefore, seek a partnership with the Member States so as to reinforce the initiatives taken by each party. Such action must be tailored to the needs of administrations, businesses and consumers for information on the manner in which Community measures are implemented at national level.

45. Through its offices in the Member States, the Commission already possesses an instrument for maintaining an active relationship with national administrations, the media, firms and consumers. There are also the Euro-Info-Centres, which are a valuable channel for disseminating information to firms. They will, therefore, have to be used as a means of reinforcing all the transparency initiatives advocated in this communication. In addition, the Commission will make use of its other relay networks, including Team Europe, and the various means of communication available, including databases (e.g. Info '92), diskettes, different publications (including an annual report) and, if the necessary resources are available, perhaps even television advertising.

46. For the purposes of its information strategy, the Commission will rely on the INFO 92 database, which is accessible to all users via the central EUROBASES computer in Luxembourg and contains 40 000 screen pages (not including the consolidated instruments) of general and technical information on all the instruments adopted, the exact references to national transposition measures and, from 1 January 1993, the full texts of

legal instruments in consolidated form. Access to this database will have to be improved and, with this in mind, an invitation to tender will be issued for the subcontracting work.

47. Over and above the general publication measures, the efforts to achieve transparency and to provide explanations in the different areas of the internal market will necessitate publication initiatives of a more technical nature aimed at consumers, firms and trade organizations. These initiatives must come as much from the Commission as from the Member States; joint consultations will, therefore, be held in order to avoid any duplication of effort and to reinforce and enrich the initiatives taken. As announced in the introduction, the Commission will publish an annual report on the internal market.

48. Lastly, the Commission is following with interest the current work on introducing greater transparency within the Council, which, without jeopardizing the confidentiality of negotiations, will make for better information on the details of negotiations. This is why the proposals that the Foreign Affairs Ministers will make in preparation for the Edinburgh European Council will also contribute to implementation of the recommendations of the Sutherland report and to closer involvement of national parliaments in the formulation of instruments which they will have to implement subsequently.