

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

