

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(94) 533 final

Brussels, 25.11.1994

**REPORT TO THE EUROPEAN COUNCIL
ON THE APPLICATION OF
THE SUBSIDIARITY PRINCIPLE
1994**

(presented by the Commission)

^

CONTENTS

INTRODUCTION	1
I. NEW LEGISLATION	3
A. New Commission initiatives	3
1. Greater selectivity	5
a. Free movement of goods	5
b. Financial institutions	6
c. Small and medium-sized firms	6
d. Research and technological development policy	7
e. Education, training and youth	8
f. Transport	9
g. Telecommunications	10
h. Labour law	10
i. Fisheries	11
j. Public health	12
2. Alternative approaches	12
3. Consultation	13
B. Withdrawal or revision of proposals outstanding	15
II. MODIFICATION OF EXISTING LEGISLATION	17
A. Right of residence	17
B. Regulations and standards	17
1. Pharmaceutical products	17
2. Foodstuffs	21
3. Technical legislation	21
C. Mutual recognition of professional qualifications	21
D. Indirect taxation	22
E. Competition	22
F. Energy	23
G. Environment	24
H. Social policy	25
I. Agricultural policy	25
J. Fisheries	26
K. Consumer protection	26

INTRODUCTION

At the European Council meeting on 11 and 12 December 1993, the Commission was asked "to report back regularly on the application of the principle of subsidiarity. The next Commission report on the subject will be submitted in December 1994"

This document therefore constitutes the Commission's first annual report on the application of the principle of subsidiarity, covering the year 1994. Documents on this subject which have appeared over the last two years include:

- the communication of 27 October 1992 on the principle of subsidiarity,¹ which clarified the concepts and laid down guidelines broadly shaping the overall approach decided by the Edinburgh European Council and the Interinstitutional Agreement of 29 October 1993;
- the report submitted by the President of the Commission to the Edinburgh European Council on 12 December 1992 on the first fruits of the Commission's review of existing and proposed legislation in the light of the subsidiarity principle;²
- the report of 24 November 1993 to the Brussels European Council on the adaptation of existing Community legislation to the subsidiarity principle,³ including a programme of work. The introduction to the report outlines the scope of the principle and reviews all the undertakings entered into by the Commission;
- the note on "subsidiarity, transparency and simplification of legislation" which was submitted to the President of the European Council at the meeting in Corfu on 24 and 25 June 1994,⁴ which reviews the steps taken by the Commission in these areas.

This first annual report is in two parts.

The first part deals with how subsidiarity is taken into account in the legislative process, i.e. in framing future Community legislation. It illustrates how:

¹ SEC(92)1990 final.

² Annex 2 to Part A of the conclusions of the Edinburgh European Council.

³ COM(93)545 final.

⁴ SG(94)D/33593.

- each new Commission initiative has been preceded by a review in terms of subsidiarity and proportionality, resulting in fewer, but better-targeted initiatives;
- the Commission, in the light of the subsidiarity principle, has chosen to withdraw or revise several initiatives tabled before the Council and Parliament. In this respect, it can be said to have met the undertakings it made in Edinburgh in December 1992 in all but two cases, where work is still in hand. But it has gone further and taken a number of initiatives not foreseen at Edinburgh.

The second part concentrates on the review of existing legislation. At the Edinburgh European Council in December 1992 the Commission had already identified several areas where it thought the legislation needed reviewing. Subsequently, in its report to the Brussels European Council in December 1993, it launched a major programme of recasting and simplification. This annual report, the first of its kind, describes the progress made, which has been good, and reveals that in some cases the objectives set out in last year's programme have been surpassed. Moreover, work has been started on matters not originally foreseen.

The Commission's readiness to listen to suggestions from outside about future legislation or the review of existing instruments has been amply demonstrated several times this year in various White or Green Papers and in other forms of consultation. It is also willing to enter into bilateral talks with any Member State that so requests. In June 1994,⁵ it responded to a German memorandum on subsidiarity by notifying its intention to withdraw two further proposals and to modify nine others, and held bilateral meetings on the subject of subsidiarity with a German delegation on 6 and 15 December 1994 and a British delegation on 22 February and 24 October 1994 (the latter meeting attended by a German representative). These meetings enabled the Commission to clarify its position on subsidiarity in relation to specific cases and to better appreciate the standpoint of the Member States concerned.

As regards methodology, a clear distinction needs to be made between the subsidiarity review and the Commission's own investigation into whether simplification of Community and national legislation would impact positively upon employment and competitiveness. Targets of the latter include over-regulation and the incorrect application of the principle of proportionality at Community or national level. In September 1994 the Commission set up a group of independent experts to help it in this task.

One final remark here. The Commission's efforts would be wasted if the legislative institutions pulled the other way. Now the latter do have the necessary powers to ensure that the principle of subsidiarity is respected, but one cannot help observing that principle and practice are often far apart with Member States meeting within the Council often adopting positions on individual cases at variance with their respect in principle for Article 3b.

⁵ C(94)1251 final, 10 June 1994.

I. NEW LEGISLATION

A. NEW COMMISSION INITIATIVES

In 1992, well before the entry into force of the Union Treaty, Article 3b of which refers explicitly to the principle of subsidiarity, a compulsory procedure was introduced within the Commission whereby all draft proposals to the Council and to Parliament had to be reviewed in terms of subsidiarity (this being taken to include the principle of proportionality, as reflected in Article 3b and the conclusions of the Edinburgh European Council).

The Commission also undertook to ensure that each legislative proposal was justified from the point of view of subsidiarity. This undertaking has been respected. The outcome of the subsidiarity review is given in the explanatory memorandum and is published. Having to justify each proposal in this way strengthens the Commission's internal discipline and makes its work more transparent.

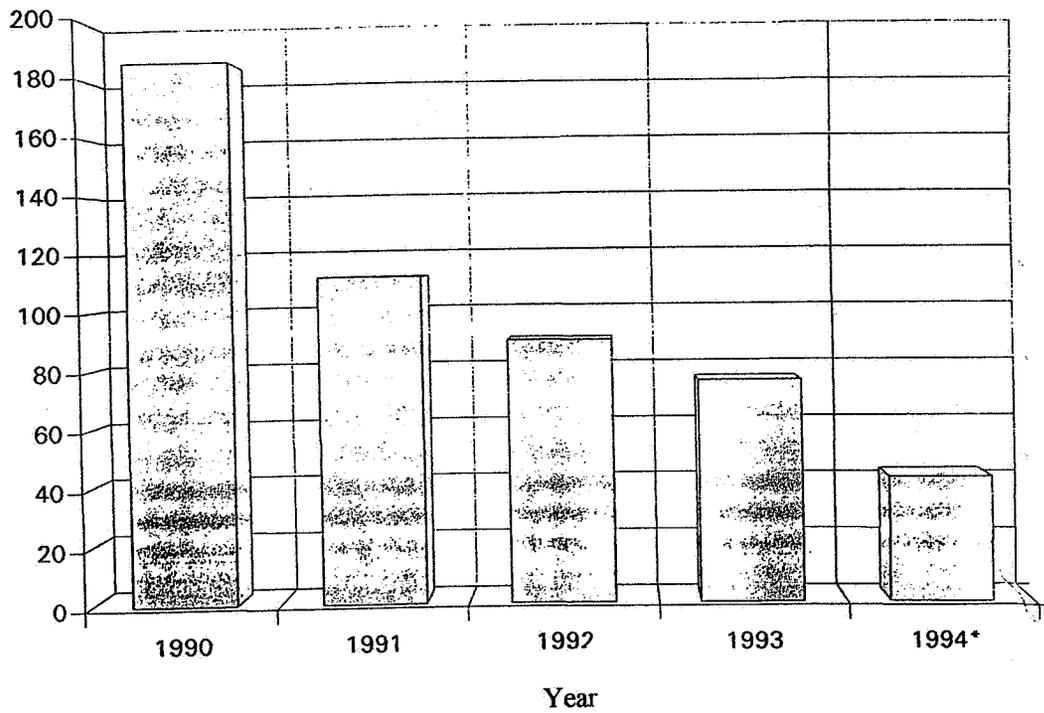
However, this is not always easy. In the area of the internal market, for example, the Community enjoys exclusive powers so the question of subsidiarity does not arise, though the question of proportionality or intensity does. It is far from straightforward to draw a clear dividing line between (a) the implementation of the four freedoms of movement - goods, persons, services and capital - which lie at the very core of the Community's exclusive powers, and (b) their accompanying measures which are designed to facilitate the operation of the internal market and which lie within the fields of competence of both the Community and the Member States, thus bringing the subsidiarity principle into play.

How does the Commission decide what line to take in these or similar cases, and how should the basic principles be interpreted? The Commission has addressed these questions in new staff guidelines on preparation of legal instruments, which are intended to help in applying the principles of subsidiarity and proportionality by asking whether the proposal resolves the problem without going beyond what is necessary.

However, some choices have to be made as early as the programming stage, well before the actual drafting takes place. The Commission has to be selective from the outset when it draws up the annual legislative programme and is increasingly strict in the criteria it applies. In addition, the annual programme has to be transparent because it is reviewed by the other institutions, published in the Official Journal and widely disseminated, thereby encouraging discussion of all aspects, including subsidiarity.

The Commission is keen for its draft initiatives to come under the broadest possible scrutiny as this ensures that the principle of subsidiarity is taken into account. It employs various forms of consultation, and has frequent recourse to green papers and white papers. These days, greater transparency has improved public access to preparatory documents and information materials, which makes it easier to discuss matters such as subsidiarity as soon as preparations for a proposal get under way.

Number of principal legislation proposals



* = First ten months.

How were these principles applied in 1994? Let us look at:

- how the application of the subsidiarity principle is reflected in the Commission's new initiatives;
- how the principle has sometimes led the Commission to drop legislative initiatives and opt for an alternative approach;
- how the Commission has used green papers, white papers or other consultative documents to ensure that the subsidiarity principle is taken into account in future initiatives.

1. Greater selectivity

In recent years, the Commission has exercised greater selectivity by restricting the number and scope of its initiatives.

The trend in the number of principal legislation initiatives during the period 1990 to 1994 is shown in the table opposite.

Examples are provided below of how either the subsidiarity principle or the proportionality principle has been taken into account in various initiatives taken this year.

a. Free movement of goods

Industrial products

On 1 February 1994 the Commission transmitted to Parliament and the Council a proposal for a directive relating to cableway installations designed to carry passengers.⁶

After a full review, it was concluded that in the interests of transparency and creating an open Community market, and in the light of the EEA Agreement, action by the Community was required.

It was clearly unrealistic, both politically and technically, for there to be a mutual recognition of regulatory provisions, in as much as it would create insuperable difficulties over interpretation and liability.

Voluntary standardization was not a viable solution either, bearing in mind the incompatibility of national regulations in this area.

The solution appeared to lie in a proposal for a Directive. In the case of cableway installations, only Community measures can ensure a truly open and competitive market. This would particularly help small firms which, owing to lack of resources, are restricted to their national or local markets, to compete throughout the

⁶ OJ C 70, 8.3.1994; COM(93) 646 final.

Community market on an equal footing with the major constructors. Furthermore, the creation of a Community reference framework is bound to promote and strengthen the competitiveness of European industry in international markets. Finally, in the case of users whose background is, for the most part, international, this will ensure the transparency and comprehensibility of the measures adopted for their safety, including ongoing operational safety. On this last point, the proposal for a Directive lays down Member States' obligations in general terms but leaves them a free choice as to the measures actually taken.

b. Financial institutions

Cross-border payments

The Commission transmitted on 21 November 1994 a *draft directive on cross-border credit transfers*.⁷

The principal objective is to ensure that in an Internal Market, cross-border credit transfers may be made free of any impediment. The draft directive deals exclusively with aspects pertaining to the performance of cross-border credit transfers, while allowing for the continuation of self-regulation with regard to the issues of transparency and redress procedures. Considering the cross border nature of the payments in question, legislation at national level would not suffice unless it were adopted in a substantively similar way in each Member State. The draft directive describes what may be considered as a number of essential conditions. These conditions allow those institutions wishing to provide cross-border transfer services an almost complete freedom of contract. Institutions decide themselves on the detailed specifications of the services they offer. The directive underpins these specifications and sets out fall-back rules in case any essential details were not specified by the institution. Only one rule in this section is mandatory, although having a limited number of opt-outs, i.e. the clause setting out the obligation to safeguard funds of customers (where funds are mislaid or lost).

c. Small and medium-sized firms

On 3 June 1994 the Commission transmitted an integrated programme in favour of SMEs and the craft sector.⁸ This programme was given the green light by the Council in its resolution of 10 October 1994.⁹

The measures to be taken cover the improvement and simplification of the enterprise environment, the organization of consultations on the key phases in a firm's life (creation, growth and transfer), and encouragement of the demand for information, training and advice from SMEs. In particular, the Commission will adopt only recommendations as regards transfers of undertakings and payment delays. These non-mandatory instruments will make it possible for Member States to take the

⁷ COM(94)436 final.

⁸ COM(94) 207 final.

⁹ OJ C 294, 22.10.1994.

measures that are required in their specific situations. But if no effect is given to the recommendations, the Commission will consider proposing more mandatory instruments.

The Commission's role in implementing these measures reflects the application of subsidiarity in the strict sense of the term. It is an innovative programme which encourages mutual consultation between Member States, and coordination between them by seeking to improve the environment in which firms operate and to stimulate support measures for SMEs. The Commission seeks to complement Member States' own measures by facilitating the exchange of experience and the dissemination of good practices which are potentially transferable from one Member State to another or from one region to another, in the common interest. It also seeks to attain greater convergence of measures, through mutual consultation or joint action, so that measures taken in favour of SMEs are both more transparent and effective.

Direct taxation

On 3 June 1994 the Commission transmitted a communication to the Council and Parliament on the improvement of the fiscal environment of SMEs¹⁰ and, on 25 May 1994, adopted a recommendation on the taxation of small and medium-sized enterprises.¹¹ These texts are directly inspired by the principles of subsidiarity and proportionality and are based on the common economic principle that it is in the Community's interest to support SMEs.

The Commission's intention was not to harmonize the national tax treatment of SMEs, but rather to suggest solutions to the most pressing problems.

Where domestic aspects are concerned (e.g. the capacity of enterprises to attract adequate financial resources, administrative complexity, preserving the continuity of the enterprise in the event of a transfer of ownership), the Commission's aim was to recommend appropriate solutions based on best practice in Member States. The recommendation includes examples of measures adopted by some Member States to lessen or remove the disparity in the tax treatment of reinvested profits, which itself depends on the structure of the firm (corporate or unincorporated). The Commission invites Member States which have yet to take action to adopt the measures recommended or take similar ones.

d. Research and technological development policy

The proposal on the fourth framework programme,¹² transmitted on 17 June 1993, was drawn up in accordance with the principle of subsidiarity; adopted by Parliament and the Council on 26 April 1994,¹³ it reflects the general agreement on the type of RTD activities that could better be carried out at Community level. This means research which:

¹⁰ COM(94) 206 final.

¹¹ OJ L 177, 9.7.1994.

¹² COM(93) 276 final.

¹³ OJ L 126, 18.5.1994.

- is too large-scale for individual Member States to provide the necessary human and financial resources;
- would have clear benefits if carried out in common;
- would enable advantage to be taken of complementarities within the Union;
- would help complete the internal market and promote cohesion;
- would strengthen coordination both between national RTD programmes and with Community programmes, as well as coordination with the activities of other international bodies.

The proposals for specific programmes,¹⁴ transmitted on 30 March 1994 to implement the fourth framework programme, define the type of activity to be carried out under these programmes in accordance with the subsidiarity principle.

The Community currently accounts only for 4% of total public-sector civilian RTD expenditure in the Union. Applying the subsidiarity principle allows the framework programme to be implemented more flexibly using methods which are adapted to the objectives. Furthermore, it is the people involved in RTD in the Member States who decide what research is to be done, who is to be associated with it and what research projects are to be carried out.

e. Education, training and youth

Action in this area is primarily based on Articles 126 and 127 of the EC Treaty which, in accordance with the principle of subsidiarity, state that Community action should support and supplement that of Member States. They rule out harmonization of Member States' own laws and regulations.

Three proposals for programmes based on these articles were presented between the end of 1993 and the beginning of 1994 to strengthen and rationalize existing Community action in the fields of education, vocational training and youth.

Youth for Europe III

Community action under this programme¹⁵ supplements Member States' own policies and action. It works through decentralized structures indicated by Member States themselves and promotes cooperation between national, regional and local structures engaged in youth work and between youth information structures in Member States. It also strengthens cooperation between them and the Community.

¹⁴ OJ C 228, 17.8.1994, and COM(94) 68 final; OJ C 113, 23.4.1994, and COM(94) 70 final.

¹⁵ COM(93) 523 final, presented on 15 December 1993 (OJ C 160, 11.6.1994), as amended by COM(94) 186 final, presented on 17 May 1994 (OJ C 170, 23.6.1994).

Leonardo da Vinci

This programme¹⁶ operates through existing machinery in Member States. The Community's role is to encourage the exchange of experience and set up transnational networks and projects in the field of vocational training.

Socrates

Community action has to take account of Member States' responsibilities as defined in Article 126 and the many kinds of education system; it therefore aims at developing the European dimension of studies by promoting cooperation between educational establishments, improving mobility for students and teachers, and encouraging the exchange of information. These objectives are all covered in the draft decision.¹⁷

f. Transport*Trans-European network*

There have been two proposals dealing with the trans-European transport network; one lays down general rules governing Community financial aid¹⁸ and the other a set of guidelines for its development covering the objectives, priorities and main lines of action.¹⁹ The proposal for a regulation on financing lays down common project selection criteria. Generally speaking, Community aid is subject to a substantial contribution from the public authorities, while requests for aid have to be agreed by the Member State concerned. As for the guidelines, they have been drawn up with the help of the Member States and broadly reflect national priorities. In addition, the detailed rules for implementing them are to be the responsibility of the Member States themselves.

If the trans-European network is to operate effectively there has to be a degree of compatibility between the various parts of the network in the different Member States. This is the purpose of the proposal for a Directive on the interoperability of the European high-speed train network,²⁰ which sets out to do what Member States have been unable to do separately, i.e. ensure a minimum degree of harmonization to keep the trains moving throughout the trans-European network. The intention is not to create a uniform network, just to ensure that its different parts work together.

¹⁶ COM(93) 686 final, presented on 4 February 1994 (OJ C 67, 4.3.1994), as amended by COM(94) 215 final, presented on 25 May 1994 (OJ C 176, 29.6.1994).

¹⁷ COM(93) 708 final, presented on 3 February 1994 (OJ C 66, 3.3.1994), as amended by COM(94) 180 final, presented on 17 May 1994 (OJ C 164, 16.6.1994).

¹⁸ COM(94) 62 final, presented on 4 March 1994 (OJ C 89, 26.3.1994).

¹⁹ COM(94) 106 final, presented on 7 April 1994 (OJ C 220, 8.8.1994).

²⁰ COM(94) 107 final, presented on 15 April 1994 (OJ C 134, 17.5.1994).

Safety

The principle of subsidiarity has also meant the Commission having to take steps to guarantee a uniform level of safety in the Community while ensuring that transporters are treated equally. An example is a proposal for a Directive on the control of the port State, which aims to stop shipowners from choosing destination ports on the basis of how strict the controls carried out by the port State are. This action was justified both on safety grounds in accordance with Article 75(1)(c) of the Treaty and by the need to ensure uniform controls and prevent distortion of competition.

g. Telecommunications

In submitting a proposal and an amended proposal relating to the *licensing of fixed and satellite-based telecommunications services*,²¹ full account was taken of the concerns raised by industry, the Member States and Parliament over the approach initially proposed of a single Community telecommunications licence. The idea of a single licence was replaced by a proposal for a system relying on the mutual recognition of national licences to provide telecommunications services (other than basic voice-telephony services for the general public). The system of mutual recognition would apply once harmonized licences for specific types of services were agreed at a European level.

In the interim, a system of one-stop shopping for current national licences would be put in place, allowing an operator to deal with a single point of contact in obtaining licences from a number of Member States.

The task of evolving harmonized licence conditions can be realized by using the expertise provided by the European Telecommunications Office, which groups more than thirty European States. This approach allows truly pan-European services, extending beyond the Union's boundaries, to emerge to meet the communications needs of Europe's users.

The Commission also adopted on 13 October 1994 a *Directive to open up the satellite market* (94/46/EC), after widespread consultation. The Commission decided to act in this area, in which it has exclusive competence, because of the rapidly growing and globalizing nature of this market and the vital importance of a competitive telecommunications industry as a whole for the overall competitiveness of EU industry.

h. Labour Law

In this field, in 1994, activity has focused on proposals *to inform and consult employees and to safeguard employees' rights in the event of transfers of undertakings, businesses or part of businesses*.

²¹ COM(93) 652 final, presented on 4.1.1994 (OJ C 36, 4.2.1994), amended by COM(94) 41 final, presented on 24.3.1994 (OJ C 108, 16.4.1994).

The main justification for the first of these lies with the transnational nature of the issues addressed by this proposal.²² In essence, existing mechanisms and procedures for the information and consultation of workers at national level apply only within individual countries' legal systems. These national procedures are no longer compatible with the new decision-making structures of major undertakings and groups of undertakings operating across national frontiers. This issue can therefore only be dealt with at Community level.

The second proposal²³ is designed to harmonize national legislation in order to protect workers in the event of a change in the head of an undertaking, particularly with a view to safeguarding their rights. This harmonization is necessary for the functioning of the internal market. Moreover, harmonization of the legislation of Member States in this field is covered by Directive 77/187, which means that this area is already part of the *acquis communautaire*. The proposal provides clarity and transparency, as well as legal certainty in a relatively complex area concerned with the essential interests and rights of workers.

i. Fisheries

The common fisheries policy is an area covered by exclusive powers in which the principle of proportionality is applied in such a way as to abide by the principles of equality between the operators concerned and of legal certainty.

On 22 April 1994, the Commission adopted Regulation (EC) No 897/94 laying down detailed rules for the application of the "fisheries control" regulation as regards *pilot projects relating to either land- or satellite-based continuous position monitoring of Community fishing vessels*.²⁴ Under the general system for monitoring the activities of vessels of the Member States, it is a basic principle that Member States bear primary responsibility for supervising fishing activities on their territories and in their maritime waters. The Commission has the power only to carry out spot checks on the monitoring activities carried out in this context by the national authorities. According to the regulation, it is therefore the responsibility of the Member States to implement these projects, or supplementary projects, as well as to communicate to the Commission the individual data supplied by vessels in the execution of the projects.

The proposed Regulation establishing the *rules on access to certain fishing areas and resources in the Community*,²⁵ adopted to adapt the accession arrangements for Spain and Portugal, would make Member States responsible for distributing the authorized fishing effort between vessels flying their flag and for adopting measures to implement the fishing effort restrictions.

²² COM(94)134 final, presented on 27.4.1994 (OJ C 135, 18.5.1994); adopted by the Council, Directive 94/45 EC, (OJ L 254, 30.9.1994).

²³ COM(94)301 final, presented on 8.9.1994 (OJ C 274, 1.10.1994).

²⁴ OJ L 104, 23.4.1994.

²⁵ COM(94) 308 final, presented on 18.4.1994 (OJ C 247, 3.9.1994).

j. Public Health

The Commission has transmitted four proposals concerning *cancer*,²⁶ *AIDS*,²⁷ *drug dependence*²⁸ and *health information*.²⁹ In its Communication of 24 November 1993 on the framework for action in the field of public health, the Commission defined a framework for future Community action to attain the Treaty's health protection objectives. The Community's role is identified as underpinning the efforts of the Member States in the public health field, assisting in the formulation and implementation of objectives and strategies, and contributing to the provision of health protection across the Community. These are the guiding principles in all four proposals transmitted in 1994, which therefore comply fully with the principles of subsidiarity and proportionality. Incidentally, the diversities observed within and between the Member States are taken into account; generally speaking, no detailed requirements are proposed by the Community.

2. Alternative approaches

Where possible, the Commission has tried to find alternative solutions to Community legislation or action, for example by promoting the decentralized application of Community law by the relevant authorities of the Member States or by calling on the services of standardization bodies, viz:

- cooperation with the national authorities responsible for competition with a view to increasing the effectiveness of Articles 85 (restrictive practices) and 86 (abuse of dominant position) of the EC Treaty through their decentralized application by them. Priority is to be attached to matters currently being dealt with by the Commission the main effects of which will be felt in one Member State only;
- joint qualitative evaluation by the Commission and the Member States of *the implementation of the customs union* by the national authorities in the framework of the Customs 2000 project;
- promotion of cooperation between the customs authorities of the Member States through the Matthaëus programme;
- *standardization*: in the *energy* field, mandates other than those connected with the implementation of legislative acts have wherever possible been given to CEN or CENELEC under the SAVE (energy efficiency) or ALTENER (renewable sources of energy) programmes;
- cooperation in the fields of *numbering/frequency coordination* : as a first step in implementing the objectives of the Mobile Green Paper, the Commission has entered into Memoranda of Understanding and framework contracts with the European Radio Communications Committee/European Radio Communications Office and with the

²⁶ COM(94)83 final, presented on 26.4.1994 (OJ C 139, 21.5.1994).

²⁷ COM(94)413 final, presented on 9.11.1994.

²⁸ COM(94)223 final, presented on 22.8.1994 (OJ C 257, 14.9.1994).

²⁹ COM(94)202 final, presented on 26.7.1994 (OJ C 252, 9.9.1994).

European Telecommunications Office. These arrangements allow the expertise of these bodies to be used (which brings together more than 30 European States) in developing pan-European approaches to frequency and numbering issues, which form the basis for the introduction of new systems and services throughout Europe.

3. Consultation

As indicated above, the Commission is resorting more frequently to green or white papers etc. so as to gather the observations of all interested parties prior to drawing up proposals and thereby judge whether the legislation is necessary and, if so, in what form.

In 1994, white or green papers have so far been presented in the following fields:

- *Social policy*

The *White Paper on European Social Policy*³⁰ states that: "Social progress can be achieved only through a cooperative partnership between the European Union, the Member States, the social partners and European citizens. The key to this must be a positive and active conception of subsidiarity. This means that the Union shall take action only if, and in so far as, the objectives cannot be sufficiently achieved by or within the Member States themselves and can, therefore, by reason of the scale or effects of the proposed action, be better achieved by the Union".

- *Audiovisual*

The purpose of the green paper on the *strategy options to strengthen the European programme industry in the context of the audiovisual policy of the European Union*³¹ is to ask questions concerning the future of the European film and television programme industry:

- How can the European industry be made more competitive and more open to the world market?
- What can be done to enable the European industry to participate in the overall growth of the audiovisual industry?
- What can be done to enable the European industry to give practical expression to its job-creation potential.
- How can the European cultures be opened up whilst respecting the identity of each country?

The aim is to stimulate a broad debate and to ensure the wide-ranging and in-depth consultation of all circles concerned.

³⁰ COM(94)333 final, presented on 29.7.1994.

³¹ COM(94)96 final, presented on 14.4.1996.

- *Mobile and personal communications*

The *Green Paper on a common approach to mobile and personal communications in the European Union*³² launched broad-based consultations with all interested organisations and industry participants with a view to building on the current success of mobile communications within Europe and world-wide.

The Green Paper accepted as a starting point that the day-to-day regulation of the industry would remain a national responsibility, but within general parameters set at a European level. The Paper, recognising the current success of the industry, where competitive provision of networks and services has been established by most Member States, proposed a relatively limited regulatory intervention.

Action at a European level would focus on ensuring an effective framework for interconnection at a national level, including dispute resolution mechanisms, on ensuring network operators could fully exploit the potential of their networks and on promoting pan-European solutions to issues such as frequency and numbering.

The widespread consultation exercise has allowed the Commission to hear the reactions of all sector players to its proposals, and helped it to formulate proposals for action which are proportionate to the problems currently found in the industry.

- *Liberalisation of telecommunications infrastructure*

On 28 October the Commission presented the first part of the *green paper on the liberalisation of telecommunications infrastructure and cable television networks*.³³ The opening up of telecommunications infrastructure to competition is one of the main steps needed to prepare the ground for the development of the network and the applications on which the information society depends. The Commission feels that a general debate is needed on the future regulation of the infrastructure of the networks and that an overall balanced and integrated approach must be defined covering not only the question of the future financing of the universal service and the other public service tasks but also the industrial, economic and social dimension and the international context. The first part of the green paper deals with the basic principles and the timetable for liberalization.

The following are examples of recent consultation initiatives:

- draft Commission block exemption Regulation for *maritime consortia* published³⁴ with a view to gathering the observations of interested parties;
- consultation of the representatives of the governments and interested parties at a conference held in June 1994 *to draw up proposals for the definitive VAT arrangements*;

³² COM(94) 145 final, presented on 16.5.1994.

³³ COM(94)440 final.

³⁴ OJ C 63, 1.3.1994.

- consultation of the motor-vehicle and petroleum industries on *the reduction of pollutant emissions*. To this end, the Commission has requested the European Petroleum Industry Association and the European Association of Motor Vehicle Manufacturers to conduct a joint study of the interactions between the quality of fuels and engine technology in order to reduce pollutant emissions to a minimum.

B. WITHDRAWAL OR REVISION OF PROPOSALS OUTSTANDING

A review of Commission proposals pending in 1992 revealed that there was insufficient justification for some of them in terms of subsidiarity. In December 1992, the Commission therefore presented the Edinburgh European Council with a list of proposals which it intended to withdraw or revise. Abiding by this commitment, it formally withdrew nine proposals in December 1993.

In 1994, it decided to withdraw the proposals relating to *the keeping of animals in zoos*³⁵ (to be replaced before the end of the year by a recommendation) and *the liability of suppliers of services*³⁶ (on which new guidelines have been proposed) and to revise two others:

- *Protection of personal data in the telecommunications field:*

The revised proposal for a Directive on data protection and privacy³⁷ in the area of telecommunications responds to the views expressed by the European Parliament, Member States and industry and removes certain elements of the original proposal which were considered to go beyond the level of protection required at a European level and which were adequately catered for in other areas of Community legislation.

- *Comparative advertising*

Whilst adhering to its central purpose, i.e. authorization of comparative advertising, the Commission has revised the 1991 proposal for a directive³⁸ by removing what, compared with the set aim, were felt to be excessively detailed aspects. The modified proposal³⁹ therefore merely serves to lay down general principles enabling the Member States to regulate the matter in greater detail.

As for the proposal relating to the *labelling of footwear*, the work carried out by the European Parliament and the Council resulted in considerable simplifications (adopted on 23 March 1994).⁴⁰

³⁵ COM(91)177 final, presented on 31.7.1991 (OJ C 249, 24.9.1991).

³⁶ COM(90)482 final, presented on 9.11.1990 (OJ C 12, 18.1.1991); COM (94) 260 final, presented on 24.6.1994.

³⁷ COM(94) 128 final, presented on 14.6.1994 (OJ C 200, 22.7.1994).

³⁸ COM(91)147 final, presented on 28.5.1991 (OJ C 180, 11.7.1991).

³⁹ COM(94)151 final, presented on 21.4.1994 (OJ C 136, 19.5.1994).

⁴⁰ Directive 94/11/EC (OJ L 100, 19.4.1994).

A revised proposal on *take-over bids*⁴¹ is expected to be presented in the first half of 1995. Work on revising the proposals for directives on *a common definition of a Community shipowner*⁴² is still in progress.

Furthermore, the Commission has simplified its proposals, not on the Edinburgh list, relating to *time-share property*,⁴³ *recreational craft*⁴⁴ and *the internal market in gas and electricity*.⁴⁵ It intends to join with Parliament and the Council in re-examining its proposals concerning *speed limits for certain categories of motor vehicles*⁴⁶ and *maximum permitted blood alcohol concentrations for vehicle drivers*⁴⁷ as well as *the advertising of tobacco products*^{47Bis} in the first half of 1995.

⁴¹ COM(88)823 final, presented on 19.1.1989 (OJ C 64, 14.3.1989), amended by COM(90)416 final, presented on 14.9.1990 (OJ C 240, 26.9.1990).

⁴² COM(89)266, presented on 31.7.1989 (OJ C 263, 16.10.1989), amended by COM(91)54, presented on 27.2.1991 (OJ C 73, 19.3.1991).

⁴³ COM(92)220, presented on 2.7.1992 (OJ C 222, 29.8.1992), amended by COM(94)363 final, presented on 13.9.1994.

⁴⁴ COM(92)141, presented on 21.4.1992 (OJ C 123, 15.5.1992), amended by COM(94)119 final, presented on 12.4.1994; adopted by Parliament and the Council, Directive 94/25/EC (OJ L 164, 30.6.1994).

⁴⁵ COM(91)548 final, presented on 24.2.1992 (OJ C 65, 14.3.1992), amended by COM(93)643 final, presented on 11.2.1994 (OJ C 123, 4.5.1994).

⁴⁶ COM(88)706 final, presented on 16.1.1989 (OJ C 33, 9.2.1989), amended by COM(91)66 final, presented on 27.3.1991 (OJ C 96, 12.4.1991).

⁴⁷ COM(88)707 final, presented on 12.12.1988 (OJ C 25, 31.1.1989), amended by COM(89)640 final, presented on 8.12.1989 (OJ C 11, 17.1.1990).

^{47Bis} COM(89)163 final presented on 7.4.1989 (OJ C 124, 19.5.1989), amended by COM(90)147 final presented on 19.4.1990 (OJ C 116, 11.5.1990), COM(91)111 final presented on 17.5.1991 (OJ C 167, 27.6.1991) and COM(92)196 final presented on 30.4.1992 (OJ C 129, 21.5.1992)

II. MODIFICATION OF EXISTING LEGISLATION

The Commission's report to the Brussels European Council in December 1993 contains an extensive programme of revision and simplification which goes well beyond mere compliance with the subsidiarity principle, especially as some of these matters are within the Community's exclusive powers (internal market, competition, etc.).

The table below shows the progress made with this programme. Work is being actively pursued in all the areas mentioned and has been completed in some of them. The table does not include the consolidation work which is also continuing apace.

A description of the situation by sector is given below. This shows that efforts to modify legislation have been extended to new areas which did not feature in the report presented to the Brussels European Council.

A. RIGHT OF RESIDENCE

Efforts to revise the legislation are under way, but the complexity of the exercise means that it will be impossible to meet the deadlines laid down in the report to the 1994 Brussels European Council. In the coming months the Commission will continue examining ways of producing a single instrument out of a dozen instruments enacted on different legal bases.

B. REGULATIONS AND STANDARDS

1. Pharmaceutical products

The revision of the regulations on *medicinal products* announced in the programme laid before the Brussels European Council is already under way (twenty or so Council Regulations and Directives, eight Commission ones, two communications and approximately fifty explanatory notes accompanying this legislation). The deadlines should be met (end of 1994, beginning of 1995).

In addition to fulfilling its commitments to the Brussels European Council, the Commission plans to revise the Directives on veterinary medicines in the course of 1995.

State of progress with the programme to modify existing legislation
(Commission report to the Brussels European Council
COM(93)545 final, 25.11.1993)

A. Revision

- Right of residence
 - * Deadlines: 1994
 - * Work continues
- Pharmaceutical products
 - * Deadlines: end of 1994 or beginning of 1995
 - * Deadlines will be met
- Competition (Regulations (EEC) No 2349/84 and 556/89)
 - * Deadlines: 1994
 - * Draft Regulations published on 30 June 1994
- Competition (State aids)
 - * No deadlines set
 - * - communications describing the application of the rules to environmental protection and company restructuring were sent on 28 October and 23 July 1993 respectively
 - regional aids: work to be completed in 1995
- p.m. Customs Code adopted in October 1992
- Trade mechanisms for agricultural products
 - * No deadlines set
 - * Work in progress
- Fisheries: structural measures
 - * No deadlines set
 - * New legal framework in operation since 1 January 1994
- Transport: roadworthiness testing
 - * No deadlines set
 - * Completion expected end of 1994

B. Simplification

- Foodstuffs: Directives on foodstuffs intended for particular nutritional uses
 - * No deadlines set
 - * Proposal presented on 28 March 1994
- Foodstuffs: "vertical" Directives on chocolates, jams, etc.
 - * Deadlines: 1994
 - * Completion expected end of 1994
- Foodstuffs: framework Directive
 - * No deadlines set
 - * Completion expected first half of 1995
- Foodstuffs: mineral waters Directive
 - * No deadlines set
 - * Proposal presented on 17 October 1994
- p.m. pressure equipment
 - * Proposal presented on 15 July 1993 and amended on 30 June 1994
- New approach: pressure equipment
 - * No deadlines set
 - * Proposal presented on 30 June 1994
- New approach: CEN/CENELEC mandate/Machinery Directive
 - * No deadlines set
 - * Draft mandate presented on 20 October 1994
- New approach: weight and dimension of road vehicles
 - * No deadlines set
 - * Completion expected first half of 1995
- New approach: measuring instruments
 - * No deadlines set
 - * Completion expected in 1995
- Professional qualifications (doctors, dentists, etc.)
 - * No deadlines set
 - * Doctors' proposal scheduled for end 1994
- Mutual recognition of qualifications: abolition of transitional Directives
 - * No deadlines set
 - * Completion expected second half of 1995

- Indirect taxation: revision of VAT regulations
 - * Deadlines: 1995
 - * Proposal for a definitive regime planned for end of 1994. Two selective initiatives already in 1994
- Energy: Regulation on investment projects in oil, gas and electricity
 - * No deadlines set
 - * Proposal expected first half of 1995
- Environment: bathing waters Directive
 - * No deadlines set
 - * Proposal presented on 29 March 1994
- Environment: Directive on the ecological quality of surface water
 - * No deadlines set
 - * Proposal presented on 8 July 1994
- Environment: drinking water Directive
 - * No deadlines set
 - * Completion expected end of 1994
- Environment: freshwater and protection of groundwater
 - * No deadlines set
 - * Completion expected first half of 1995
- Environment: air quality Directive
 - * No deadlines set
 - * Proposal for a framework Directive presented on 4 July 1994
- Social policy: acquired rights Directive
 - * Deadline: 1994
 - * Proposal presented on 8 September 1994
- Agriculture: COM
 - * No deadlines set
 - * Work in progress. Proposal for the revision of the COM in wine presented on 13 June 1994
- Consumers: indication of price
 - * Deadline: 1994
 - * Completion expected end of 1994

2. Foodstuffs

As regards the commitments entered into in the Brussels report:

- on 28 March the Commission presented its proposal to simplify the Directives on *foodstuffs intended for particular nutritional uses*;⁴⁸
- it presented a proposal for a Directive on *mineral waters*, amending Directive 80/777/EEC on 17 October;⁴⁹
- a proposal to simplify the *vertical Directives* on chocolates, jams, fruit juice, honey, coffee and milk is due to be tabled before the end of this year;
- in addition, work continues on drafting a *framework Directive* in this area, expected to be completed in the first half of 1995.

3. Technical legislation

The Commission has revised its "new approach" proposal for *pressure equipment*.⁵⁰

As regards the *CEN/CENELEC mandate*, a draft was presented to the Directive 83/189/EEC Committee on 20 October 1994. It should shortly be sent to the machinery Directive Committee, before being adopted by the 83/189/EEC Committee at its meeting on 13 December 1994.

Work on simplifying certain earlier regulations, particularly on *weights and dimensions of road vehicles and roadworthiness testing*, is expected to be completed in the first half of 1995 and before the end of 1994 respectively.

A proposal on *metrology* is planned for 1995.

In addition to this work, referred to in the Brussels report, a proposal for a Directive on *ranges of nominal quantities and nominal capacities for certain prepackaged products* should be drafted by the end of the year. It will simplify Directives 75/106/EEC and 80/232/EEC.

C. MUTUAL RECOGNITION OF PROFESSIONAL QUALIFICATIONS

In accordance with the commitments entered into in the Brussels report:

- the relevant Directives (on doctors, dentists, veterinarians, nurses, midwives and pharmacists) will be simplified by incorporating a committee procedure intended to facilitate the regular updating required to keep abreast of changes in training. The

⁴⁸ OJ C 108, 16.4.1994; COM(94)97 final.

⁴⁹ COM(94)423 final.

⁵⁰ OJ C 246, 9.9.1993; COM(93)319 final, amended by COM(94)278 final, presented on 30.6.1994 (OJ C 207, 27.7.1994).

Commission should adopt the first of its proposals, on doctors, at the end of this year (modification of Directive 93/16/EEC);

- work is currently under way on a proposal, expected to be ready in the second half of 1995, for the repeal of some forty "*temporary*" Directives which, while maintaining the achievements of these Directives, will extend to the occupations in question (crafts, etc.) the benefits of the general system of mutual recognition of qualifications.

D. INDIRECT TAXATION

The work set out in the Brussels report is well under way:

- a proposal for a Directive amending Directive 77/388/EEC and introducing new measures to *simplify VAT* was presented on 9 March 1994.⁵¹ The text offers solutions to the practical problems encountered by businesses and national administrations. The proposal to amend Directive 92/12/EEC, presented on 30 June 1994, serves a similar purpose for *products subject to excise duty*;⁵²
- in an attempt to simplify the VAT system, particularly for businesses, the Commission is currently preparing the *definitive regime*, with a view to the presentation of a proposal by the end of 1994.

E. COMPETITION

The Commission announced some major clarification and simplification in the Brussels report:

- it has merged the two Regulations (EEC) No 2349/84 (block exemption for patent licensing agreements) and No 556/89 (block exemption for know-how licensing agreements) into *a single Regulation* applying to "*certain categories of technology transfer agreements*". The preliminary draft of the new Regulation has been published⁵³ and has provoked numerous comments from the interested parties, making further consultations with them and the Member States necessary. Adoption of the new Regulation by the Commission will consequently have to be delayed until 1995;
- regarding State aids:
 - it has adopted two *communications* laying down details for the application of regulations in two important areas, namely *environmental protection*⁵⁴ and the *rescuing and restructuring of firms in difficulty*.⁵⁵ These two communications clarify the application of Community regulations and ensure greater legal certainty

⁵¹ OJ C 107, 15.4.1994; COM(94)58 final.

⁵² OJ C 215, 5.8.1994; COM(94)179 final.

⁵³ OJ C 178, 30.6.1994.

⁵⁴ SEC(93)1628 final.

⁵⁵ SEC(94)1228 final.

for Member States and companies. The details of aid are left to the discretion of the national authorities;

it has also started to revise the regulations on *regional aid*, with a view to simplifying application. The work should be completed in early 1995. The Commission has adopted a flexible approach and taken account of national policies on regional development when finalising the methods for drawing up the regional "maps" for each Member State.

Other initiatives were not announced in the Brussels report:

- with reference to restrictive practices and abuse of dominant positions:
 - amendment of the A/B form and of Commission Regulation No 27 before the end of the year;
 - revision of Commission Regulation (EEC) No 123/85 on the *block exemption for agreements in the motor vehicle distribution sector* in the first half of 1995. The proposed amendments are intended to create more flexible forms of distribution;
 - amendment, before the end of 1995, of the Commission communication on *agreements of minor importance not covered by Article 85(1) of the Treaty* (which prohibits restrictive practices). The communication will seek to promote *cooperation between businesses, particularly small ones*, in so far as it does not raise any objection as regards competition policy;
- on the subject of *merger controls*, the Commission plans to revise Regulation (EEC) No 2367/90 and its annexes before the end of 1994 to make it more transparent and effective. It also intends to amend the notices on the interpretation of the merger rules.

F. ENERGY

Having consulted the Member States, the Commission is currently drafting a proposal to simplify Regulation (EEC) No 1056/72 (*investment projects of interest to the Community*); it will be ready in the first half of 1995. The revision will lighten the burdens which the Regulation imposes on industries and national administrations by reducing the amount of data collected, extending the deadlines and leaving the choice of the means used to collect information to the discretion of the Member States.

In addition to this revision, specified in the report to the Brussels European Council, the Commission has undertaken a complete reappraisal of legislation in the energy field. This study has resulted in the following initiatives:

- a reappraisal, in the light of the provisions of the *SAVE programme*, of the legislation on energy efficiency, some of which might be repealed in consequence before the end of the first half of 1995;

- a reappraisal of all *legislation relating to the oil crisis*, the legacy of the 1970s. This should lead to:

repeal of part of the legislation in this area in the first half of 1995;
subsequent simplification of the regulations.

G. ENVIRONMENT

In accordance with the conclusions of the Edinburgh European Council, the Commission has proceeded with a revision of the legislation on the protection of water and air quality:

- on 29 March 1994 it presented a proposal to amend Directive 76/160/EEC on the *quality of bathing water*,⁵⁶
- on 8 July 1994 it presented a proposal for a Directive on the *ecological quality of surface water*,⁵⁷
- before the end of the year it is due to adopt a proposal to amend Directive 80/778/EEC on *drinking water*;
- it will present a proposal to revise the Directive on the *protection of groundwater* in the first half of 1995, to complete its revision of the water protection legislation;
- on 4 July 1994 it presented a proposal for a *framework Directive* to simplify *air quality* legislation.⁵⁸ This seeks to establish a framework for the harmonization and evaluation of air quality standards within the Union, while leaving Member States the responsibility for taking specific measures to reduce levels of pollution in their territory.

In these fields the Commission has based its work on the need for simplification and proportionality and a cost-benefit assessment. It has been careful to ensure that application of the subsidiarity principle does not lead to a drop in standards from their current high level.

In addition to these examples, referred to in the report to the Brussels European Council, the Commission has pursued the application of the subsidiarity principle in several other cases:

- the Commission delayed from 1993 to 1994 its proposal concerning the revision of the *Seveso Directive 82/501/EEC*,⁵⁹ in order to ensure that subsidiarity was fully taken into account. The proposal allows Member States to choose the ways and means of achieving a high level of safety at major industrial plants and is thus fully in keeping with the spirit of the Fifth Community Environment Programme, in that

⁵⁶ OJ C 112, 22.4.1994; COM(94)36 final.

⁵⁷ OJ C 222, 10.8.1994; COM(93)680 final.

⁵⁸ OJ C 216, 6.8.1994; COM(94)109 final.

⁵⁹ OJ C 106, 14.4.1994; COM (94) 94 final, presented on 4.3.1994.

it combines the principles of company accountability, prevention and public information;

- the Commission is preparing an amendment to Directive 90/219/EEC on the *contained use of genetically-modified micro-organisms* and a re-evaluation of Directive 90/220/EEC on the *deliberate release into the environment of genetically-modified organisms* for the first quarter of 1995;
- the performance of the *LIFE Regulation* setting up a financial instrument for the environment will be evaluated in a report in December 1994, which should make it possible to assess the soundness of the criteria it lays down.

H. SOCIAL POLICY

The proposal to amend the "*acquired rights*" Directive (Directive 77/187/EEC) announced in the Brussels report was presented by the Commission on 8 September.⁶⁰

I. AGRICULTURAL POLICY

The Commission's approach to the question of revising the rules on export *refunds* for agricultural products has been as follows:

- establish a single Commission Regulation that would bring together the general rules on the granting of export refunds (which are currently to be found in thirteen Council Regulations). The Council, however, rejected this approach in its recent discussions on measures to give effect to the results of the Uruguay Round. But simplification is possible none the less, and before the end of the year the Commission will be making proposals to incorporate the thirteen Regulations into the relevant basic Regulations;
- the Council Regulation on the advance payment of export refunds for agricultural products is to be amended in the second half of 1995 so as to exclude all possibilities of abuse.

Consolidation measures, not covered by this report, also form part of the general strategy in this area.

The Commission presented a proposal for the *reform of the COM in wine* on 13 June 1994, which seeks to simplify the rules and gives greater responsibility to the regions.⁶¹

In addition to this work, which featured in the Commission report to the Brussels European Council, the Commission has sent six proposals to the Council in the *zootechnical veterinary field*.⁶² These are intended to revise existing legislation and form

⁶⁰ OJ C 274, 1.10.1994; COM(94)300 final.

⁶¹ OJ C 194, 16.7.1994; COM(94)117 final.

⁶² COM(94)111 final, presented on 28.1.1994 (OJ C 51, 19.2.1994);
COM(94)241 final, presented on 10.6.1994 (OJ C 208, 28.7.1994);

part of a coherent body of rules laying down standards as part of the completion of the internal market. They take the form of either Directives or Decisions to be implemented by the Member States. The requisite controls in the Member States are to be carried out by the national authorities, subject to inspection by the Commission.

J. FISHERIES

The new legal framework for *structural intervention* established by Regulations (EEC) No 2080/93 and (EC) No 3699/93 has been in operation since 1 January 1994. It complies with the subsidiarity principle by providing for a proper division of responsibility between the Community and the Member States.

In addition to this work, which featured in the Commission's report to the Brussels European Council, the Commission presented a proposal for a Regulation amending the *control system applicable to the common fisheries policy* created by Regulation (EEC) No 2847/93.⁶³ This spells out the responsibility of the Member States for limiting and monitoring fishing effort and the control of fishing activity.

K. CONSUMER PROTECTION

As announced in the Brussels report, the Commission is drafting a proposal to simplify Directives 79/581/EEC, 88/314/EEC and 88/315/EEC on mechanisms relating to the *indication of the price of products offered to consumers* (COM(94)431, to be adopted by the Commission before the end of the year). After extensive consultations it has opted for a simplified mechanism whereby it will as a general rule be compulsory to indicate the sale price and the unit price for all products. In the case of prepackaged products, where the existing system was very complicated, the conditions for exemption from the unit price requirement have been simplified. The new system should enter into force in 1999, which will allow time for the necessary adjustments to be made. Member States will be given greater discretion to decide how best to ensure that consumers are properly informed.

COM(94)315 final, presented on 18.7.1994 (OJ C 224, 12.8.1994);
COM(94)394 final, presented on 20.9.1994 (OJ C 282, 8.10.1994);
COM(94)396 final, presented on 23.9.1994;
COM(94)401 final, presented on 26.9.1994 (OJ C 285, 13.10.1994).
⁶³ COM(94)309 final, presented on 18.8.1994 (OJ C 247, 3.9.1994).