

COMPLETING THE
INTERNAL MARKET



CURRENT STATUS MARCH 1988

CONDITIONS FOR
INDUSTRIAL COOPERATION

Company Law
Intellectual Property
Taxation

A SINGLE PUBLIC
PROCUREMENT MARKET

COMMISSION OF THE
EUROPEAN COMMUNITIES

In June 1985, the Commission of the European Communities issued a White Paper "Completing the Internal Market" setting out a target of achieving by 1992 a single European market for goods, services, people and capital.

The White Paper included a detailed legislative timetable containing over 300 measures and proposals.

In March 1988, the Commission issued its "Third Report on the Implementation of the White Paper on Completing the Internal Market". This updated and modified the original legislative timetable contained in the White Paper.

This brochure is one of a series of five intended to summarize the current problems, the 1992 objectives and the measures and proposals contained in the White Paper and Third Report.

The complete series of brochures covers

A common market for services

The elimination of frontier barriers and fiscal controls

**Conditions for industrial cooperation
A single public procurement market**

A new Community standards policy

Plant and animal health controls

These brochures will be updated and reissued at regular intervals until 1992. Details about availability are given on the inside back cover.

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CONDITIONS FOR INDUSTRIAL COOPERATION A SINGLE PUBLIC PROCUREMENT MARKET

How To Use This Brochure

The aim of this series of brochures is to

- Inform the interested European public about the steps which are being taken to bring about the single market
- Summarize the approach which is being taken in individual business sectors
- Provide a first reference to the content and current status of each proposal which the Commission has drafted to bring about the 1992 Internal Market.

This brochure contains

- A brief description of how the Community makes laws and recommendations
- A general introduction to the issues and problems in creating an Internal Market in industrial cooperation and public procurement
- Specialized introductions to the approach being adopted in individual sectors of industrial cooperation and public procurement
- Brief summaries of every measure which has been adopted or proposed to create the Internal Market for industrial cooperation and public procurement. Proposals mentioned in the White Paper but not yet issued by the Commission will be summarized in the future updates of the brochure.

The reader should

- Ensure he is familiar with how the Community makes laws and recommendations. If not, he should turn to page iii
- Read the general introductions to industrial cooperation and public procurement for an overview of the issues (page 1, 41)
- Select the section(s) which cover sector(s) of interest from the contents (page vii).

The summaries provide references to the appropriate copies of the Official Journal of the European Communities for those readers wishing to examine measures in more detail. Copies of the Official Journal can be obtained from the information offices listed inside the back cover.

HOW THE EUROPEAN COMMUNITY MAKES LAW AN OUTLINE

It is necessary to be familiar with the procedures by which the Community passes laws in order to understand the detail contained in the summaries. Each summary relates to a specific measure intended to facilitate the creation of the single market. In broad terms

- The Commission (which has both executive and administrative roles) initiates and drafts a proposal which it submits to the Council
- The European Parliament (which is elected by the citizens of the Community) and the Economic and Social Committee (which consists of representatives from employer organizations, trade unions and other interest groups) consider and comment on the proposal
- The Council (whose members represent the governments of the Member States, normally at ministerial level) adopts the proposal which then becomes law. In some cases, this power can be exercised by the Commission.

This brochure contains summaries of different types of measures; their consideration and adoption can follow different procedures. These are discussed below.

1. LAWS AND OTHER MEASURES

Regulations

A *regulation* is a law which is binding and directly applicable in all Member States without any implementing national legislation. Both the Council and the Commission can adopt *regulations*.

Directives

A *directive* is an EEC law binding on the Member States as to the result to be achieved, but the choice of method is their own. In practice national implementing legislation in the form deemed appropriate in each Member State is necessary in most cases. This is an important point as businesses affected by a *directive* have to take account of the national implementing legislation as well as the *directive*.

Decisions

A *decision* is binding entirely on those to whom it is addressed. No national implementing legislation is required. The *decisions* summarised in this brochure are *Council decisions* although in certain cases the Commission has the power to adopt *Commission decisions*.

Recommendations

A *recommendation* has no binding effect (it is not a law). *Recommendations* can be adopted by both the Council and the Commission.

The majority of the measures included in this brochure are *Council Directives*.

EEC Legislation from Start to Finish (Directives and Regulations)

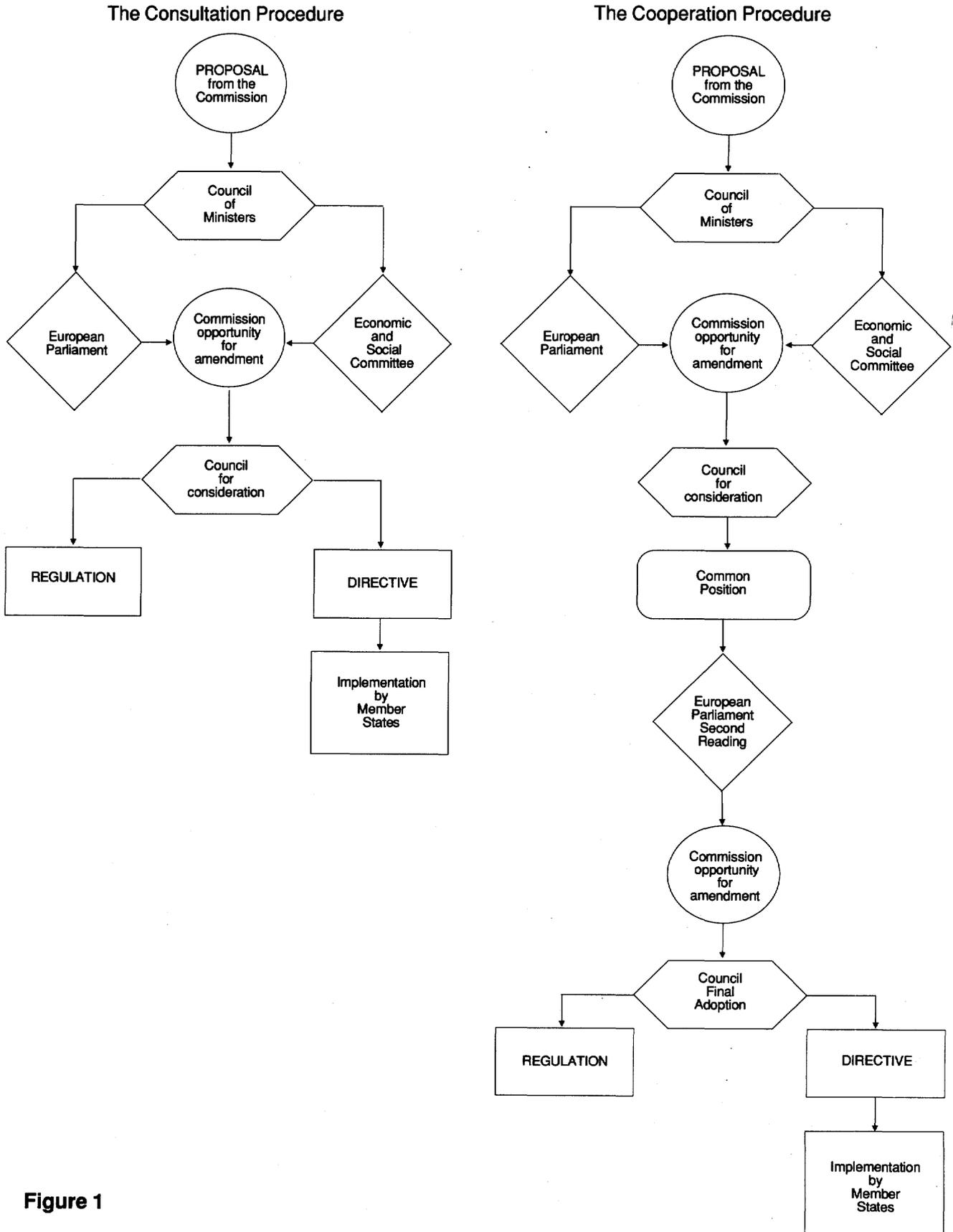


Figure 1

2. PROCEDURES FOR MAKING LAWS

The Community's decision-making procedures are best illustrated by tracing the progress of a *directive*. The following text should be read in conjunction with the flow chart in figure 1.

Since the entry into force of the Single European Act on 1.7.87 there are two distinct procedures for the adoption of a *directive*; the *consultation procedure* and the *cooperation procedure*. The EEC Treaty article upon which a proposal is based dictates which procedure is followed.

In both cases a *directive* begins with a proposal from the Commission to the Council.

Under the *consultation procedure*, the Council requests an opinion from the European Parliament and, in most cases, from the Economic and Social Committee. Once these have been given, the Commission then has the opportunity to amend the proposal if it so wishes. The proposal is then examined by the Council which may adopt it as proposed, adopt it in an amended form, or fail to reach agreement, in which case the proposal remains "on the table".

Under the *cooperation procedure*, the Council requests opinions from the Parliament and the Economic and Social Committee in the same way. Once these opinions have been received the Council has to adopt what is called a *common position*, although it seems that the proposal will again remain "on the table" failing any *common position* being reached. On a *common position* being reached, this is transmitted to the Parliament which has three months to accept, reject, or propose amendments to it, on its *second reading*.

At this stage the Commission may again amend the proposal if it wishes. The proposal is then returned to the Council which has three months to take a final decision. In the absence of a decision, the proposal lapses.

Whether the Council can adopt a proposal by a *qualified majority* or has to reach a *unanimous decision* depends in the first instance upon the article of the Treaty which is the basis for the measure. However, there are certain situations where unanimity must be reached by the Council:

- i) to introduce amendments of its own initiative to a proposal
- ii) to adopt amendments proposed by the Parliament but not taken up by the Commission
- iii) to adopt a measure when the Parliament has rejected the Council *common position* under the *cooperation procedure*.

The question of whether a *directive* or a *regulation* is subject to the *cooperation procedure*, the *consultation procedure* or neither of these depends on its legal basis.

There are a limited number of *decisions* summarised in this brochure. The European Parliament and the Economic and Social Committee are consulted on some of these.

There are also a limited number of *recommendations* in this brochure. Some *Council recommendations* are submitted to the European Parliament and the Economic and Social Committee for their opinion before adoption.

3. PUBLICATION OF TEXTS

At certain stages in the Community decision making procedure, texts are published in the Official Journal of the European Communities. There is an 'L' series which contains legislation and a 'C' series which contains other information, such as *communications* issued by the Commission.

This brochure contains summaries of both adopted legislation and proposals for legislation. In the case of adopted legislation, the summary gives the reference to the Official Journal 'L' series in which the text has been published. Readers interested in the legislative history of a measure will find in the text the Official Journal 'C' series references for the corresponding Commission proposal(s) and the opinions of the European Parliament and the Economic and Social Committee.

In the case of proposals for legislation, the summary gives the Official Journal 'C' series references for the Commission proposal(s) and the opinions of the European Parliament and the Economic and Social Committee, if published by 15.3.88.

The Commission's 1985 White Paper "Completing the Internal Market" contains a legislative programme. In the course of carrying out this programme, certain proposals have been withdrawn and others have been added. Where the Commission has not yet submitted proposals listed in the programme, these are mentioned in the sector introduction.

CONDITIONS FOR INDUSTRIAL COOPERATION

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A SINGLE PUBLIC PROCUREMENT MARKET

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INTRODUCTION

WHAT CONDITIONS FOR INDUSTRIAL COOPERATION?

1957 Treaty of Rome

This was intended to create a single market across European Community, with free movement of goods, persons, services and capital.

Although a customs union was established very quickly and significant progress made with regard to the free movement of goods and persons, a number of administrative, physical and technical barriers continued to exist which prevented the creation of a genuine single market.

1985 White Paper

Some progress had been made towards creating an environment which encouraged cooperation between businesses in different Member States. However, such cooperation was hampered by excessive legal, fiscal and administrative problems plus occasional problems created by mental attitudes and habits.

It was recognized that the development of the Internal Market will result in companies becoming more and more involved in all manner of intra-Community operations. There will be an ever increasing number of links with associated enterprises, creditors and parties in other Member States.

The Commission published a White Paper 'Completing the Internal Market' which listed over 300 legislative proposals and a timetable for their adoption; it was endorsed by the Heads of State and Government.

1987 Single European Act

This Act, which has modified the EEC treaty and had therefore to be ratified by the governments and parliaments of all Community countries, confirmed the objective of achieving a single European market by 1992 and the timetable of the 1985 White Paper. It adapted the Community's procedures for decision making, and increased the scope for a type of majority (as opposed to unanimous) voting in the Council of Ministers. The Single European Act should facilitate the adoption of the White Paper measures within the proposed timeframe.

1988 Current Situation

A number of measures have already been taken and others are currently under discussion. These are aimed at coordinating Member States' laws, especially those governing limited companies, taxation and intellectual property.

1992 Single Market

Deadline set by the 1985 White Paper for complete elimination of obstacles to European-wide industrial cooperation.

Industrial Cooperation

The measures and proposals outlined in this brochure are intended to create an environment which will favour the development of cooperation between individual businesses in the Community. Such an environment is necessary for a number of reasons. The elimination of internal frontiers, the movement of goods and capital, freedom of establishment and the freedom to supply services are fundamental to the creation of the internal market and will confer enormous benefits on suppliers and consumers of goods and services. It will also create opportunities and incentives for cooperation between businesses in different Member States, for example where complementary expertise and resources are identified. This cooperation could take a variety of forms ranging from mergers or the incorporation of joint subsidiaries to ad hoc cooperation on specific projects. The benefits of such cooperation would not only be felt within the Community itself. It would also strengthen the position of European businesses when competing on world markets.

However, the elimination of internal frontiers is not sufficient to create the optimum environment for cross-frontier cooperation between businesses. At present there are no appropriate forms for such cooperation. Company mergers across frontiers involve the application of differing national laws and often have tax implications which can act as a severe disincentive. The setting up of a joint subsidiary involves at least one partner in an unfamiliar legal system while, again, the tax implications may act as a disincentive. When businesses wish to pursue jointly a single activity, there is no appropriate and administratively straightforward corporate form for doing so. Numerous potential joint projects have failed to get off the ground because of such problems.

The existence of differences in patent, trademark and copyright laws also have a direct, negative effect on intra-Community trade and on the ability of businesses to treat the Community as a single market. Multiple applications for patents and trademarks, and the correspondingly multiplied fees, create an administrative and financial burden which also psychologically perpetuates the traditional perception of separate national markets.

Still in the intellectual property field, advances in technology, particularly in the areas of computer software, microcircuits and biotechnology create the risk that separate intellectual property systems will adapt in different ways. This would create uncertainty about the level of protection of innovation, uncertainty which would act as a disincentive to both investment and cooperation between businesses in different Member States.

The measures and proposals in the fields of company law, taxation and intellectual property which are summarized in this brochure are intended to tackle these problems head-on and create an environment in which businesses can cooperate across frontiers in the way they can presently do so within their national frontiers.



1. COMPANY LAW

CURRENT PROBLEMS AND 1992 OBJECTIVES

- The absence of a Community legal framework for cross-frontier operations and cooperation between firms in different Member States has often resulted in multinational projects being unable to get off the ground.
- In order to satisfy the needs of a genuine internal market, firms must be able to cooperate, set up subsidiaries, merge and generally restructure across internal frontiers without unnecessary formalities of a purely technical legal nature.
- The Community is setting the stage for a new type of association known as the European Economic Interest Grouping (summary 1.1). This is a grouping which will make it easier for separate businesses from different Member States to undertake a specified range of joint activities, without actually merging or setting up a jointly owned subsidiary. It will be covered by uniform legislation throughout the Community.
- Summary 1.3 covers the proposal to create a legal framework for a European (as opposed to national) company. This will allow existing companies to restructure across borders without suffering from differing national laws. There is also a proposal (summary 1.4) to harmonize laws so as to provide for cross-border mergers.
- The proposal for the Fifth Directive on Company Law (summary 1.2) will ensure the separation of the functions of management and supervision of management in the interests of shareholders. It will also ensure employee participation and bring Member State laws closer together in such matters as the role of the AGM.
- Two further measures have currently been proposed: one relieving foreign branches of companies of the need to publish separate branch accounts (summary 1.5); and one relating to the publication of accounts by partnerships, since these structures can be used to avoid disclosure by major businesses.
- There are serious gaps in most Member States' legislation regarding the balance to be struck between the interests of groups of companies as a whole and their members. Often company law is too closely modelled on the idea of company autonomy. This no longer reflects economic reality in many cases, for example many companies are wholly owned subsidiaries of centrally managed multinational companies situated in other countries. In 1988, the Commission will publish a proposal which addresses these relationships between businesses in a group.
- The Commission will also produce during 1988 proposals on the liquidation of companies, takeover bids and amendments to the European Company Statute.



1. COMPANY LAW

1.1 European Economic Interest Grouping

- 1) *Objective* To create a new legal entity based on Community Law to facilitate and encourage cross-border cooperation. This will benefit businesses which do not wish to merge or form joint subsidiaries, but wish to carry out certain activities in common.
- 2) *Community measure* **Council Regulation (EEC) No 2137/85 of 25 July 1985** on the European Economic Interest Grouping (EEIG).
- 3) *Contents*
1. A European Economic Interest Grouping can only be formed in accordance with the rules of the Regulation set out below.
 2. The purpose of the grouping shall be to facilitate or develop the economic activities of its members by a pooling of resources, activities or skills. This will provide better results than those of the members acting in isolation. Its purpose is not to make profits for itself. If the grouping makes profits these will be apportioned between the members and taxed accordingly. Its activities shall be related to the economic activities of its members, but cannot replace them. An EEIG cannot employ more than 500 persons.
 3. An EEIG can be formed by companies, firms and other legal bodies in accordance with the national law of a Member State. It can be formed by individuals carrying on an industrial, commercial, craft or agricultural activity or providing professional or other services in the Community.
 4. An EEIG must have at least two members. The two members necessary to form an EEIG shall be linked to different Member States.
 5. The contract for the formation of an EEIG shall include its name, its official address, its objectives, the name, number and place of registration, if any, of each member of the grouping and the duration of the grouping. This contract and various other specified documents shall be filed at the registry designated by each Member State. Registration confers full legal capacity on the EEIG throughout the Community.
 6. If a grouping has been formed, or liquidated, details must be published in the Official Journal of the European Communities.
 7. A grouping's official address must be situated within the Community. It may be transferred from one Member State to another subject to certain conditions.
 8. Each member of an EEIG shall have one vote although the contract for its formation may give certain members more than one vote provided that no one member holds a majority of the votes. The Regulation lays down voting procedure.
 9. The EEIG must have at least two *organs*; the members acting collectively and the manager or managers. Each EEIG shall be managed by one or more individuals according to certain defined criteria. These managers represent and bind the EEIG towards third parties even where their acts do not fall within the objectives of the grouping.
 10. No EEIG may invite investment by the public.
 11. An EEIG does not necessarily have to be formed with capital. Members are free to use alternative methods of financing the grouping.

12. The profits of an EEIG shall be the profits of its members divided either according to the relevant provision in the contract or, if such does not exist, in equal shares. The profits or losses of an EEIG shall be taxable only in the hands of its members. As counterpart to the contractual freedom, which is the basis of the EEIG, and to the fact that members are not required to provide a mandatory capital, each member of the EEIG is jointly and severally liable for the debts of the EEIG.

13. The profits or losses of an EEIG shall be taxable only in the hands of its Members.

4) *Deadline for implementing Member State legislation*

5) *Application date (if different from 4)* 1.7.89

6) *Date for further coordinating proposal (if specified)*

7) *References* Council Adoption Official Journal L 199, 31.7.85



1. COMPANY LAW

1.2 European Company Statute

- 1) *Objective* To create a European Company with its own legislative framework. This will allow companies incorporated in different Member States: to merge, to form a holding company or a joint subsidiary without suffering from conflicting national laws.
- 2) *Proposal* **Proposal** for a Regulation for a Statute for a European Company.
- 3) *Contents*
1. Only companies limited by shares incorporated under the law of a Member State may form a European Company.
 2. The European Company shall have fully paid up minimum capital of not less than: 250,000 ECU in the case of creation by merger or formation as a holding company, 100,000 ECU in the case of formation as a joint subsidiary, 100,000 ECU in the case of formation of a subsidiary by a European Company.
 3. Every European Company shall be registered in the European Commercial Register to be created at the Court of Justice of the European Communities.
 4. The Company shall be managed by a Board of Management exercising its functions under the supervision of a Supervisory Board. The Management Board shall be appointed by the Supervisory Board.
 5. The authorization of the Supervisory Board shall be necessary for the Management Board to act on:
 - the closure or transfer of establishments of the Company
 - substantial curtailment, extension or modification of the activities of the Company
 - substantial organizational changes
 - establishment or termination of long term cooperation agreements with other businesses.
 6. The Supervisory Board shall be composed of one third representatives of shareholders, one third representatives of employees and one third co-opted by these two groups. Only persons representing general interests, possessing the necessary knowledge and experience and not directly dependent on the shareholders, the employees or their respective organizations may be nominated for co-option.
 7. A European Works Council shall be formed in every European Company having at least two establishments in different Member States, each having at least fifty employees. The number of representatives from each establishment shall depend on its size. There are detailed provisions for the decisions of the Management Board which can be taken only with the agreement of the Works Council. The Works Council shall have the right to be consulted on other stated matters as well.
 8. An arbitration board shall be established to settle disputes between the Works Council and the Management Board.
 9. Detailed provisions on the preparation of annual accounts.
 10. Detailed provisions defining the scope and powers of groups of companies which include a European Company.
 11. Detailed provisions pertaining to the alteration of the Company statute, dissolution, liquidation and bankruptcy.

12. On a proposal of the Management Board approved by the Supervisory Board, a European Company may be transformed into a limited liability company under the laws of one of the Member States. A European Company may also merge with other European Companies or other limited companies incorporated under the law of a Member State.

13. Detailed provisions on dissolution, liquidation, bankruptcy and mergers.

14. Where a European holding company is formed by companies limited by shares incorporated under the law of a Member State or by European Companies, allotment to the shareholders of these companies of shares in the European holding company in exchange for shares in those companies shall not give rise to any tax liability.

15. For purposes of taxation, the European Company shall be considered resident in the Member State in which its centre of effective management is located. A European Company which holds not less than 50% of the capital of another company which is liable to tax on profits and which suffers a loss may deduct an amount (proportional to its holding) from the taxable profits of the European Company.

16. If a European company has a permanent establishment in another Member State whose overall result of the operations in that state shows a loss, that loss shall be deductible from the taxable profits of the European company.

4) Opinion of the European Parliament

The Commission's amended proposal incorporates the European Parliament's views on various points in particular the provisions on minimum capital, the threshold for establishment of the Works Council and the division of the Supervisory Board into thirds, representing shareholders, employers and general interests.

5) Current status

The proposal is before the Council which stopped its examination in 1982 but will return to the proposal in 1988.

6) References

Commission Proposal	Official Journal C 124, 10.10.70
European Parliament Opinion	Official Journal C 93, 7.8.74
Economic and Social Committee Opinion	Official Journal C 131, 13.12.72



1. COMPANY LAW

1.3 Structure of public limited companies

- 1) *Objective* To ensure that managers of public limited liability companies are effectively supervised on behalf of the shareholders. To ensure employee participation in the management of such companies.
- 2) *Proposal* **Proposal** for a Fifth Directive founded on Article 54 (3) (g) of the EEC Treaty concerning the structure of public limited companies and the powers and obligations of their organs.
- 3) *Contents*
1. The Directive will apply to types of company such as:

UK	a public limited company
France	la société anonyme
Germany	die Aktiengesellschaft

 and equivalents in the other Member States. Member States have the option to exclude cooperatives.
 2. Member States must ensure that such companies are organized according to either a two-tier board structure (management body and supervisory body) or a one-tier system (administrative body in which the actions of the executive members are supervised by the non-executive members).
 3. The authorization of the supervisory body or non-executive members shall be required by the management body or executive members for decisions relating to;
 - the closure or transfer of the whole or part of the undertaking
 - substantial extension or reduction in the activities of the undertaking
 - important organizational changes and
 - the establishment or ending of long term cooperation with other firms.
 4. In companies with less than one thousand employees, the members of the supervisory body shall be appointed by the general meeting. If a company has more than one thousand employees, Member States must provide for employee participation in the appointment of:
 - members of supervisory bodies in the two-tier system
 - non-executive members of boards in the one-tier system.
 A maximum of two thirds of the supervisory body or non-executive members shall be appointed by the general meeting. A minimum of one third (maximum of one half) shall be appointed by the employees. Alternatively members of the Supervisory Board may be appointed by co-option by the Board itself. However, the general meeting of the shareholders or the employees' representatives may object to such an appointment on various stated grounds. Another alternative is for Member States to provide for employee participation through a works council or through a collective agreement system rather than by employee participation on the Supervisory Board. No person may be a member of the management body and the supervisory body at the same time.
 5. There must be an Annual General Meeting and other general meetings can be convened by either the management body, the executive members of the supervisory body or shareholders (providing the latter represent a certain minimum equity). The annual accounts, annual report and the auditors report shall be made available to every shareholder. Resolutions at the AGM can only be passed by absolute majority except in special circumstances. Minutes

have to be prepared for every AGM.

6. The annual accounts are subject to several requirements. For example, 5% of any profit for the year has to be put in a legal reserve until it reaches a certain minimum value. The audit has to be undertaken by persons truly independent of the company, appointed by the general meeting. The auditors have to produce a detailed report of their work.

7. After a specified time period the Commission will have to submit a report to the Council and the Parliament as to how the Directive is working.

8. Certain derogations from the Directive are allowed eg for companies with political, religious, charitable or educational objectives.

*4) Opinion of the
European Parliament*

The Parliament approved the original proposal subject to a large number of amendments. It proposed adding the choice of a one-tier board structure to the two-tier system proposed, raising from five hundred to one thousand the threshold for obligatory employee participation and increasing the choice of forms of participation. The Commission accepted these proposals in its amended proposal.

5) Current status

The proposal is currently before the Council of Ministers for establishment of a common position.

6) References

Commission Proposal	Official Journal C 131, 13.12.72
Amended Proposal	Official Journal C 240, 9.9.83
European Parliament Opinion	Official Journal C 149, 14.6.82
Economic and Social Committee Opinion	Official Journal C 109, 19.9.74



1. COMPANY LAW

1.4 Cross-border mergers

- 1) *Objective* Currently it is difficult for companies in different Member States to merge. This Directive will harmonize the laws on cross-border mergers of public limited companies so as to facilitate this process. It will introduce additional requirements to the previous Directive on national mergers for those aspects of cross-border mergers which differ from national mergers (due to different legal systems applying).
To protect shareholders, creditors and employees when all the assets and liabilities in a company are transferred to another company in another Member State.
- 2) *Proposal* **Proposal** for a Tenth Council Directive based on Article 54 (3) (g) of the Treaty concerning cross-border mergers of public limited companies.
- 3) *Contents* 1. Definition of cross-border merger and the type of company to which the Directive is to apply in each of the Member States, for example
Belgium société anonyme
United Kingdom public companies limited by shares or by guarantee.
2. Obligation on the managers of the merging companies to draw up draft terms for the merger as required by the Member States involved and this Directive. Additional information to that already required by the Directive on national mergers will have to be included because of the transnational element; for example the location of the public registers which contain information on the companies involved. Member States cannot oblige merging companies to include other information.
3. A merger must have the approval of not less than two-thirds of the votes of the general meeting of each of the merging companies.
4. The merging companies must engage at least one independent expert to examine the draft terms of the merger and draw up a report for the shareholders. The expert must either be appointed or approved by a judicial or administrative body of the Member State of one or other of the merging companies.
5. Obligation on the Member States to provide adequate safeguards for the creditors and debenture holders of the merging companies.
6. Obligation on the management of each company to produce a report explaining the effect of the merger on employees.
- 4) *Opinion of the European Parliament* Not yet given.
- 5) *Current status* The proposal is currently being considered by the European Parliament.
- 6) *References* Commission Proposal Official Journal C 23, 25.1.85
European Parliament
Opinion
Economic and Social Official Journal C 303, 25.11.85
Committee Opinion





1. COMPANY LAW

1.5 Disclosure requirements in respect of branches

- 1) *Objective* To relieve foreign branches of companies of the obligation to publish branch accounts, so as to facilitate the freedom of establishment.
- 2) *Proposal* **Proposal** for a Council Directive based on Article 54 (3) (g) of the Treaty concerning disclosure requirements in respect of branches opened in a Member State by certain types of companies governed by the law of another State.
- 3) *Contents*
 1. The Directive applies to branches of public and private companies situated in a Member State other than that in which the company is established. They will no longer need to produce branch accounts if they publish the annual accounts and annual report of the company. Subsidiaries of EEC companies may, however, publish consolidated accounts and the consolidated annual report of the parent company.
 2. EEC branches of public and private companies which are established in a non-EEC State but have a legal form comparable to that of Community companies shall publish documents which cover:
 - the address of the branch
 - the law of the State by which the company is governed
 - where the company is registered and its registration number
 - the company's constitution
 - the legal form of the company
 - information on the company directors.
 The branch must disclose at least the annual accounts and annual report of the company.
 3. Member States shall provide appropriate penalties for failure to disclose the information required.
 4. The provisions of the Directive dealing with the disclosure of accounting documents does not apply to branches of banks, other financial institutions, and insurance companies.
- 4) *Opinion of the European Parliament* The Parliament approved the proposal subject to a number of minor amendments.
- 5) *Current status* The proposal is currently before the Council for its consideration. The cooperation procedure will apply giving the European Parliament the opportunity of a second reading once it has received the view of the Council at the end of its first examination.
- 6) *References*

Commission Proposal	Official Journal C 203, 12.8.86
European Parliament Opinion	Official Journal C 345, 21.12.87
Economic and Social Committee Opinion	



1. COMPANY LAW

1.6 Annual and consolidated accounts: amendments

- 1) *Objective* To extend Community legislation relating to annual company accounts and consolidated accounts to partnerships. This will ensure that certain types of partnerships, all of whose unlimited members are constituted as limited liability companies, do not avoid corporate disclosure (for example German firms organized as GmbH & Co. KG).
- 2) *Proposal* **Proposal** for a Directive amending Directive 78/660/EEC on annual accounts and Directive 83/349/EEC on consolidated accounts as regards the scope of those Directives.
- 3) *Contents* 1. Extension of Community legislation on the form, content and publication of annual accounts of companies to partnerships: for example
- | | |
|---------|---|
| UK | the partnership
the unlimited partnership
the unlimited company |
| France | la société en nom collectif
la société en commandite simple |
| Germany | die offene Handelsgesellschaft
die Kommanditgesellschaft |
2. Extension of Community legislation on the form, content and publication of *consolidated* accounts of companies to those partnerships as in (1). It applies when either the parent or subsidiary is organized in this way.
- 4) *Opinion of the European Parliament* The Parliament approved the proposal but called for concessions to be made for small and medium-sized enterprises.
- 5) *Current status* The proposal is currently being examined by the Council.
- 6) *References*
- | | |
|---------------------------------------|----------------------------------|
| Commission Proposal | Official Journal C 144, 11.6.86 |
| European Parliament Opinion | Official Journal C 125, 11.5.87 |
| Economic and Social Committee Opinion | Official Journal C 328, 22.12.86 |





2. INTELLECTUAL PROPERTY

CURRENT PROBLEMS AND 1992 OBJECTIVES

- Differences between Member States' intellectual property laws have an adverse impact on intra-Community trade and on the ability of firms to treat the common market as a single environment for their activities.
- In the field of trademarks, the existence of the distinct national systems (and the combined Benelux system) creates obstacles to Community-wide marketing, in addition to cumbersome and costly administrative and legal burdens. A single European market needs a single Community trademark system for companies trading throughout the Community. It also needs more uniformity in national trademark systems for companies who, although not trading throughout the Community, do have commercial activities in more than one Member State. Summaries 2.1 - 2.3 cover the current proposals in this area. During 1988, the Commission will produce a proposal on the siting of the Community Trademark Office.
- The intellectual property situation is currently complicated by the need to provide protection to inventions in new technologies such as computer software, microcircuits and biotechnology. These technologies were not in existence when the present intellectual property laws were drafted, and so methods for legal protection are obscure. The Community has already taken an important step to improve the situation by adopting a Directive (summary 2.4) concerning the legal protection of semiconductors. Proposals for the legal protection of innovations in biotechnology and computer programs are currently in preparation and will be tabled during 1988.





2. INTELLECTUAL PROPERTY

2.1 Community trademark

- 1) *Objective* To create a Community trademark applicable throughout the Community. This will remove the current requirement to make separate applications for trademarks in each Member State. To ensure that registered trademarks enjoy uniform protection under the legal system of all the Member States.
- 2) *Proposal* **Proposal** for a Council Regulation on the Community trademarks.
- 3) *Contents*
1. The Regulation would create Community trademarks. A Community trademark would come into existence on registration by a Community Trademark Office.
 2. Definition of what cannot be registered as a Community trademark, eg anything which consists solely of signs used to indicate the kind, value, or purpose of the goods.
 3. Application for a Community trademark, grounds for refusal of registration, eg if the mark is likely to be confused with an existing trademark. Permitted proprietors of trademarks include nationals or residents of Member States and nationals of any State which provides Member States' nationals with the same trademark protection as it provides for its own nationals.
 4. Procedure to be followed when applying for a Community trademark, including surrender, revocation and invalidity and appeals against these.
 5. A Community trademark shall be registered for a period of ten years from the date of filing, renewable for a further ten years.
 6. Effect of Community trademarks and rights conferred by such trademarks. Limitations of such rights and effects, eg if a proprietor allows its use by a third party he cannot subsequently withdraw this permission after a set time limit.
 7. A Community trademark may only be granted for the whole of the Community. However the Regulation does not prevent the owner of an earlier national trademark from taking an action in respect of a Community trademark under the law of one of the Member States.
 8. Alteration, transfer and licensing of Community trademarks.
 9. Provision for collective marks to be registered as Community trademarks if the purpose is to distinguish the goods or services of the association which is the proprietor of the mark from those of other businesses.
 10. Establishment of a Community Trademark Office. The revenue of the Trademark Office shall come from fees payable for registration of trademarks and, if necessary, financing from the Communities' budget.
- 4) *Opinion of the European Parliament* The Parliament approved the proposal subject to several recommendations for amendment. These include the definition of the right conferred by the trademark. The Commission included these recommendations in its amended proposal.
- 5) *Current status* The proposal is currently before the Council for the establishment of a common position. This shall then be sent to the European Parliament for a second reading.

6) References

Commission Proposal
Amended Proposal

Official Journal C 351, 31.12.80
Official Journal C 230, 31.8.84

European Parliament
Opinion

Official Journal C 307, 14.11.83

Economic and Social
Committee Opinion

Official Journal C 310, 30.11.81



2. INTELLECTUAL PROPERTY

2.2 National trademark legislation approximation

- | | | | | | | | | | |
|--|--|---------------------|----------------------------------|------------------|----------------------------------|-----------------------------|----------------------------------|---------------------------------------|----------------------------------|
| 1) <i>Objective</i> | To ensure that registered trademarks enjoy the same protection under the legal systems of all the Member States. | | | | | | | | |
| 2) <i>Proposal</i> | Proposal for a first Council Directive to approximate the laws of the Member States relating to trademarks. | | | | | | | | |
| 3) <i>Contents</i> | <ol style="list-style-type: none"> 1. The Directive shall apply to every trademark which has been registered for goods or services in a Member State. 2. Registration will be refused or invalidated if the mark: <ul style="list-style-type: none"> - consists of a sign which cannot, under law, constitute a trademark - is devoid of distinctive character - is liable to mislead or is contrary to public policy - is identical or similar to a previous mark and the goods which it represents are the same as those represented by the earlier mark. 3. The registered trademark confers on the proprietor exclusive right of use. The proprietor shall be entitled to prohibit any third party from using it in the course of trade, except with his consent. This will also apply to any other sign which is identical or similar and is used in relation to goods which are identical or similar. 4. If the owner of a trademark consents to the use of a later trademark for five successive years, he shall forfeit the right to apply for a declaration that the later mark is invalid. He shall no longer be able to oppose the use of the later mark in respect of the goods or services for which the later mark has been used unless this was in bad faith. 5. Unless there is a legitimate reason for non-use, a trademark will be invalidated if <ul style="list-style-type: none"> - the owner has not put it to genuine use in the Member State and in connection with the goods for which it is registered within five years of registration, or - it has not been used for any continuous period of five years. 6. A trademark shall also be invalidated if, due to the inactivity of its owner, it has become a common name in trade for an entire category of products or services. | | | | | | | | |
| 4) <i>Opinion of the European Parliament</i> | The Parliament approved the proposal subject to recommendations for amendment including: the definition of the rights conferred by a national trademark and an exhaustive list of prior rights which can be opposed to the registration of a trademark. The Commission incorporated these recommendations in its amended proposal. | | | | | | | | |
| 5) <i>Current status</i> | The proposal is currently before the Council for the establishment of a common position. This shall then be sent to the European Parliament for a second reading. | | | | | | | | |
| 6) <i>References</i> | <table border="0" style="width: 100%;"> <tr> <td style="padding-right: 20px;">Commission Proposal</td> <td>Official Journal C 351, 31.12.80</td> </tr> <tr> <td>Amended Proposal</td> <td>Official Journal C 351, 31.12.85</td> </tr> <tr> <td>European Parliament Opinion</td> <td>Official Journal C 307, 14.11.83</td> </tr> <tr> <td>Economic and Social Committee Opinion</td> <td>Official Journal C 310, 30.11.81</td> </tr> </table> | Commission Proposal | Official Journal C 351, 31.12.80 | Amended Proposal | Official Journal C 351, 31.12.85 | European Parliament Opinion | Official Journal C 307, 14.11.83 | Economic and Social Committee Opinion | Official Journal C 310, 30.11.81 |
| Commission Proposal | Official Journal C 351, 31.12.80 | | | | | | | | |
| Amended Proposal | Official Journal C 351, 31.12.85 | | | | | | | | |
| European Parliament Opinion | Official Journal C 307, 14.11.83 | | | | | | | | |
| Economic and Social Committee Opinion | Official Journal C 310, 30.11.81 | | | | | | | | |



2. INTELLECTUAL PROPERTY

2.3 Community Trademark Office: fees

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|--|--|---------------------|--------------------------------|-----------------------------|--|---------------------------------------|--|
| 1) <i>Objective</i> | To specify the fees payable to the Community trademark office. Methods of payment are also defined. | | | | | | |
| 2) <i>Proposal</i> | Proposal for a Council Regulation on fees payable to the Community trademark office. | | | | | | |
| 3) <i>Contents</i> | <ol style="list-style-type: none"> 1. Fees governed by the Regulation include application fee for a Community trademark, fee for opposition to a Community trademark, registration and renewal fees. 2. Detailed provisions covering the fees to be paid for different classes of goods and different actions taken by the Trademarks Office. 3. The amount of fees, costs and prices shall be specified in ECU. Payment may, however, be made in the currency of the Member State where the financial institution making the payment is established. | | | | | | |
| 4) <i>Opinion of the European Parliament</i> | Not yet given. | | | | | | |
| 5) <i>Current status</i> | The proposal has not yet been submitted to the European Parliament for its opinion. | | | | | | |
| 6) <i>References</i> | <table border="0" style="width: 100%;"> <tr> <td style="width: 50%;">Commission Proposal</td> <td style="width: 50%;">Official Journal C 67, 14.3.87</td> </tr> <tr> <td>European Parliament Opinion</td> <td></td> </tr> <tr> <td>Economic and Social Committee Opinion</td> <td></td> </tr> </table> | Commission Proposal | Official Journal C 67, 14.3.87 | European Parliament Opinion | | Economic and Social Committee Opinion | |
| Commission Proposal | Official Journal C 67, 14.3.87 | | | | | | |
| European Parliament Opinion | | | | | | | |
| Economic and Social Committee Opinion | | | | | | | |



2. INTELLECTUAL PROPERTY

2.4 Legal protection of the topographies of semiconductor products

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|--|---|
| 1) <i>Objective</i> | To harmonize Member State legislation regarding the protection of the topographies (design) of semiconductor products. The Directive not only provides protection for the creator of the design, it also allows for the free movement of semiconductors within the Community. |
| 2) <i>Community measure</i> | Council Directive 87/54 EEC of 16 December 1986 on the legal protection of topographies of semiconductor products. |
| 3) <i>Contents</i> | <ol style="list-style-type: none"> 1. Definition of semiconductor products, topography and commercial exploitation for the purposes of the Directive. 2. Obligation on Member States to adopt legislation to protect topographies, providing that they are the result of their creator's own intellectual effort and not commonplace in the semiconductor industry. This legislation shall confer exclusive rights. Member States shall specify in favour of whom the right to protection shall apply. 3. The Directive specifies which persons benefit from the right to protection and the procedure to be followed to extend protection in favour of persons not covered by the Directive. 4. Member States may refuse protection or remove protection under the Directive. They can do so if an application for registration of the topography has not been made to a public authority within two years of its first commercial exploitation. Member States may require that material identifying the topography is also provided, but shall ensure that this is not made public if it is a trade secret. 5. Member States shall grant exclusive rights. These include the right to authorize or prohibit reproduction of a protected topography and the right to commercial exploitation or import of a topography or a product manufactured by using the topography. The exclusive right shall not apply to reproduction for the following purposes; analyzing, evaluating or teaching the concepts, processes, systems or techniques embodied in the topography or the topography itself. 6. If exclusive rights are conditional on registration, they will come into existence on the date of filing or the date of first commercial exploitation anywhere in the world, whichever comes first. If registration is not a condition, the rights will come into existence on the date of first commercial exploitation anywhere in the world or when the topography was first fixed or encoded. 7. The exclusive right shall come to an end ten years from the end of the calendar year in which the topography was first commercially exploited anywhere in the world. If registration is required and an application is filed prior to the date of first commercial exploitation, the 10 year period is calculated from the filing date. |
| 4) <i>Deadline for implementing Member State legislation</i> | 7.11.87 |
| 5) <i>Application date (if different from 4)</i> | |

*6) Date for further
coordinating proposal
(if specified)*

7) References

Council Adoption

Official Journal L 24, 27.1.87



3. TAXATION

CURRENT PROBLEMS AND 1992 OBJECTIVES

- In a single market, business decisions should be taken on commercial grounds which have uniform tax considerations throughout the Community. The current differences in company tax between Member States can distort investment decisions and conditions of competition.
- There is a widespread feeling in private enterprises in Europe that the fiscal environment discourages risk capital and innovation. This compares badly with that of the Community's major competitors.
- A major problem in cross-border operations is the risk of double taxation, due to differences in national tax laws. Little progress has been made in this field, despite the fact that the Council has expressed the view that a number of basic decisions need to be taken quickly in relation to removal of these barriers.
- The proposals in the White Paper which aim to remove these tax obstacles to cross-frontier expansion and cooperation between businesses in different Member States are presently being considered by the Council. Summary 3.1 covers setting up a common taxation system for the members of a group of companies to eliminate double taxation, summary 3.2 aims to eliminate a particular type of double taxation which can arise due to non-market based transfer pricing between companies in a group and summary 3.3 concerns the tax treatment of a group restructuring across frontiers. There is a proposal (summary 3.4) to harmonize the tax treatment of the carry-over of losses from year-to-year. Summary 3.5 describes a proposal to abolish certain taxes on security transactions which distort movements of capital.
- In addition, the Commission has announced in its Third Progress Report that it will present a communication on enterprise taxation together with a proposal for a directive to harmonize the tax base of enterprises. These cover different types of taxation for businesses and other enterprises.



3. TAXATION

3.1 Common taxation of parent companies and their subsidiaries

- 1) *Objective* To create a system whereby the profits of a subsidiary company in one Member State distributed to the parent company in another Member State are exempt from:
- with-holding tax on dividends
 - corporation tax in the hands of the parent company.
- 2) *Proposal* **Proposal** for a Council Directive on the common system of taxation applicable to parent companies and their subsidiaries in different Member States.
- 3) *Contents*
1. Member States' tax legislation can discourage companies from setting up subsidiaries across frontiers. The distributed profits of a subsidiary can be taxed several times. They can be taxed as profits of that subsidiary, then be subject to a deduction of tax by that company when it distributes a dividend, and then taxed again as dividend income of the parent in another Member State. The Directive is intended to create a situation whereby a subsidiary's profits are taxed only once.
 2. Member State's tax legislation may distort decisions on the location of subsidiaries. The Directive is intended to make the effect of tax considerations neutral in these decisions. This is achieved by introducing a common system of taxation of parent and subsidiaries situated in different Member States.
- 4) *Opinion of the European Parliament* The Parliament approved the proposal subject to certain recommendations for amendment.
- 5) *Current status* The proposal is currently before the Council for adoption.
- 6) *References*
- | | |
|---------------------------------------|--------------------------------|
| Commission Proposal | Official Journal C 39, 22.3.69 |
| European Parliament Opinion | Official Journal C 51, 29.4.70 |
| Economic and Social Committee Opinion | Official Journal C 100, 1.8.69 |



3. TAXATION

3.2 Elimination of double taxation (arbitration)

- 1) *Objective* Some multinational companies currently suffer from double taxation because national tax authorities adjust transfer prices between subsidiaries in the group. This Directive will eliminate this source of double taxation within the Community.
- 2) *Proposal* **Proposal** for a Council Directive on the elimination of double taxation in connection with the adjustment of transfers of profits between associated enterprises (arbitration procedure).
- 3) *Contents*
1. The Directive would apply where double taxation arises as a result of
 - a) the tax authorities of one Member State increasing the taxable profits of an enterprise on the grounds of transactions with an associated enterprise in another Member State not being at arms length, and
 - b) the tax authorities of the second Member State not making a corresponding reduction in the taxable profits of the associated enterprise.
 2. At present there is no obligation on national tax authorities to eliminate double taxation of profits resulting in this way. The aim of the proposal is to allow an associated enterprise, whose profits have been subjected to such double taxation, to present its case to the tax authorities entrusted with the taxation of its profits, with a view to eliminating the double taxation.
 3. If the tax authority did not arrive at a satisfactory solution of the problem, it and the authorities of the Member State where the other associated enterprise is taxed would try to reach mutual agreement with a view to eliminating the double taxation.
 4. If the tax authorities concerned failed to reach an agreement that eliminates the double taxation, they would present the case to an arbitration commission whose decision they agreed from the outset to accept.
 5. The commission would consist of
 - an equal number of representatives from the tax authorities concerned
 - an uneven number of independent persons appointed by mutual agreement.
- 4) *Opinion of the European Parliament* The Parliament approved the proposal.
- 5) *Current status* The proposal is currently before the Council for adoption. Whether the final format will be a Community Directive or an inter-State Convention has not yet been decided.
- 6) *References*
- | | |
|---------------------------------------|----------------------------------|
| Commission Proposal | Official Journal C 301, 21.12.76 |
| European Parliament Opinion | Official Journal C 163, 11.7.77 |
| Economic and Social Committee Opinion | Official Journal C 18, 23.1.78 |





3. TAXATION

3.3 Common taxation: mergers, divisions and contributions of assets

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|--|---|---------------------|--------------------------------|-----------------------------|--------------------------------|---------------------------------------|--------------------------------|
| <i>1) Objective</i> | To resolve the tax problems resulting from Member State tax treatment of cross-frontier restructuring of companies. | | | | | | |
| <i>2) Proposal</i> | Proposal for a Council Directive on the common system of taxation of mergers, divisions and contribution of assets taking place between companies from different Member States | | | | | | |
| <i>3) Contents</i> | <p>1. The national fiscal legislation of Member States can restrict cross-border restructuring of companies and impede the completion of the Internal Market.</p> <p>2. The tax cost of mergers, acquisitions and divisions is a major obstacle. It impedes the adaptation of the size of enterprises to the requirements of the Common Market: eg producing in economically efficient quantities; being large enough to compete in global markets. Taxation of these transactions can replace purely commercial factors as major grounds for decisions on restructuring. It can even prevent restructuring operations from being carried out.</p> <p>3. The purpose of the Directive is to introduce throughout the Community a common tax treatment of these cross-frontier restructuring operations so as to eliminate these problems.</p> | | | | | | |
| <i>4) Opinion of the European Parliament</i> | The Parliament approved the proposal. | | | | | | |
| <i>5) Current status</i> | The proposal is now before the Council for adoption. | | | | | | |
| <i>6) References</i> | <table border="0"> <tr> <td>Commission Proposal</td> <td>Official Journal C 39, 22.3.69</td> </tr> <tr> <td>European Parliament Opinion</td> <td>Official Journal C 51, 29.4.70</td> </tr> <tr> <td>Economic and Social Committee Opinion</td> <td>Official Journal C 100, 1.8.69</td> </tr> </table> | Commission Proposal | Official Journal C 39, 22.3.69 | European Parliament Opinion | Official Journal C 51, 29.4.70 | Economic and Social Committee Opinion | Official Journal C 100, 1.8.69 |
| Commission Proposal | Official Journal C 39, 22.3.69 | | | | | | |
| European Parliament Opinion | Official Journal C 51, 29.4.70 | | | | | | |
| Economic and Social Committee Opinion | Official Journal C 100, 1.8.69 | | | | | | |

3. TAXATION

3.4 Tax treatment of carryover of losses

- 1) *Objective* To harmonize and liberalize Member States laws governing the carry-over of losses. This is of special importance because of its effect on the investment capability and competitiveness of businesses.
- 2) *Proposal* **Proposal** for a Council Directive on the harmonization of the laws of the Member States relating to tax arrangements for the carry-over of losses of undertakings.
- 3) *Contents*
1. Taxes to which the Directive shall apply for example,

France	Impôt sur le revenu
	Impôt sur les sociétés
Italy	Imposta sul reddito delle persone fisiche
	Imposta sul reddito delle persone giuridiche
	Imposta locale sui redditi
 2. Rules for calculating profit or loss for the purpose of this Directive.
 3. The firm can choose from one of two alternative approaches to the carry-over of losses. The first is that losses from a given financial year may be offset against the profits of one or more of the three *preceding* financial years. If not completely offset in this way, the balance may be set against the profits of the *following* financial years in chronological order. The second alternative is that the loss may be offset against the profits of the *following* financial years in chronological order.
- 4) *Opinion of the European Parliament* The Parliament approved the proposal subject to recommendations for amendment including a recommendation that the period of carry-over of profits from previous years be extended from two years to three. This was accepted by the Commission in its amended proposal.
- 5) *Current status* The proposal is currently before the Council for adoption.
- 6) *References*
- | | |
|---------------------------------------|---------------------------------|
| Commission Proposal | Official Journal C 253, 20.9.84 |
| Amended Proposal | Official Journal C 170, 9.7.85 |
| European Parliament Opinion | Official Journal C 46, 18.2.85 |
| Economic and Social Committee Opinion | Official Journal C 160, 1.7.85 |



3. TAXATION

3.5 Securities transactions: abolition of taxes

- 1) *Objective* To harmonize indirect taxation on transactions in securities. Movements of capital will no longer be distorted by differing national taxes which currently often result in double taxation and discrimination.
- 2) *Proposal* Amended **proposal** for a Council Directive concerning indirect taxes on transactions in securities.
- 3) *Contents*
1. Member States which impose a tax on transactions in securities must abolish it.
 2. Obligation on Member States not to levy any tax on transactions in securities, whether or not levied at a flat rate, which is based on the value of the security being traded.
 3. Member States may still levy certain duties: capital duty, transfer duty on transfers of shares when the transaction in fact relates to land and buildings, value added tax on securities representing land and buildings.
- 4) *Opinion of the European Parliament* The Parliament approved the proposal.
- 5) *Current status* The proposal is currently before the Council for adoption.
- 6) *References*
- | | |
|---------------------------------------|----------------------------------|
| Commission Proposal | Official Journal C 115, 30.4.87 |
| European Parliament Opinion | Official Journal C 318, 30.11.87 |
| Economic and Social Committee Opinion | Official Journal C 319, 30.11.87 |



A SINGLE PUBLIC PROCUREMENT MARKET

1. PUBLIC PROCUREMENT

Current problems and 1992 objectives

- 1.1 Public supply contracts
- 1.2 Public works contracts
- 1.3 Compliance procedures





1. PUBLIC PROCUREMENT

CURRENT PROBLEMS AND 1992 OBJECTIVES

- The total value of government procurement including contracts awarded by firms in the public sector is estimated at about 400 billion ECU (about 15% of the Community's gross domestic product). However, only two percent of public procurement contracts in the Community are awarded to firms from a Member State other than the Member State advertising the tender.
- This lack of open and effective competition is one of the most obvious and anachronistic obstacles to the completion of the internal market. As well as increasing costs for the procuring bodies, the lack of intra-Community competition in certain key industries (eg telecommunications) discourages the emergence of European firms which are competitive on world markets.
- There are two existing directives which have been in force for a number of years which aim to open up national tendering procedures to competition by firms in other Member States. One addresses *public supply* contracts, the other *public works* (eg building and road construction). Their general approach is to require, for contracts above certain threshold values, publication of a summary invitation to tender in the Official Journal of the European Communities, followed by a competitive tender. Use of other procedures (eg single sourcing) is restricted. However, these Directives have had limited impact due to
 - *restrictions* in their scope because of the exclusion of significant industrial sectors and certain inadequacies in their procedures
 - *widespread avoidance* of the provisions by, for example, invoking the exceptions and splitting contracts to keep below the thresholds at which the provisions apply.
- The Commission has put forward two proposals (summaries 1.1, 1.2) which would substantially strengthen and improve the existing provisions by limiting the exclusions, reducing the thresholds and introducing some new procedures. It has also put forward a third proposal (1.3) to ensure that there are effective remedies if there is national or other discrimination in awarding contracts.
- The Commission intends to eventually remove the concept of excluded sectors and is planning to produce further proposals to bring this about. During 1988 it will table two further proposals; the first will extend the scope of the existing Directives to the previously excluded areas of transport, energy, water and telecommunications; the second will address the services sector.



1. PUBLIC PROCUREMENT

1.1 Public supply contracts

- 1) *Objective* To increase openness of procedures and practices in awarding *public supply contracts* and to improve and extend the existing Directives. To develop the conditions of effective competition in the public procurement markets, define and reduce the extent of industry sectors which are currently exempt from this Directive, and to specify a time-limit for introducing further provisions for these sectors. To make use of the *open procedure* rule and to create a negotiating procedure in order to limit the use of the *single tender procedure*. To lay down all applicable thresholds in one provision.
- 2) *Proposal* **Proposal** for a Council Directive amending Directive 77/62/EEC relating to the coordination of procedures on the award of public supply contracts and deleting certain provisions of Directive 80/767/EEC.
- 3) *Contents*
1. Definition of *public supply contracts*, *open*, *restricted* and *negotiated procedures*. *Open procedures* allow any supplier to submit a full bid, and *restricted procedures* allow the purchasing authority to restrict the invitation to tender to a particular list of suppliers. *Negotiated procedures* are where the purchasing authority publishes its general requirements and the details of the contract are then negotiated with suppliers who have expressed interest.
 2. Exclusion of certain parts of the defence sector from the field of application of the Directive.
 3. Exclusion from the scope of the Directive for contracts awarded by: transport carriers by land, sea and air; contracting authorities where such contracts concern the production, transport and distribution of drinking water; contracting authorities whose principle activity lies in the production and distribution of energy or telecommunication services. Also excluded are supplies which are declared secret or whose delivery must be accompanied by special security measures under national legislation.
 4. Thresholds above which the EEC rules shall apply and rules for calculating certain estimated contract values (generally 200,000 ECU for regional and local authorities, 130,000 for central authorities). The threshold in national currencies is published in the Official Journal and is revised every two years.
 5. Obligation on contracting authorities to use the *open procedure* for public supply contracts. There are certain exceptions covering situations where it would be impossible to maintain a balance between the value of the contract and procedural costs, or because of the special nature of the goods to be supplied. In such cases a *restricted procedure* may be used. Contracting authorities may also award their supply contracts by *negotiated procedure* in certain specified cases.
 6. Obligation on contracting authorities to draw up a written report on every contract awarded on the basis of *restricted*, *negotiated* and *single tender procedures*. Contents of such a report. This report shall be communicated to the Commission at its request.

7. Obligation on contracting authorities to incorporate in general or contractual documents the technical specifications defined in an annex to the Directive. These specifications shall be defined by the contracting authorities by reference to national standards implementing European standards or to common technical specifications. Certain exceptions to this obligation are outlined. If no European standards or common technical specifications exist, the technical specifications may be defined by reference to other documents such as; national standards implementing international standards; national standards of the country of the contracting authority or any other standards.

8. Requirement for contracting authorities listed in the annex to the Directive to make known, by means of a notice published at the beginning of each fiscal year, any supply contracts of an estimated value greater than 750,000 ECU which it intends awarding during the coming 12 months and the relevant time limits. Such notices shall be published in the Official Journal of the European Communities. Obligation on contracting authorities who have awarded a contract to publish the results.

9. Amendment of the time limits for submission of tenders: in *open procedures* increased from not less than 36 to not less than 52 days; for receipt of requests to participate in *restricted procedures* from not less than 21 days to not less than 37 days and for receipt of tenders from not less than 36 days to not less than 40 days. Alternative time limits in case of urgency.

10. Power of contracting authorities to exclude from tenders, any enterprises which distort competition to their economic advantage. This covers failure to comply with statutory obligations of the country in which they are established, relating to health and safety at work and equal opportunities for women, the handicapped and racial or religious minorities.

11. Derogation until 31 December 1992 for certain existing national provisions which aim to reduce regional disparities and to promote job creation in areas where development is lagging behind.

12. Obligation on Member States to communicate to the Commission before 30 June each year, a statistical report relating to contracts awarded in the previous year.

4) *Opinion of the European Parliament*

The European Parliament approved the Commission's proposal subject to a number of recommendations for amendment. The Commission accepted several of these amendments including: an improved text on European standards; derogations for certain national provisions.

5) *Current status*

The Commission has now produced a proposal based partly on the Council's common position and partly on the European Parliament's recommendations for amendment. It is now before the Council for adoption.

6) *References*

Commission Proposal	Official Journal C 173, 11.7.86
Amended Proposal	Official Journal C 161, 19.6.87
European Parliament Opinion	Official Journal C 246, 14.9.87
Economic and Social Committee Opinion	Official Journal C 68, 16.3.87



1. PUBLIC PROCUREMENT

1.2 Public works contracts

- 1) *Objective* To ensure that decisions for procurement of *public works* are taken on the best commercial grounds and do not create a bureaucratic burden. Consequently, to increase the openness of award procedures and improve information, offering better opportunities for participation to interested firms and establishing a better base for pursuing infringement.
- 2) *Proposal* **Proposal** for a Council Directive amending Directive 71/305/EEC concerning the coordination of procedures for the award of public works contracts.
- 3) *Contents*
1. Extension of the field of application of Directive 71/305/EEC to cover some new contractual forms, eg promotion contracts and management contracts.
 2. Some firms are currently not subject to normal competition rules because of exclusive rights granted them by the public authorities. EEC rules will now apply to them.
 3. Obligation on Member States to apply EEC rules by 31.12.92 at latest to public work contracts awarded by contracting authorities whose principal activity lies in air, land or sea transport or in the production, transport and distribution of drinking water and energy.
 4. Exclusion of certain types of public works contracts from the scope of the Directive. This exclusion covers those awarded under an international treaty with one or more non-member countries or to those under an international agreement relating to the stationing of troops.
 5. Obligation on contracting authorities to inform any tenderer who so requests of the reasons for the rejection of his tender within fifteen days. Obligation on contracting authorities to draw up a written report identifying the contracting authority, the successful participants and the reason for their selection and the unsuccessful participants and the reason for their rejection. This report shall be communicated to the Commission within seven days if it so requests.
 6. The directive shall apply to public works contracts whose estimated net value is not less than 700,000 ECU except for the rules on advertising which shall apply to contracts of not less than 7,000,000 ECU.
 7. Reduction of the use of *single tender* by introducing a *negotiating procedure* with a prior call for competition and with at least three candidates. Limited cases in which a contracting authority may use the *negotiating procedure* with or without a prior call for competition.
 8. Obligation on the contracting authorities to define technical specifications by reference to European standards or European harmonization documents.
 9. Obligation on contracting authorities to publish information on the contracts it intends awarding during the next six or twelve months.
 10. Obligation on the contracting authorities to publish the main elements of the contract after it has been awarded.
 11. Increase in time limits receipt of tenders under the *open procedure* from 36 days to 50 days; requests to participate in *restricted procedures* from 21 days to 40 days; requests in urgent cases to participate from 12 days to 25 and for such tenders from 10 days to 20.

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12. Obligation on contracting authorities to use new models published in an annex to the Directive for publication of various notices and the essential information these must contain.
 13. Criteria to be used in the award of contracts. These shall be the most economically advantageous tender and shall allow contractors to propose technically more advanced solutions.
 14. More specific requirements for establishing reports and statistics.

4) Opinion of the European Parliament

Not yet given.

5) Current status

The European Parliament is preparing its opinion.

6) References

Commission Proposal

Not published.

European Parliament
Opinion

Economic and Social
Committee Opinion

Official Journal C 319, 30.11.87



1. PUBLIC PROCUREMENT

1.3 Compliance procedures

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|--|--|---------------------|---------------------------------|-----------------------------|--|---------------------------------------|--|
| 1) <i>Objective</i> | To increase substantially the guarantees of openness and non-discrimination in public procurement. To ensure that any offences committed during the tender award procedures are effectively and rapidly censured. | | | | | | |
| 2) <i>Proposal</i> | Proposal for a Council Directive coordinating the laws, regulations and administrative provisions relating to the application of Community rules on procedures for the award of public supply and public works contracts. | | | | | | |
| 3) <i>Contents</i> | <ol style="list-style-type: none"> 1. Obligation on Member States to take measures necessary to ensure effective administrative and/or judicial remedies <ul style="list-style-type: none"> - for overturning decisions taken by contracting authorities in breach of non-discrimination rules - to suspend the award of the contract concerned - to indemnify the injured contractor or supplier. 2. Power of the competent administrative body or court to order the removal of technical, economic or financial specifications which discriminate against non-domestic tenderers. Similar powers to overturn decisions taken unlawfully to impose penalty payments, and to award damages to the injured undertaking. 3. Obligation on Member States to guarantee the right of the Commission to intervene in the administrative or judicial procedure to ensure precedence of Community public interest. 4. Right of the Commission to suspend the contract award procedure for a period of not more than three months where it has been established that a clear and manifest infringement has been committed. | | | | | | |
| 4) <i>Opinion of the European Parliament</i> | Not yet given. | | | | | | |
| 5) <i>Current status</i> | The proposal is currently before the European Parliament for its consideration. | | | | | | |
| 6) <i>References</i> | <table border="0" style="width: 100%;"> <tr> <td style="width: 50%;">Commission Proposal</td> <td style="width: 50%;">Official Journal C 230, 28.8.87</td> </tr> <tr> <td>European Parliament Opinion</td> <td></td> </tr> <tr> <td>Economic and Social Committee Opinion</td> <td></td> </tr> </table> | Commission Proposal | Official Journal C 230, 28.8.87 | European Parliament Opinion | | Economic and Social Committee Opinion | |
| Commission Proposal | Official Journal C 230, 28.8.87 | | | | | | |
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