

PRESS RELEASE

8500/89 (Presse 155)

1344th meeting of the Council

- INTERNAL MARKET -

Brussels, 18 September 1989

President: Mrs Edith CRESSON

Minister for European Affairs
of the French Republic

The Governments of the Member States and the Commission of the European Communities were represented as follows:

Belgium:

Mr Paul DE KEERSMAEKER
State Secretary for European
Affairs and Agriculture

Denmark:

Mr Neils Henrik SLIBEN
Deputy Permanent Representative

Germany:

Mr Helmut HAUSSMANN
Federal Minister for Economic Affairs

Greece:

Mr D. DANILATOS
Secretary-General, Ministry of Trade

Spain:

Mr Pedro SOLBES
State Secretary for Relations with
the European Communities

France:

Mrs Edith CRESSON
Minister for European Affairs

Mrs Véronique NEIRETZ
State Secretary for Consumer Affairs

Ireland:

Mr Terry LEYDEN
Minister of State at the Department
of Industry and Commerce

Italy:

Mr Pierluigi ROMITA

Minister for Community Policies

Mr Adolfo BATTAGLIA

Minister for Industry

Luxembourg:

Mr Georges WOHLFART

State Secretary for Foreign Affairs

Netherlands:

B.J.M. Baron van VOORST tot VOORST

State Secretary for Foreign Affairs

Portugal:

Mr Vasco VALENTE

Deputy Permanent Representative

United Kingdom:

Mr John REDWOOD

Parliamentary Under-Secretary of State,
Department of Trade and Industry

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Commission:Mr Martin BANGEMANN
Sir Leon BRITTANVice-President
Vice-President

CONTROL OF CONCENTRATIONS

The Council held a detailed debate on the key points in the draft Regulation on control of concentrations, on the basis of a Presidency compromise.

Following the debate the President summarized the outcome of the discussion as follows:

- The Council agreed to seek a final decision at the meeting to be held on 10 October 1989.
- It welcomed the broad outlines of the compromise submitted by the Presidency as the basis for a global solution.
- On the question of thresholds, the Council did not reach a final agreement, but established a consensus on the principle of a four-year transitional period, at the end of which a decision would be taken on a revision.
- Nearly all the delegations could agree to ECU 5 000 million as a starting point for the transitional period.
- The Commission reaffirmed its intention to propose a downward revision.
- Following a proposal from the Netherlands, there emerged a broad consensus in favour of empowering the Commission, in view of the high level of the thresholds, to intervene in respect of concentrations even below the thresholds, if they affected trade between Member States and threatened competition. This right to intervene would be reviewed at the same time as the thresholds.

- Regarding the criteria, it was generally agreed that the Presidency's text provided a basis for agreement.

The Council instructed the Permanent Representatives Committee to clarify the exact terms of the compromise and to settle the other questions outstanding in the compromise and in the draft Regulation (most importantly, Articles 3 and 5).

IMPLEMENTATION OF THE INTERNAL MARKET

The Council heard an introduction by Vice-President BANGEMANN of a Commission communication on implementation of the legal acts required to build the single market. The communication contained a general appraisal of progress in putting the White Paper into practice and took stock of the transposal and implementation of the directives pertaining to the single market.

The Council instructed the Permanent Representatives Committee to report back to it at a forthcoming meeting on ways to improve the situation.

COMMUNITY PATENT

The Council adopted the following conclusions:

1. The Council is conscious of the political necessity of respecting the 1993 objective for the introduction of the Community patent, which constitutes an important element in the completion of the internal market.
2. The Council has agreed that a Conference of the Representatives of the Governments of the Member States will be convened by the Presidency in Luxembourg from 11 to 15 December 1989 with the aim of drawing up the definitive text of the Agreement relating to Community patents, which will be open for signing by the twelve Member States at the end of the Conference.

The Conference will have to settle the two technical problems which remained unresolved at the Luxembourg Conference of 1985, namely the scale for the distribution between the Member States of revenue from charges on Community patents and the arrangements concerning translations and publication of Community patents, and it will also have to resolve the problems posed by conclusion of the Agreement for Spain and Portugal, as a result of the obligations devolving upon these two countries by virtue of their accession to the Communities. The entry into force of the Agreement will be subject to ratification by the twelve Member States.

3. Taking into account the aim of introducing the Community patent on 1 January 1993 and the risk that the difficulties which have hitherto prevented the 1975 Community Patent Convention from being ratified by certain Member States may not be resolved by that date, a Protocol worded as follows will have to be adopted:

"If by 31 December 1991 the Agreement has not entered into force, a Conference of the Representatives of the Governments of the Member States is authorized to fix the number of Member States which must ratify the Agreement for it to enter into force."

The Protocol itself will come into force after ratification by the twelve Member States of the European Communities.

4. The Council instructed the Permanent Representatives Committee to prepare for the Conference to be held from 11 to 15 December 1989 and in particular to prepare basic drafts on which the Conference would be asked to decide.

RIGHT OF RESIDENCE

The Council referred to the three proposals for directives on the right of residence and instructed the Permanent Representatives Committee to continue its work, with a view to reporting to the Council at its next meeting on 10 October 1989.

EEC-SWITZERLAND INSURANCE AGREEMENT

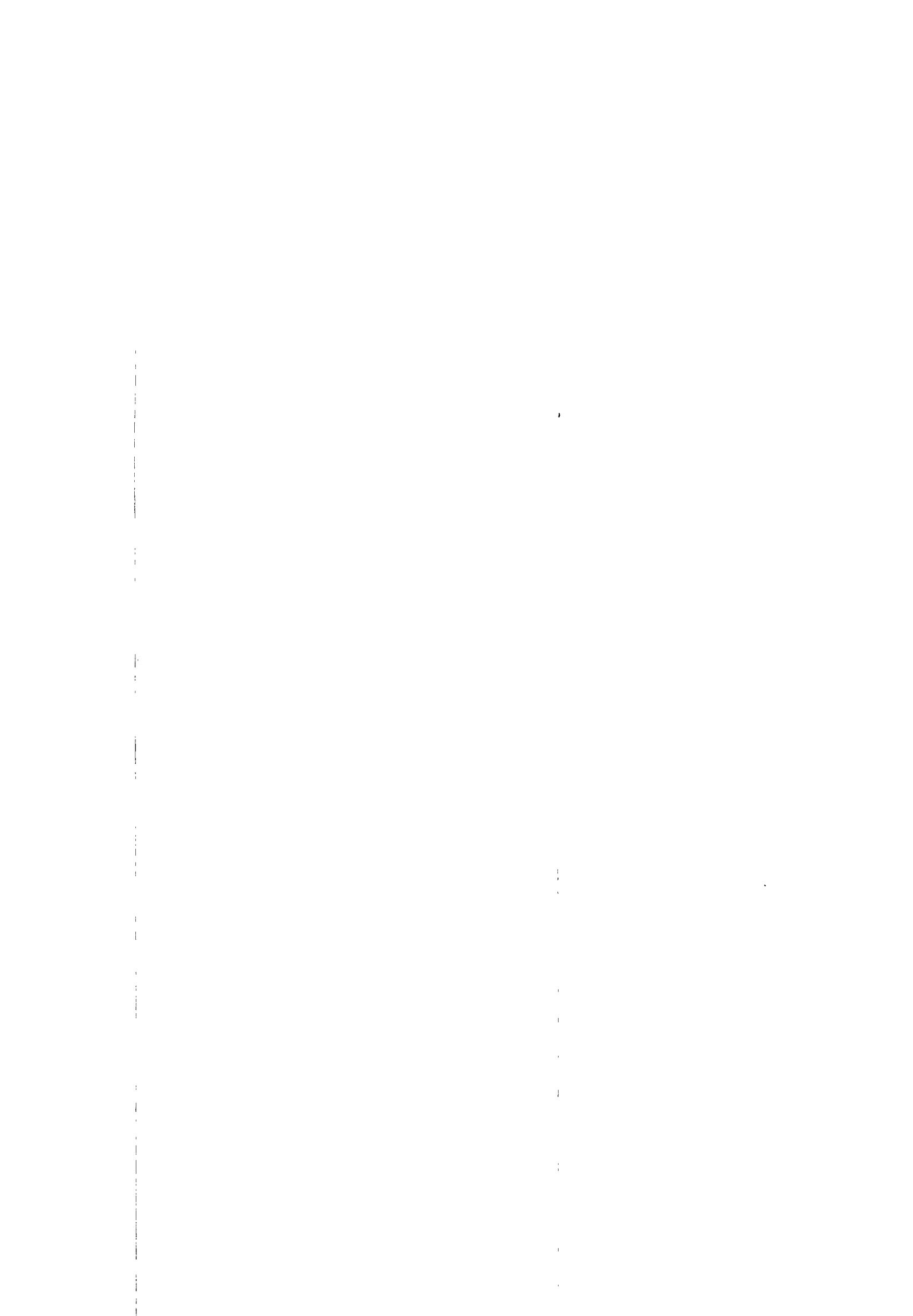
The Council agreed to enter this question as an "A" item on the agenda for its next meeting, scheduled for 26 September 1989.

EQUIVALENCE OF DIPLOMAS OF A LEVEL LOWER THAN 3 YEARS' POST-SECONDARY

The Council agreed to postpone examination of this item until its next meeting, scheduled for 10 October 1989.

CERTIFICATION AND TESTS

The Council agreed to defer this item until its next meeting, on 10 October 1989.



VARIOUS DECISIONS

Signing of the EEC-Poland Agreement

The Council approved the results of the negotiations conducted by the Commission with Poland with a view to conclusion of an agreement on trade and on economic and commercial co-operation, and decided to proceed with the signing of the Agreement subject to its conclusion.

The signing is to take place in Warsaw on Tuesday, 19 September 1989.

Anti-dumping

The Council adopted the Regulation imposing a definitive anti-dumping duty on imports of calcium metal originating in the People's Republic of China (21,8%) and the Soviet Union (22,0%) and definitively collecting the provisional anti-dumping duty imposed on such imports.

Trade Agreements

The Council adopted the Decision authorizing extension or tacit renewal of certain trade agreements concluded between Member States and third countries.

Harmonization of Frontier Controls of Goods

The Council adopted the Decision accepting, on behalf of the Community, the Resolution of the Inland Transport Committee of the Economic Commission for Europe (UN) concerning technical assistance measures for the implementation of the International Convention on the Harmonization of Frontier Controls of Goods (Resolution No 230 of 4.2.1983).

Fertilizers

The Council adopted the Directive on the approximation of the laws of the Member States supplementing and amending Directive 76/116/EEC in respect of the trace elements boron, cobalt, copper, iron, manganese, molybdenum and zinc contained in fertilizers.

Brussels, 15 September 1989

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NOTE BIO (89) 257 AUX BUREAUX NATIONAUX
CC: AUX MEMBRES DU SERVICE PORTE-PAROLE

PREPARATION INTERNAL MARKET COUNCIL, 18 September 1989 (M. Berendt)

The principal issue for this Council will be the proposed regulation on mergers. The presidency is expected to push for agreement. The purpose of this regulation is to simplify the competition procedures relating to mergers in the context of the single European market. It would set a threshold above which mergers would be considered only by the Commission under Community law, and below which they would be the responsibility of the authorities in member states, thus creating a "one-stop shop" for companies. During the course of negotiations, however, the issues have become more complex and there will be three main areas for negotiation:

(I) Thresholds: because of reluctance by a number of member states to accept 2,000mecu global turnover as the starting threshold for the regulation, as proposed by the Commission in December 1988, the presidency is now proposing 5,000mecu. There will, however, be discussion over the formula for reverting to 2,000mecu after a transitional period, with some member states, especially the UK and Germany, reluctant to see a commitment at this stage to such a reduction. There may well be agreement in the Council on the use of a qualified majority vote for a subsequent reduction in the threshold. The Commission has made clear that it would retain powers to examine any mergers between 2,000 and 5,000mecu.

The other thresholds likely to be agreed are between 200 and 300mecu for turnover within the Community and not more than two thirds of turnover in any one member state.

(II) Criteria: there is a difference of approach between member states as to the criteria to be used by the Commission in examining the large mergers which would be governed by the regulation. Member states such as Britain and Germany insist that only competition rules should be applied, whereas another group of countries including Spain and France would see a further qualitative element. This problem is expected to be resolved by a compromise formula.

(III) Procedures: Sir Leon Brittan has explained to the Council how the system would work when the Commission had to examine a merger. If the Commission was clear that no competition problems were raised, it would inform the parties within a month stating that it had no objections. If it did see problems, it would send a warning letter which would not have formal suspensive effect, but would make it clear that the plans ran the risk of being blocked.

Whereas smaller member states and Italy - who do not have national competition authorities - are anxious that the Commission should be able to act in certain cases below the threshold levels, other countries, particularly Germany, seek the right to intervene in certain cases above the threshold. These issues will be subject to further negotiation in the Council.

Swiss/EC agreement on non-life insurance

Negotiations between the Community and Switzerland on insurance other than life assurance were completed in July, and the Commission has now proposed the final text to the Council for formal adoption. It still has to go to the European Parliament and Economic and Social Committee for their opinions. Monday's Council will be discussing the legal base to be used by the Community for the implementation of the agreement.

The agreement essentially allows insurance companies from each party to operate in the other, but contains a clause whereby the agreement lapses if either party cannot accept future changes in the insurance legislation of the other.

Regards,

C.D. Ehlermann

C.D. Ehlermann

Brussels, 15 September 1989

Note BIO (89) 257 (suite 1) aux bureaux nationaux
cc. aux membres du Service du Porte-Parole

Préparation Conseil Marché Intérieur, 18.9.89 (E. Reuter)

The Council will proceed to the customary stocktaking of the implementation of the decisions aiming at completing the internal market. Mr Bangemann will stress the urgent need for Member States to enact through national legislation and administrative decisions the directives adopted by the Council.

Community Patent

The Council will revert to this issue with a view to deciding whether to convene an intergovernmental conference. Three problems remain: the modalities of the entry into force of the convention, the linguistic regime and the financial arrangements. The Community patent convention was signed in Luxembourg in 1975 but has not entered into force because ratification by all Member States was required. Denmark and Ireland cannot ratify because of political and constitutional difficulties. The new Member States are supposed to accede to the convention but insist that ratification by all Member States is part of the "acquis communautaire".

The language problem derives from the necessity to have as few languages as possible in order to have procedures which are compatible with businesses' need for speed and efficiency in the internal market.

The issue of the location of the European Community's trade mark office has also been linked to this discussion.

The Council's deliberations will no doubt be rather technical and complicated and it is difficult to predict the outcome. Politically there can be no doubt that the European internal market needs a European patent.

Right of residence

It is recalled that the Commission withdrew in May the ten year old proposal for a general right of residence which had been based on Article 235 requiring unanimity. The Commission has now tabled replacement proposals for students and for old aged pensioners based on treaty provisions which allow adoption by qualified majority. The underlying principle is that residents should not become a burden on the social security system of the host Member State. Thus a Member State can require proof of sickness insurance.

The ministers are expected to have a political discussion over lunch. The legal counsel of the Council argues that a legal basis requiring unanimity is the only one compatible with Community law.

Mutual recognition of diplomas

The Commission will make a first presentation of its proposal on the mutual recognition of professional qualifications involving a training at a level lower than baccalaureat plus three years.

Amities,

C.D. EHLERMANN - comeur

Brussels, 19 September 1989

NOTE BIO (89) 257 SUITE 2 AUX BUREAUX NATIONAUX
CC: AUX MEMBRES DU SERVICE PORTE-PAROLE

Internal Market Council 18 September 1989 (M.F.Berendt)

Mergers: Despite several hours of bilateral talks with delegations undertaken by the Presidency and the Commission, ministers were unable to reach agreement on the text of the mergers regulation, although the shape of a compromise became clearer and the issue will be taken again at the Council of October 10.

The threshold levels proposed by the Presidency (5000mecu global turnover, 250mecu within the Community, not more than two-thirds of turnover in one member state) will certainly form the basis of a final agreement. The basic difference of approach is between those countries which wish to keep Commission involvement to a minimum, in particular Germany, the UK and Luxembourg, and those including Italy and most of the smaller countries, who wish to retain the possibility for the Commission to intervene in cases below the 5000mecu threshold.

A Dutch proposal formed the basis of the Presidency's conclusions which would give the Commission special powers to act below the 5000mecu threshold following a complaint or on its own initiative if it believed that competition in the Community was at risk. For the purposes of mergers, this would replace the use of the existing regulations used for implementing articles 85 and 86 of the Treaty.

Among other issues unresolved were a British demand for a unanimous Council decision when the threshold came up for review, a German demand for the right for a member state to intervene after the Commission had given its agreement to a merger (a problem which can be resolved by closer definition of the conditions where member states can intervene in the "public interest"), a demand from Italy for more vigorous use of articles 85 and 86 below the thresholds and the reciprocity clause introduced into the presidency compromise.

This clause would allow the Commission to propose negotiations with any third countries which hindered mergers or takeovers. It was opposed by the Dutch, Germans and British. For the Commission it was "unnecessary but not objectionable" in Sir Leon Brittan's words, and should be seen in relation to the announcement of Vice-President Bangemann in the Council that the Commission would be making proposals for equal conditions for takeovers and mergers within the Community on the basis of a report to be presented by the end of September.

Community Law

Vice President Bangemann introduced the Commission report on the implementation of Community Law, underlining the importance of more rapid progress. Transposition of Community law into national legislation was going too slowly. There were 68 directives which should now have been transposed by member states, especially relating to standards. Only seven directives under the 1992 programme had so far met this requirement. Foodstuffs law was being adopted too slowly by the Council and there was a poor record on agreeing directives on freedom of movement. Furthermore, member states were not respecting decisions of the Court of Justice - 46 cases of non-compliance were outstanding.

Mr. Bangemann said that he was sounding the alarm bell. Although the Commission had always agreed against a centralised process, it might have to abandon directives in favour of regulations, which have direct effect. The lack of cooperation by member states might compel us to use regulations more frequently.

Regards,

C.D. Ehlermann
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