

## document

supplement to *European report*  
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### **THE INTERNAL MARKET AFTER 1992** **Meeting the challenge**

*Report to the EEC Commission by the High Level Group on the Operation of Internal Market, presided over by Peter Sutherland (extracts) - October 28, 1992*

*This report, requested by the Commission in March 1992, identifies the extent to which existing administrative mechanisms are being adapted in preparation for the removal of border controls and suggests a strategy designed to ensure that full benefits are drawn from the Internal Market after 1992.*

#### SECTION I

#### COMMUNITY REGULATION AND SUBSIDIARITY

##### Diversity in an Internal Market

Many external contributions expressed concern that the benefits of the internal market will not flow unless its rules are applied effectively and consistently throughout the Community. At the same time they underlined the importance of retaining local, regional and national diversity.

The acceptance of such diversity is politically and culturally important to Europe, but it risks being in conflict with the effective operation of an internal market based on the free movement of persons, goods, services and capital (the "four freedoms").

Thus, if the protection of diversity amounts to the application of separate rules at local, regional or national level, the principle of the internal market itself may be put in doubt. As we consider it is important to apply the concept of subsidiarity to help reconcile this conflict, we wish to make our contribution to the ongoing debate on subsidiarity.

The Community has already made considerable progress towards resolving the problem by basing much of the internal market programme (the White Paper of 1985) on the principle of mutual

recognition. There are, however, limits to mutual recognition where there are over-riding needs, such as the protection of health, safety, the environment or consumers, and when national legislation is not equivalent.

Where these limits are identified the Community should avoid unnecessary legislation, bearing in mind that in the areas mentioned above it has already made substantial progress. We therefore underline the importance of the Commission :

- continuing to make effective use of its power to ensure that national legislation takes the principle of mutual recognition fully into account ;
- analysing the full economic effect of national measures which cannot, for good reason, build in mutual recognition so as to assess the case for Community legislation.

When such an analysis concludes that the effect of national measures is not material to the operation of the internal market, we consider that the Community should not insist on legislation : we express a preference for preserving diversity in such circumstances

#### Avoiding complexity

Internal market legislation necessarily involves detailed choices about the way in which the Community achieves wider policy objectives,

such as a high level of protection of health, safety, environment and consumers. This can lead to very complicated legislative solutions, particularly where existing national approaches are incorporated as alternatives during negotiations in the Council.

Such situations are unsatisfactory for the development of the internal market and risk provoking criticism that the Community is excessively bureaucratic in its approach. Nonetheless the Community has developed a broad variety of approaches to the achievement of free circulation. We mention only two of them, simply to illustrate the point : in some cases, producers are given the choice of manufacturing according to Community rules or to national ones ; in other cases, harmonisation is achieved by enabling voluntarily agreed European technical standards to be used to show that products meet a specified level of safety.

A better understanding of the way in which these and other approaches help meet the needs of people is required both on the part of Community institutions and the Member States. The Commission needs to choose carefully from among these approaches when deciding the shape of its future initiatives.

#### A common sense approach to subsidiarity

The Community is moving towards a truly major achievement - the completion of a single European market. Political commitment at the highest level has been consistently expressed. The Treaty itself

demand action and defines the rules for such action. And yet there is a growing unease that, in practice, future Community legislation may be too heavy-handed. To improve this situation, a common sense approach to subsidiarity is needed when the possibility of Community action in the Internal Market is being considered. We have identified five criteria :

- 1) Need : Community action should be undertaken only when national solutions to a problem :
  - represent a material prejudice to the four freedoms ; or
  - are inappropriate and solutions on a Community basis are demonstrably better.
- 2) Effectiveness : a choice of possible measures should be considered so as to identify the most effective form of Community action ranging from self-regulation to total harmonisation.
- 3) Proportionality : Community solutions need to be directly related to the objective desired - in other words, they should go no further than is necessary, thereby minimising disruption to existing practices within Member States
- 4) Consistency : a new measure needs to fit in as closely as possible with existing Community measures, thereby avoiding confusion for consumers and the imposition of extra burdens on business.
- 5) Communication : the merits of any proposed measure should be

readily explicable to the citizen, and particularly to consumer and business opinion. The details of a proposal need to be discussed at as early a stage as possible with those who will be most affected by it.

Recommendation

- (1). *All proposals for Community action should be based on a wide-ranging analysis of its political, social and economic impact, comparing the advantages and disadvantages of intervention and of non-intervention. This analysis should be based on the five criteria of need, effectiveness, proportionality, consistency and communication.*

Recommendation

- (2). *The Commission needs to develop a policy towards the choice of market regulation techniques, based on their appropriateness for particular objectives.*

Recommendation

- (3). *The Commission needs to continue to exercise its powers under the Treaty when action is required at Community level in circumstances where uncoordinated action by Member States could materially jeopardise the operation of the Internal Market.*

### The longer term

The point has been made in several contributions that, in the longer term, it will be important to assess the progress of the internal market, to identify the remaining problem areas, and to review the effectiveness of various regulatory techniques. We agree, particularly as our report concentrates quite deliberately on the urgent operational needs of the internal market.

### Recommendation

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

## SECTION II

### REASSURING CONSUMERS AND BUSINESS

#### The task

The way the internal market works depends above all on the behaviour of consumers, through their purchases, and of firms, through their marketing and investment strategies.

Consumers who have doubts about the quality of goods from other Member States, or who are not convinced of the effectiveness of the checks carried out on such products, could by their behaviour, reduce the opening-up of markets which should result from the harmonisation of rules. Similarly, a lack of interest on the part of suppliers of services in exercising their professions or activities on the territory of other Member States would simply highlight the disparity between the effort which harmonisation has entailed and its limited effects on the market.

And if firms were to fail to respond to the opportunities created, for example, by the new procedures for making public procurement transparent (advertising of tender notices and award criteria), they would serve merely to preserve national, or even local, market fragmentation thereby preventing the emergence of competition.

A real and substantial effort is therefore needed to persuade consumers and firms (especially small and medium-sized firms) to

adopt a confident outward-looking attitude towards the entire body of rules and procedures, designed as it is to enable them to enjoy the advantages of a large, frontier-free market. The problem of succeeding in delivering such a message, not least given its technical complexity, cannot be underestimated (and the communication difficulties encountered in the context of the Maastricht Treaty are a timely reminder of the risks of failure). Despite these difficulties and because of its concern about the consequences of failure we consider that action is needed in two key areas :

- the quality and efficiency of communication with, and information for, consumers and firms ;
- the quality of the Community rule-making apparatus (transparency, consistency, simplification, etc.).

### Information

Informing the public about the instruments of the internal market and about how to use them is a task for both Community institutions and national governments. Clearly the Commission needs to play a key co-ordinating and promotional role, providing access to basic information (for example by developing the INFO 92 database to inform firms and consumers about the various rules on which the functioning of the internal market is based). But it is above all up to the Member States to increase the awareness and understanding by

consumers and firms of Community measures. And of course, for such communication to be effective, it must be targeted as closely as possible on particular sections of the public concerned and must reflect national culture.

### Recommendation

- (5). *The Commission needs to develop a communication strategy, involving all the Community institutions, national administrations and other non-governmental organisations in a systematic and co-ordinated way. This strategy would set the key objectives (starting with those areas where the lack of information is greatest) and organise the resources which are available at Community and national level.*

### Recommendation

- (6). *Consumers and firms are entitled to know about their legal rights and where they can find out about new regulations and laws, for example by means of illustrative and explanatory material such as brochures, manuals, interpretative notices, guides and databases.*

### Recommendation

- (7). *Without excluding the possibility of information provided directly by the Commission (e.g. as in the case of the toy*

*safety) nor its role in co-ordinating and promoting such activity in the Community, it is for the Member States to take prime responsibility in improving information for consumers and business.*

#### Transparency of rule-making activities

Making law demands transparency and participation of those concerned by it. Yet many contributions we received highlighted the present weaknesses : for example intermittent flows of useful information, inadequate prior consultation and the absence of information at each stage of the Community's legislative process.

Such shortcomings make the whole process unpredictable leaving the public confused, feeling excluded and unclear as to the need for and usefulness of Community legislation. Consumers and firms need to be consulted - and involved - more systematically and effectively. Consultation of the Economic and Social Committee, although mandatory, is by itself insufficient (it takes place only once the preparatory work has been completed).

While the Commission maintains a dialogue with European organisations which represent members throughout the Community, it is apparent that there is not always a full and timely transmission of information between the central body and national offices. The result is that feedback is sometimes inadequate and delayed.

Coupled with the formal confidentiality of the Council's work, such difficulties - and there are many more - help to create a divide between public opinion and the Community legislative process. The consequence is that Community rules run the risk of being perceived as technocratic constraints, even as interference, albeit agreed by Member States in Council, rather than as contributions to the wider political ideal of the internal market.

#### Recommendation

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

#### Recommendation

- (9). *The Commission should, in collaboration with the Council and Parliament, initiate a wide-ranging discussion on the rules and procedures for formally ensuring the transparency of the entire Community legislative process. This discussion is urgently needed and its follow-up must include specific action to ensure the free flow of information to the citizen.*

Transparency of Community law

Consumer organisations and businesses often criticise Community law for being unclear and unduly complex. The difficulties they experience seem to arise both in Community instruments and in the national legislation that transposes them.

Most of the difficulties arise from the fact that Community legislative acts are revised, adapted or complemented by several succeeding acts which amend but do not replace them. Consequently, a complete up-to-date legal text can sometimes be consulted only by painstakingly picking over many legal acts. We note nonetheless, the usefulness to interested parties of what is called "declaratory codification", whereby the Commission produces informal texts of the original piece of legislation with later amendments inserted at the appropriate points.

Yet, without systematic codification (i.e. legislative consolidation) - combining the initial text and all subsequent amendments into a single authoritative text - the transparency of Community law cannot be guaranteed.

Several proposals for legislative consolidation are currently under discussion, with thirteen new instruments replacing eighty-five old ones, reflecting more than two decades of Community rule-making activity. The new, consolidated directive faithfully reflects the substance of the basic directives in that it introduces only those amendments required by the consolidation operation itself.

This sort of work is inevitably slow, despite the 1974 Resolution in which the Council undertook to encourage the consolidation of Community law.

Legislative codification must be the subject of a formal proposal by the Commission since a single directive replaces several directives covering a particular field.	
Consolidation proposals before the European Parliament and the Council include :	
- agricultural tractors .....	38 directives
- dangerous substances and preparations .....	13 directives
- units of measurement .....	3 directives
- doctors' diplomas .....	7 directives
- fertilisers .....	11 directives
- public works contracts .....	6 directives
- fruit juices .....	4 directives
- labelling of foodstuffs .....	3 directives

The difficulties are at one and the same time political, legislative and linguistic. Each directive is usually the result of sometimes laborious political compromises which the Member States fear will be jeopardised by the process of consolidation. Consolidation itself is often complicated by frequent contradictions and anomalies that stem from inconsistencies between successive legal instruments or from different linguistic versions of the same text.

Recommendation

(10). *A more systematic and sustained effort made by the European institutions to accelerate the legislative*

*consolidation of Community law. This needs to be matched by a similar effort on the part of the Member States to ensure that their legislation which transposes Community law has a similarly high priority.*

These difficulties may be compounded by transposition into national legislation. This arises because, as a directive imposes on Member States an obligation as to the results to be achieved and not as to the means to be used, the same Community rule can be transposed by diverse national legislative instruments reflecting different legal and administrative structures.

Thus differences arise when domestic statutes, even though they transpose the same piece of Community law, are brought into effect. For consumers, firms and market control authorities the Community text no longer has the merit being the only one which applies throughout the Community. This problem is already serious and is likely to become worse, above all with the eventual enlargement of the Community.

The use of directly applicable regulations instead of directives (for which transposition is required) would help overcome this problem. The adoption of such an approach would however be difficult for certain Member States on account of their particular legal and legislative structures.

#### Recommendation

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

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

#### Recommendation

(12). *The Commission should provide legal assistance of an informal nature to the Member States during the transposition of directives to avoid discrepancies and contradictions between national legislation.*

#### Recommendation

(13). *Member States need to take more systematic action to promote awareness of their transposition legislation, to give*



*publicity to their inspection, monitoring and certification structures and, in general, to inform consumers and business about the rights and obligations created by Community legislation.*

#### Cohesion and consistency of Community legislation

The fierce timetable established by the White Paper, and now virtually achieved, has necessitated the rapid adoption of many Community instruments. All departments, in the Commission and in the Member States, have set about preparing and negotiating general and technical directives covering a very wide variety of policy fields. In doing so they have, in some cases, adopted an overly specific approach, ignoring or failing to make adequate links with other horizontal and sectoral instruments that had been agreed or were being negotiated.

Several bodies have amply illustrated the disadvantages and uncertainties for their members resulting from a lack of uniformity between certain overlapping Community measures, from their complex and cumbersome nature, and from the transitional problems that are associated with the implementation of many Community directives. In the food sector the important part played by national rules and regulations in the system of mutual recognition, particularly in areas (such as quality) which benefit from Community deregulation policy, add to contradictions within the internal market - such

contradictions being perceived as a distortion to competition and an impediment to investment.

#### Recommendation

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

#### Recommendation

- (15). *To avoid contradictions very often caused by an excessively sectoral approach the Commission needs to subject its initial work and its adoption to proposals to assessment by a legislative co-ordination unit. This assessment would ensure the consistency of each proposal with existing legislation and check that the five analytical criteria (Recommendation 1) had been properly applied. Other Community institutions need to take action in parallel.*

#### Recommendation

- (16). *The real impact of Community legislation, and of the principle of mutual recognition of national rules where legislation has not been harmonised, should be assessed*

*periodically by the Commission, in close consultation with all the parties concerned, to check their effectiveness and their compatibility with the proper functioning of the internal market.*

Basing proposals on sound scientific evidence is essential. Problems of health, safety and ethics often arise in the fields affected by the establishment of the internal market (safety of foodstuffs, medicines, cosmetics, medical devices, blood products, etc.). Such problems must neither be treated as matters for straightforward administrative negotiation without any proper scientific basis, nor be undervalued in order to pursue, blindly, the principle of freedom of movement of goods.

#### Recommendation

- (17). *The activity of the existing Scientific Advisory Committees within the Commission and Council framework should be strengthened and co-ordinated in order to ensure the overall scientific consistency of Community legislation. Such an approach should be based on the guidelines for co-operation between national administrations, as discussed in Section IV of the report.*

### SECTION III REMOVING DOUBTS ABOUT COMMUNITY LAW

The growth of cross-frontier transactions, which will inevitably give rise to disputes and litigation, is increasingly underlining the need for consumers and businesses to have effective redress. The issues involved are complex and we do not pretend that the problems are capable of easy solution ; but we are quite certain that the success of the internal market demands that they are addressed now. Several external contributions have identified particular problems facing those who wish to invoke European law before national courts. Examples include an insufficient knowledge of European law on the part of judges, and the effect of national rules of legal procedure which make individual claims based on European law difficult to take in practice.

#### Providing advice to consumers and firms

We are concerned that too few people understand how they can secure their rights under Community legislation. There is confusion over the respective roles of Community and national redress mechanisms.

The very uniqueness of the Community - its decentralised nature, involving different legal, administrative and linguistic cultures - makes it all the more important that such information and advice should be available through well known and competent sources.

We are not concerned about the provision of legal advice as such but about the choice of approaches available to those - particularly consumers and firms - who believe they have been mistreated by reference to internal market rules. An initial listing of the possibilities shows the scale of the problem :

- whether the complaint falls within the scope of provisions laid down by European law ;
- the appropriate means of legal redress through national courts and the European Court of Justice ;
- when it would be more appropriate to seek redress through non-judicial mechanisms e.g. ombudsmen, consumer guarantee schemes, etc. ;
- where problems should be submitted to national administrations or competent authorities in the first instances ;
- when and how to approach the Commission directly ;
- the relevance of the powers of the Commission in particular circumstances, and the role of national representatives on committees, e.g. in the context of "safeguard" clauses ;
- the possibility of seeking recourse through direct contact with Members of the European Parliament.

We welcome the effort by the Parliament, the Commission and Member States to make the relevant information available, and are aware that many other bodies such as trade and representative associations, chambers of commerce, consumer bureaux, etc. stand ready to advise individuals. We note, however, that national administrations have a detailed knowledge of the Community law and procedure, particularly those units which deal with cases involving infringements of the Treaty.

#### Recommendation

(18). *The Commission and the Member States should, in close liaison, respond to the need to provide informal advice on redress for breaches of Community law to those who request it.*

There has been a noticeable increase recently in the number of complaints about restraints on trade being submitted directly to the Commission, perhaps reflecting the confidence of consumers and businesses in the Commission. We draw attention to two aspects of this development :

- complainants go to the Commission as an alternative to bringing an action before domestic courts, although in some cases they exercise both options in parallel. One of the chief merits of the Commission route, apart from being a cheaper alternative, is that purely

administrative action by the Commission can, in many cases, be a quicker way of arriving at an equitable solution. But an action before a domestic court has several advantages, in particular where an award of damages is sought (only a court can make such an award) ;

- national administrations and the Commission need to work more closely with the explicit aim of speeding up the resolution of alleged Treaty infringements. This would reduce the adversarial atmosphere which can cloud the discussion of such cases, as well as reducing the need for lengthy legal proceedings under Article 169 or before the European Court of Justice.

Recommendation

(19). *When giving advice, the Commission and Member States should point out the advantages of taking disputes involving the application of Community law before national courts.*

Recommendation

(20). *Member States should ensure a close and permanent contact with the Commission's units which handle alleged infringements of Community law. This would facilitate a more rapid, partnership-based, resolution of cases handled by the Commission.*

Access to the courts

If the internal market is to work fairly and to meet the expectations of consumers and of businesses, those seeking to exercise the rights conferred on them by Community law must have comparable access to the courts. Among the differences between the rules governing access to the courts of Member States are the following :

- the requirements and procedures for bringing actions before the domestic courts: the speed of these procedures varies between Member States ;
- the provision or not of legal aid, i.e. a system allowing exemption or reimbursement of legal fees : the systems which do exist have very different conditions of eligibility and are sometimes confined to nationals only (which appears contrary to the non-discrimination provisions of the Treaty). It is important that the various approaches to the issue of legal aid should not result in prejudicing the access by European citizens to the courts ;
- the widely varying conditions under which a court may take interim measures against an alleged infringement.

Given the different legal traditions in the Member States, a harmonisation of their systems of civil redress is difficult to imagine. But as the economic impact of the internal market gathers pace, individuals will increasingly need to have access to courts in other

Member States if they are to have an effective right of redress in disputes involving persons resident in those jurisdictions. A model already exists in the provisions for redress at member State level laid down in the Remedies Directives which apply in the field of public procurement.

#### Recommendation

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

Several contributions have pointed to difficulties experienced by consumers when taking legal proceedings. These are increasing in number and often have cross-frontier characteristics (for example, where consumers purchase a product from a mail-order company based in another Member State).

The rules of procedure in Member States vary widely as regards the right of consumer associations to seek redress in court. This right does not exist in some Member States while, in those where it is recognised, it may be limited to national bodies - which seems contrary to the non-discrimination provisions of the Treaty.

We consider that the Community needs to look at the way in which consumer rights can be better protected. Among the possibilities we have identified two approaches as worthy of further development :

- the establishment of an ombudsman at Community level or in each Member State, responsible for examining problems raised by consumers. Co-operation between national ombudsmen would clearly help to resolve cross-border cases ;
- Member States could provide better (and non-discriminatory) rights at court to consumer associations.

#### Recommendation

*(22). Doubts about the effective protection of consumers' rights need to be overcome. The issues should be given rapid consideration by the Community.*

We are concerned about the comments we have received on the ineffectiveness of the **Brussels Convention of 1968 on the Mutual Recognition of Judgements**. It appears from our preliminary examination to be very difficult to rely on the Convention to obtain the execution in one Member State of an order in civil matters awarded by a court in another Member State. In practice, the court of the Member State where the execution is sought will refuse it on public interest grounds, with the result that the plaintiff is obliged to commence fresh legal proceedings in that country.

In addition, the Convention does not apply to binding decisions taken by administrative bodies rather than courts of law as such.

### Recommendation

- (23). *An urgent examination is required of the difficulties faced by those who - despite the provisions of the Brussels Convention of 1968 - wish to execute, in one jurisdiction, a civil order which has been made in another.*

If consumers and businesses are to take full advantage of the internal market, the judges and lawyers involved in domestic courts will have to become more familiar with Community law. Where training programmes do not exist, they might take the form of compulsory courses in Community law as part of the studies leading to such careers, training seminars, or the secondment of domestic judges or officers to the legal departments of Community institutions. A system of co-operation between bodies charged with training judges would, despite the evident initial technical problems, be of great benefit to consumers and businesses throughout the Community.

### Recommendation

- (24). *More effort needs to be made to improve knowledge of Community law on the part of lawyers and judges in the Member States.*

The recent judgement by the European Court of Justice in the Francovich and Bonifaci case has practical implications for consumers

and business. While the Court upheld the principle that Member States were obliged to compensate individuals for damage caused to them by infringements of Community law imputable to the Member States, it defined the conditions governing the states' liability:

- (1) the result to be achieved by the directive concerned must involve the attribution of rights attaching to individuals,
- (2) it must be possible to identify the subject matter of those rights by reference to provisions of the directive,
- (3) there must be a causal link between the infringement of the obligations incumbent upon the Member State and the damage suffered by the persons aggrieved.

The Francovich and Bonifaci judgement breaks new ground in what it has to say about the liability of a Member State for an infringement of Community law. But in practice this principle is subject to the workings of domestic rules of procedure, which are generally very demanding in the standard of proof they require, and which usually take a restrictive approach to the nature of the damage for which compensation can be claimed. There is a danger that such rules may deprive the principle of liability of its effect, and also that they may generate inequality of treatment between parties belonging to different Member States.

Recommendation

(25). *The Commission should issue an interpretative communication about the implications of the recent Francovich and Bonifaci judgement for consumers, businesses and the Member States.*

Recommendation

(26). *The Community needs to initiate progress towards greater comparability of treatment in legal disputes. A way forward could be to consider the implications of the different approaches of the various jurisdictions to the key concepts of "damage" and "compensation". An effort to clarify their meaning, at least for the purposes of Community law itself, could constitute a useful first step.*

Access to the courts in the field of public procurement raises a number of specific problems.

1. **Confidentiality:** the complainant's identity may be disclosed to the awarding authority which decides the contract, with the risk of subsequent retaliation such as "blacklisting".
2. **Speed:** by the time a complaint is made the contract has often been awarded, with work already started. It can be awkward, and indeed expensive, for a complainant to seek suspension of a decision taken by the awarding authority.

3. **Evidence:** it can be difficult for a complainant to show that the contract has been awarded unlawfully, and it will sometimes be impossible to establish the relationship of cause and effect between the infringement and the injury suffered in such a way as to satisfy the requirements of national law.

The two "Remedies" directives (of 1989 and 1992) already address these problems, particularly as regards the possibility of obtaining damages. But greater priority has to be given to resolving the issues of confidentiality and to flexibility if competition is really to be advanced in this very important field. We have considered whether these needs could be met without further legislation, for example, by establishing a mediator in each Member State who would be independent of the complainant and the awarding authority.

Thus where an infringement appears to have been committed, the mediator could, in confidence, take up the case (on his own initiative or on application by an interested party), using wide powers of investigation so that the inquiry is not based only on evidence supplied by the complainant. Maximum effectiveness would be obtained if a system of co-operation were to be set up providing for the exchange of information between mediators in different Member States. The mediator would be empowered to bring cases to court so that appropriate rulings could be made.

### Recommendation

- (27). *Alleged infringements by authorities in the award of public contracts need to be firmly and rapidly dealt with. To enable Community legislation on remedies in this field, to be really effective, consideration should be given to the appointment of a mediator in each Member State who would be independent of the complainant and the awarding authority.*

### Ensuring that Penalties work

We note that Member States, who are of course responsible for determining the penalties applicable under their law, apply different sanctions to similar breaches of their laws, for example in the fields of customs and market control offences. This is a clear signal to consumers and businesses that trading conditions in the internal market are uneven. For example, some Member States can temporarily suspend a product pending investigation while others cannot.

The right to take legal action and to impose appropriate penalties in the case of non-conforming products is clearly necessary. The European Court of Justice (in the Casati judgement) has, however, already established that "the administrative measures or penalties must not go beyond what is strictly necessary, the control procedures must

not be conceived in such a way as to restrict the freedom required by the Treaty and they must not be accompanied by a penalty which is so disproportionate to the gravity of the infringement that it becomes an obstacle to the exercise of that freedom". We believe that this approach should be more systematically applied by Member States.

### Recommendation

- (28). *Penalties and sanctions should be imposed with the aims of the Community in mind.*

It is clear, however, that longer term solutions will involve further work on the various legal systems. Informal consultations are already taking place at the level of the Justice Ministries of the Member States. The way to establish responsibility for non-conforming products and adequate ways of raising the responsibility issue before the courts should also be examined.

Progress towards a coherent European legal framework would be enhanced by making national sanctions an integral part of the transposition measures which are notified to the Commission. In this way, the sanctions would be readily identifiable thereby assisting day-to-day contacts between authorities of the Member States.

It should be noted that, in the absence of Community criminal law, Community legislation tends to apply sanctions to products and not to those responsible for their non-conformity. This kind of approach



might, however, have unwanted consequences : by emphasising a particular penalty, namely withdrawal of a product from the market, which in many cases may appear out of proportion to the degree of non-conformity of the products, the law itself may not be enforced.

Recommendation

(29). *Judicial co-operation between Member States should aim at an approximation of sanctions in respect of breaches of Community law. Such co-operation should enhance the free movement of goods but avoid it benefiting Member States which have the least stringent system of sanctions.*

Recommendation

(30). *Details of relevant sanctions should be notified by the Member States to the Commission along with the notification of national transposition of Community legislation.*

**SECTION IV**  
**ENFORCING THE RULES THROUGH PARTNERSHIP**

The problem

The Council has expressed the highest degree of political commitment to the objectives of the internal market and Member States are making a major effort to implement the internal market programme through national transposition and subsequent application. This process has led to the development of a "partnership", often informal, between the Commission and Member States designed to help Member States apply Community law and to help the Commission ensure its overall effectiveness and resolve problems.

The key principle on which such partnership is based is the responsibility of Member States for enforcing the law within their jurisdictions. While the Commission reserves the right to take infringement proceedings against a Member State in the event of misapplication or non-application of Community law, the involvement of the Commission is in the first instance one of monitoring and advice. In a few areas, however, the Council has agreed that the Commission should be able to assess directly the effectiveness of national inspectorates responsible for ensuring compliance with the law.

Nonetheless the representations we have received from consumers and business convey substantial doubts about the prospects for the

even and effective enforcement of internal market rules throughout the Community.

We have therefore given careful consideration to several issues :

- the way in which the high level of protection (health, safety, etc.), which is embodied in directives governing the free movement of products, will be achieved in practice ;
- the quality and availability of product testing and certification services, and of official market enforcement procedures ;
- how "cross-border" disputes involving Member State authorities will be resolved, and how rapidly : for example, when problems are found by a Member State with a product (such as lack of safety or unfair competition) which is manufactured in (or imported by) another Member State ;
- the very uneven way in which certain "safeguard" powers, provided under Community legislation to enable action against non-conforming products, have been used in practice by Member State authorities.

#### The Need for Greater Co-operation

We do not believe that such important questions can be left to be resolved merely through responses to problem cases as they arise.

The Community needs to anticipate and meet the challenge now. The key to progress is rapid agreement between Member States and the Commission on information sharing, pooling of expertise and adoption of case handling procedures.

While such arrangements generally exist at national and local level, including full and automatic information exchange between authorities within a Member State on matters such as dangerous products, risky services or unfair competition, the same cannot yet be said for the Community. Nonetheless, there are significant examples of such co-operation (for example, in the field of foodstuffs).

We have paid particular attention to several national arrangements concerning market surveillance information, for example in the field of product safety :

- **France.** Monitoring of the market place in respect of products is carried out by the DGCCRF (Direction Générale de la Concurrence, de la Consommation et de la Répression des Fraudes). It is a unified administration with a central office in Paris, 22 regional directorates and 100 departmental directorates. Each department can obtain information about the supplier of a product from another on the basis of a simple request.
- **Germany.** Monitoring is carried out by market surveillance offices (Gewerbeaufsichtsamt) of which there is a network in each Land.

usually reporting to the Land Ministry of Health and Social Affairs. Each office which discovers a safety defect in a product will notify the office covering the district where the company first placing the product on the German market is established. Any necessary action will be taken by the office so notified. Following the convention for inter-Land co-operation, a standard enquiry and feedback procedure is used.

- **United Kingdom.** Monitoring is carried out by 130 local authority trading standards departments. Information exchange between local authorities is facilitated by a designated non-statutory body (as is generally the case in the UK) on the basis of a "home authority principle". The home authority for any supplier is the trading standards department in whose area the supplier is established. While action will often be taken at the point of discovery, the home authority is obliged to give assistance to the discovering authority (e.g. information, contact with the supplier's office).

After the lifting of border controls on 1.1.93, however, an important assumption on which such national systems are based namely, the presence and therefore the proximity of a supplier within each national jurisdiction - will no longer be credible. This means that, with an increasing volume of trade between Member States as the internal market takes effect, a growing proportion of information essential to the work of an enforcement authority will only be available from authorities of the Member States in which the supplier (producer or importer) is established.

We take it as axiomatic that enforcement must be carried out on the ground, subject to national, legal and administrative procedures (and also regional or local rules as appropriate), because that is the only efficient and effective way it can be undertaken. But, as many external contributions have stressed, the free flow of goods and services demands that effective co-ordination between the authorities of all the Member States takes place.

#### Recommendation

- (31). *A co-operative approach to the enforcement of internal market legislation should be extended and intensified urgently as the single most important way of reinforcing mutual confidence between Member States and the Commission.*

We believe this approach will enhance public confidence, and envisage that it would be built on a framework governing the administrative co-operation between all bodies involved in enforcement work.

The basic principles of administrative co-operation which are proposed below may, in some quarters, appear difficult to introduce or to apply in practice. These difficulties must however be overcome if the Single Market is to operate effectively :

- Administrative co-operation, for example, is not a free commodity : to be worthwhile, it has to be supported by exchange programmes,

joint or multilateral working groups, telematic systems, language training and so on.

- The rules require the bodies concerned to make available to each other information which, on occasion, may involve matters of commercial confidentiality. We believe, however, that the anxieties to which this can give rise, particularly where the authority of origin has doubts about the ability of the authority of receipt to respect confidence, should not be exaggerated and can be resolved by agreement at Community level.
- Suppliers may react in an unnecessarily defensive way to suggestions that they are in breach of Community law when made by authorities in other Member States. It is important that their local enforcement authorities avoid such reactions.

#### Operational guidelines for administrative co-operation

We have endeavoured to come up with a set of five operational guidelines on which the administrative co-operation we consider so vital might be based.

- 1) Each authority responsible for applying and enforcing Community legislation at national and local level should accept a duty to cooperate with other such bodies, both through direct contact and via central contact points (see

guideline 2 below). This requires them to recognise and respond to their Community-wide responsibilities which arise from the fact that their official functions directly affect citizens of all other Member States. Their officials have Community-wide responsibilities, for example :

- at the stage of market surveillance of goods (because the results affect all consumers in the Single Market) ;
  - at the stage of pre-market checking of product or supplier conformity (home country control), because the products or services so cleared will have free access throughout the EC.
- 2) For each broad field of the internal market (often covering many directives), each Member State should establish a central contact point, with one or named individuals, whose function is to :
    - liaise with other national contact points and the Commission ;
    - be responsible for internal communication with their local enforcement bodies on Community matters.
  - 3) Details of the contact point, together with information about the relevant enforcement bodies, should be notified to all other contact points and to the Commission. The contact points, including the relevant unit in the Commission, will constitute a "contact group".

- 4) All authorities should have a "feedback" obligation to communicate information to this contact group which is materially relevant to the monitoring of the effectiveness of Community legislation, without waiting for specific enquiries to be mounted.
- 5) Given that responsibility for enforcement action should lie with the Member State of origin or import ("home country control"), all authorities accept the obligation to supply information for market control purposes rapidly and automatically on request from another. Where this includes information about commercial undertakings, confidentiality must be respected by the authority of receipt.

#### Rapid Response Procedure

These rules should be applied in a positive way so that the most effective action can be taken by the relevant authorities in the Community. For example, the appearance in one Member State (X) of products or services which do not conform to Community legislation or which are potentially dangerous and originating in another Member State (Y) should be handled through a graduated rapid response procedure :

- Level I : a market control authority in Member State X requests another such authority in Member State Y to intervene with the supplier. The initial contact point may be different from the body which is involved on the ground ;

- Level II : in the absence of a mutually satisfactory result, X may accompany Y on a joint visit to the supplier. Either X or Y may request the presence of the Commission ;
- Level III : in the absence of resolution, X may proceed with its own measures until Y takes suitable action itself. The Commission need be notified only at Level III, e.g. under the provisions of standard safeguard clauses contained in Community legislation ;
- Level IV : where, however, an emergency situation arises, immediate action is available to Member State X under the appropriate safeguard clause and, for consumer goods, under the General Product Safety Directive when it comes into force (June 1994). Such action must however be proportional to the actual or potential damage and would be notified immediately to the Commission and other Member States ;
- Level V : where it is clear that the action taken at Levels III and IV relate to problems which exist or are likely to arise in other Member States, complementary measures should be taken with an appropriate degree of urgency across the Community.

In the light of criticisms we have received about the slowness of Community decision-making in matters affecting consumers and firms, we have given careful consideration to the need for a "clearing house" of last resort designed to deal rapidly with urgent problems which are not easily resolved through Community existing machinery. In our

guideline 3 for groups of directives) because of their responsibility for co-ordination within their respective administrations.

Recommendation

*(37). National and Community enforcement guides should be drawn up for groups of directives, and a summary of them should be made public. They should cover, at the minimum, all directives not yet in force.*

Other considerations

We do not see any need to make recommendations about the progress of the European standards-making programme. The principal issues have, quite properly, been thoroughly debated following the Commission's Green Paper of 1990, and the conclusions drawn by the Council in June 1992 reflect a careful appraisal of the progress now being made to produce the standards urgently required to implement many important directives. It is clear that there is widespread understanding that the sooner these standards are available for use, the easier the task of enforcement officials will be.

Nonetheless two related matters concern us, both of which have an important part to play in building mutual confidence. The first is the need for faster progress in securing agreement on the mutual recognition of the accreditation procedures used for certification

bodies (i.e. those specialist organisations which certify the conformity of products to the levels of safety and other protection laid down in EC legislation). This would materially assist the acceptance of duly certified products throughout the Community.

The second matter is the wide variation in the procedures, including product test methods, used during the course of investigations by enforcement authorities. Some approximation of procedures would improve the quality and speed of co-operation between market control authorities across the Community.

Recommendation

*(38). The Commission should assist the building of market confidence :*

- by securing the agreement of Member States to the mutual recognition of national systems for the accreditation of product certification bodies, and*
- by proposing the development of harmonised methods for investigations by enforcement authorities.*

- EAT : European Advertising Tripartite
- European Public Services Committee of the ETUC :
- The Advertising Association (UK)

- 
- American express :
  - BP Europe :
  - Courage Limited
  - Ericson group
  - ICI Group :
  - United Parcels Service :

## ANNEXE

### LISTE DES ORGANISATIONS QUI ONT TRANSMIS DES CONTRIBUTIONS AU GROUPE

- 
- BEUC : Bureau européen des Unions de consommateurs
  - TME : Toy Manufacturers of Europe
  - CECG : Consumers in the European Community Group
  - Union Européenne des Alcools, Eaux de Vie et Spiritueux :
  - CIAA : Confédération of the Food and Drink Industries of the EEC
  - PROSAFE : Product Safety Forum in Europe
  - FLEP : Food Law Enforcement Practitioners  
Food and Drink Federation (UK) :
  - ORGALIME : Liaison Group of the European Mechanical, Electrical, Electronic, and Metalworking Industries
  - U.S. Council for International Business :
  - European Flavour and Fragrance Association :
  - EC Committee of the American Chamber of Commerce :
  - CEOC : Confédération européenne d'organismes de contrôle
  - Fédération des industries agro-alimentaires (Belgium)
  - UNICE : Union des Confédérations de l'Industrie et des

# LE MARCHÉ INTERIEUR APRES 1992

## REPONDRE AU DEFI

Rapport présenté à la Commission  
par le Groupe à haut niveau sur le  
fonctionnement du marché intérieur

Membres du Groupe  
Peter Sutherland - Président  
Ernst Albrecht  
Christian Babusiaux  
Brian Corby  
Pauline Green  
Giuseppe Tramontana

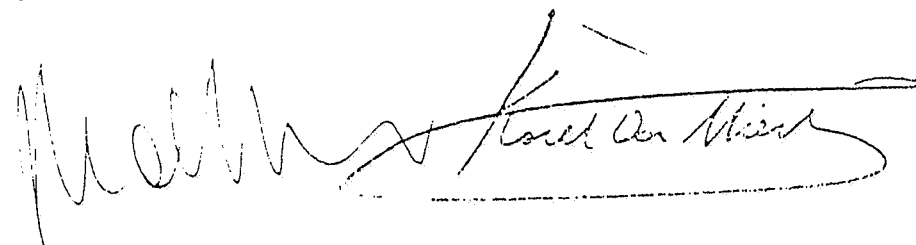
Bruxelles, octobre 1992

La réalisation du programme relatif à l'achèvement du marché intérieur dans un délai de sept ans a été une entreprise extraordinaire, en raison de son ampleur, de la complexité des travaux effectués, du nombre d'experts qu'il a été nécessaire de mobiliser et, *last but not least*, du grand effort législatif demandé aux Etats membres pour assurer la transposition nationale des actes réglementaires communautaires.

Mais le premier janvier 1993 n'est pas seulement un point d'arrivée. Il représente plutôt le point de passage d'un processus continu. Rendre effectif le fonctionnement du marché intérieur signifie en effet agir au niveau des structures pour les rendre adaptées aux nouvelles nécessités et au niveau des hommes - consommateurs, entreprises, administrations - pour les inciter à des comportements cohérents avec les potentialités nouvelles qui leur sont offertes.

Peter Sutherland ainsi que ses collègues réunis dans le groupe restreint qu'il a animé, ont su saisir toute l'importance et la gravité de ce nouveau défi. Ils nous proposent dans ce rapport une stratégie cohérente, fondée sur une analyse lucide, qui fait appel à toutes les ressources existantes aussi bien dans les institutions européennes que dans les Etats membres.

Nous leur sommes reconnaissants pour ce travail qui va maintenant constituer la base d'une réflexion globale pour tous ceux qui sont appelés à relever ce défi.



Martin BANGEMANN

Karel VAN MIERT



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## PREFACE

En mars 1992, la Commission nous a invité

- à identifier
  - dans quelle mesure les mécanismes administratifs existants sont adaptés à la situation nouvelle créée par la disparition des contrôles aux frontières intérieures ;
  - dans quelles conditions les mesures et les actes administratifs adoptés dans un Etat membre peuvent être considérés comme équivalents dans un autre Etat membre ;
  - si de cela découle un degré suffisant de confiance réciproque pour répondre aux besoins des opérateurs économiques et des consommateurs ;
- à considérer la répartition optimale de responsabilités et des compétences au sein de la Communauté à cet égard ;
- à suggérer à la Commission une stratégie afin d'assurer que tous les bénéfices du marché intérieur soient acquis dans la pratique après 1992.

Le groupe s'est réuni six fois et a décidé d'inviter lors de sa première réunion toutes les associations et organisations, principalement celles constituées au niveau européen et les autres parties intéressées à

soumettre des contributions écrites sur les sujets couverts par le mandat. Celles-ci sont mentionnées en annexe. Nous avons été en contact étroit avec le Parlement Européen.

Nous avons commandé deux rapports externes pour nous assister sur les problèmes posés à long terme :

- concernant les stratégies réglementaires dans la période post 1992 : Institut Universitaire Européen de Florence ;
- concernant les difficultés de gestion que pose le fonctionnement du Marché Intérieur : Institut Européen d'Administration Publique de Maastricht.

Dès le début, le Groupe a délibérément concentré son attention sur les problèmes de fonctionnement liés à la liberté de circulation des biens et dans une moindre mesure sur les problèmes posés dans le domaine des services.

Nous avons essayé de trouver une réponse pratique au défi que pose le Marché Intérieur. Notre rapport :

- apporte une contribution au débat sur la subsidiarité en ce qui concerne le développement de la politique législative communautaire ;

- examine en détail les problèmes qui doivent être résolus pour permettre une application juste et effective de la législation communautaire, et ce sous trois rubriques : la communication, les problèmes judiciaires et le partenariat administratif ;
- considère ce qu'il est nécessaire de faire pour répondre aux attentes continues, explicites ou implicites, de ceux qui sont impliqués dans les marchés : les consommateurs et les entreprises.

## AVANT-PROPOS

### Notre message en bref

Le marché intérieur bénéficiera aux consommateurs en leur offrant un large choix de biens et de services. Il bénéficiera aussi aux petites et grandes entreprises en leur offrant des opportunités de marché.

Il est d'opinion courante que la Communauté a déjà pris presque toutes les mesures nécessaires prévues dans le Livre Blanc de 1985, ces mesures devant entrer en vigueur progressivement. Ceci constitue clairement un succès remarquable.

Notre rapport consiste à savoir ce qu'il faut faire pour que le marché intérieur fonctionne effectivement maintenant que ses fondations sont en place et ceci pour répondre aux préoccupations des consommateurs et des entreprises. Il a, en outre, pour objectif d'être un guide pratique apportant des éléments de réponse à un ensemble de problèmes concrets.

Nous tenons à insister, dès maintenant, sur le fait que notre mandat ne concernait pas d'autres problèmes importants tels que le développement de la politique sociale ou la libre circulation des personnes.

Le succès du marché intérieur sera renforcé par l'affirmation d'un **objectif clair** : faire que le droit communautaire soit perçu et appliqué de la même façon que le droit national traditionnel. Les règles du

marché intérieur doivent produire des effets équivalents dans toute la Communauté.

Pour réaliser cet objectif, le **message immédiat** est clair lui aussi. Une plus grande confiance mutuelle est essentielle à tous les niveaux opérationnels. Celle-ci résultera d'un réel engagement politique :

- de rendre plus claires les règles et de dire clairement aux consommateurs et aux entreprises ce à quoi ils peuvent s'attendre et ce qu'il faut faire en cas de problème - un devoir de **communication** ;
- de faire en sorte que la législation communautaire soit plus accessible - un devoir de **réforme judiciaire** ;
- de reconnaître qu'il est urgent qu'une coopération pratique plus poussée s'instaure entre les institutions nationales et européennes et qu'elle prenne une ampleur bien plus importante que celle opérée actuellement - un devoir de **partenariat**.

Toutefois, il y a aussi un message important pour le **long terme**. Le marché intérieur constitue un cadre politique important dans lequel se développe un environnement concurrentiel commun. Il est de bon sens de croire que l'ensemble réglementaire flexible qui existe déjà grâce au programme du marché intérieur permet d'approcher beaucoup d'objectifs plus larges de la Communauté et des Etats Membres. Il est essentiel toutefois que les **avantages et les inconvénients des propositions réglementaires communautaires soient clairement identifiés et discutés** ouvertement au stade le plus précoce.

## L'importance pour les consommateurs et les entreprises

Nous nous réjouissons de ce que presque toute la législation nécessaire à la création du marché intérieur soit désormais en place. Toutefois des préoccupations existent sur son fonctionnement pratique. Ces doutes, qu'il faut s'employer à dissiper sans tarder, reflètent les conséquences inévitables qui résultent d'un échéancier établi au niveau politique le plus haut. En conséquence, une action rapide est nécessaire pour compléter le cadre législatif.

Les **citoyens** ont raison de s'attendre à ce que les lois soient convenablement conçues et appliquées, prises dans des conditions transparentes, et ce, qu'elles soient d'origine locale, régionale, nationale ou communautaire. Le programme du Livre Blanc a cependant introduit des changements majeurs dans les dispositions des Etats membres relatives à la liberté de circulation des personnes, des biens, des services et des capitaux.

S'il est vrai que des efforts considérables ont été réalisés par les Etats membres et la Commission dans le sens d'une meilleure consultation et d'une meilleure diffusion des informations ainsi que par le Parlement européen dans le cadre de ses débats, **davantage reste à faire pour expliquer le besoin de nouvelles réglementations**, leur fonctionnement, comment faire pour en retirer un bénéfice et comment obtenir réparation. Certaines réactions du public au Traité de Maastricht illustrent la nécessité d'une communication efficace.

Même dans le domaine des produits, où les règles communautaires sont les plus anciennes, il ne suffit pas d'adopter des réglementations en se contentant d'espérer qu'elles seront appliquées de façon égale dans tous les Etats membres. Il se fait ressentir aussi le besoin d'un dialogue plus effectif et clairement exprimé entre les Institutions européennes, les citoyens et les entreprises. **Une stratégie de communication doit être mise en place accompagnée d'une action visant à ce que le droit communautaire soit clair, plus cohérent et mieux transposé au niveau national.**

L'entrée en vigueur des règles d'harmonisation et le fait que les fournisseurs saisissent les opportunités qui découlent de la reconnaissance mutuelle par les Etats membres de leurs règles nationales permettront aux consommateurs de choisir parmi un plus grand choix de biens et de services de haute qualité. Mais le consommateur a besoin d'être certain que cette plus grande variété de biens et de services ne présente pas de danger et que des moyens existent, le cas échéant, pour obtenir effectivement réparation. Cela exige **une plus grande coopération entre les autorités de contrôle des Etats Membres et un accord précis sur la réponse rapide à apporter aux problèmes urgents dans la Communauté.** Il est nécessaire aussi que soient accomplis des efforts en ce qui concerne le recours dans la pratique au droit communautaire, le rôle des tribunaux nationaux lorsqu'ils l'appliquent mais aussi en ce qui concerne la façon d'obtenir une **plus grande équivalence des procédures et sanctions.**

Pour les **entreprises**, le marché intérieur est une occasion majeure pour accéder aux marchés. Ceci se réalisera grâce à l'application réelle du principe de reconnaissance mutuelle et au fait que les règles communautaires écartent l'obligation de s'adapter à 12 systèmes réglementaires différents. Pour que les attentes des entreprises puissent se concrétiser, il faut veiller à ce que les obstacles ne réapparaissent pas. Il existe en effet un risque non négligeable de refragmentation du marché provenant soit des différences d'interprétation et d'application du droit communautaire dans les divers Etats membres, soit de l'introduction de règles nationales segmentant inutilement ce marché. La subsidiarité ne peut pas et ne doit pas être interprétée comme permettant de tels développements.

Cela montre encore combien il est important **d'approfondir la coopération entre la Commission et les Etats membres.** Pour les **Etats membres**, cela signifie une plus grande prise de conscience de **la nécessité d'éviter de porter atteinte au marché intérieur**, en particulier en donnant effet au principe de reconnaissance mutuelle avant l'adoption de toute nouvelle loi nationale. Pour la **Commission**, cela veut dire, lorsque c'est possible, **accepter un certain degré de diversité**, en particulier lorsque les mesures nationales n'ont qu'un impact négligeable dans la Communauté.

Nos propositions reflètent ces préoccupations. Elles reflètent le présent débat politique et, pour la plupart d'entre elles, ne nécessitent pas l'adoption de législation particulière. En revanche, elles se fondent sur la nécessité d'une coopération plus étroite entre les administrations

nationales et communautaires, et ce pour que les "quatre libertés" soient une réalité. S'il existe déjà, dans certains domaines, des dispositifs utiles de liaison, de communication et de coopération, il existe encore, dans l'ensemble un besoin urgent d'instaurer un cadre favorisant des coopérations administratives afin que les Etats membres puissent appliquer les règles communautaires et que la Commission puisse surveiller l'efficacité de cette mise en oeuvre.

Nous sommes conscients que l'application correcte du droit communautaire, et la surveillance de cette application, nécessiteront beaucoup de moyens en termes financiers et en personnes. Nous pensons qu'il est essentiel pour le devenir du marché intérieur que le Conseil et la Commission prennent l'engagement politique de partenariat avec les ressources nécessaires.

Ramené à sa plus simple expression, notre message est le suivant : les institutions européennes et les Etats membres doivent agir maintenant pour renforcer la confiance mutuelle, et ce en apportant une réponse aux incertitudes des consommateurs, en surmontant les résistances au changement des milieux locaux ou sectoriels, et en apaisant les inquiétudes des entreprises commerciales et industrielles. Pendant trop longtemps, on a considéré que les règles du marché intérieur allaient de soi, et étaient d'application aisée. Le défi, maintenant, consiste à rassurer les consommateurs et à provoquer le déclic des entreprises, notamment des plus petites. Quand cela sera achevé, le marché intérieur sera réellement perçu comme le mur de fondation pour la construction de l'Europe.

## LISTE DES RECOMMANDATIONS

### SECTION I - LA REGLEMENTATION COMMUNAUTAIRE ET LA SUBSIDIARITE

- (1). Toute proposition de législation doit faire l'objet d'une large analyse, fondée sur les aspects politiques, sociaux, et économiques, comparant les avantages et les inconvénients qu'il y aurait à légiférer et ce qu'il en coûterait au marché intérieur de ne pas intervenir du tout. Cette analyse devrait être basée sur les cinq critères, de nécessité, d'efficacité, de proportionnalité, de concordance et de communication.
- (2). La Communauté doit développer une politique qui permette de choisir les techniques de réglementation du marché et qui aurait pour base leur adéquation aux objectifs poursuivis.
- (3). La Commission doit continuer à exercer ses pouvoirs qui découlent du traité lorsqu'une action est nécessaire au niveau communautaire dans les circonstances où une action non coordonnée des Etats membres peut mettre en danger le bon fonctionnement du marché intérieur.
- (4). Pendant les prochaines années, la Commission devrait procéder à des analyses pour déterminer la nature, l'intensité et l'importance des obstacles directs et indirects au fonctionnement

du marché intérieur, tels que perçus par les consommateurs, les entreprises et les autorités chargées du contrôle.

## SECTION II - RASSURER LES CONSOMMATEURS ET LES ENTREPRISES

- (5). La Commission devrait mettre en oeuvre une stratégie en matière d'information, impliquant d'une manière systématique et coordonnée les institutions européennes, les administrations nationales et les organisations non gouvernementales. Cette stratégie consisterait, d'une part à fixer des objectifs prioritaires (à partir des domaines où une plus grande carence d'information aurait été constatée) et d'autre part à mobiliser toutes les ressources existantes aux niveaux national et communautaire.
- (6). Les opérateurs doivent pouvoir revendiquer l'information de leurs droits et connaître la législation communautaire, par la mise à leur disposition de supports illustratifs et explicatifs (brochures, manuels, communications interprétatives, vademecum, base de données).
- (7). Sans exclure la possibilité d'interventions directes de la Commission - un exemple significatif a été sa brochure sur la sécurité des jouets - et son rôle de promotion et de coordination, il appartient surtout aux Etats membres d'assumer leur responsabilité pour une amélioration réelle de l'information

et sa répercussion sur les organisations professionnelles et les consommateurs.

- (8). Une large et effective consultation publique sur les propositions de la Commission est essentielle. La Commission devrait instaurer une meilleure procédure visant à rendre publique, au stade le plus précoce, toute nouvelle intention réglementaire, tout en rendant disponibles les analyses qui servent de référence, au vu notamment des principes de subsidiarité et de proportionnalité. La Commission devrait aussi procéder à des auditions de toutes les catégories concernées.
- (9). Avec la collaboration du Conseil et du Parlement la Commission devrait engager une réflexion approfondie sur les règles et modalités à mettre en oeuvre pour rendre formellement transparent l'ensemble du processus législatif communautaire. Cette réflexion est urgente et elle doit donner lieu à une action spécifique pour assurer un libre flux d'informations pour les citoyens.
- (10). Un effort plus soutenu et plus systématique de codification du droit communautaire est nécessaire, auquel devrait être jointe une action analogue des Etats membres destinée à assurer qu'une priorité semblable soit accordée à la transparence de leur législation transposant le droit communautaire.
- (11). La Commission devrait engager sans tarder une réflexion sur les limites évidentes que posent en termes de transparence l'utilisation de la directive dans l'harmonisation des législations

nationales et envisager une approche législative communautaire qui consisterait à:

- utiliser la directive comme l'instrument permettant dans une première phase l'harmonisation des systèmes juridiques nationaux tout en respectant leur spécificité,
  - procéder dans une deuxième phase - c'est-à-dire après un certain nombre d'années durant lesquelles l'application a permis d'atteindre un niveau satisfaisant de rapprochement - à la transformation de ces directives en règlements directement applicables, permettant ainsi la référence pour les consommateurs, les professionnels et les autorités de contrôle à un texte unique de droit dans toute la Communauté.
- (12). Une aide juridique informelle des Etats membres dans la phase de transposition devrait être organisée par la Commission, pour éviter des divergences et contradictions entre les textes nationaux.
- (13). Une action plus systématique de la part des Etats membres est indispensable pour promouvoir la connaissance de leur législation de transposition, pour assurer la publicité de leurs structures d'inspections, de contrôle et de certification et, en général, pour informer largement les consommateurs et les professionnels des droits et obligations créés par la législation communautaire.

- (14). Il est nécessaire d'éliminer les contradictions et incohérences de la législation communautaire qui risquent d'empêcher sérieusement le fonctionnement du marché et qui découlent de la cadence rapide avec laquelle celle-ci a été adoptée. C'est une action à laquelle les institutions européennes devraient accorder la plus grande priorité.
- (15). Afin d'éviter les contradictions qui résultent bien souvent d'une approche excessivement sectorielle, la Commission devrait fonder ses travaux et adopter ses propositions sur la base d'évaluations émanant d'une unité de coordination législative, assurant la cohérence de chaque proposition avec les textes déjà existants, ainsi qu'une application uniforme des cinq critères analytiques visés dans la recommandation (1). Les autres institutions communautaires devraient prendre des mesures en parallèle.
- (16). L'impact réel des réglementations communautaires et du principe de la reconnaissance mutuelle des réglementations nationales dans les domaines non harmonisés (en particulier ceux des biens de consommation) devrait faire l'objet d'une évaluation périodique de la part de la Commission, en consultation étroite avec toutes les parties concernées, afin de vérifier leur efficacité, au vu des intérêts des consommateurs et du fonctionnement effectif du marché intérieur.
- (17). L'activité des comités consultatifs scientifiques existant tant au niveau de la Commission que du Conseil devrait donc être



renforcée et coordonnée, afin d'assurer une cohérence scientifique globale des textes communautaires. Une telle approche devrait se fonder sur les principes et les modalités de coopération entre les administrations nationales, exposés dans les recommandations de la section IV.

### SECTION III - REpondre aux préoccupations au sujet du droit communautaire

- (18) La Commission et les Etats membres en liaison entre eux devraient répondre à l'attente de ceux qui désirent recevoir des conseils informels en ce qui concerne les moyens pour obtenir réparation aux violations du droit communautaire.
- (19) La Commission et les Etats membres devraient rappeler aux opérateurs économiques qu'ils peuvent toujours soumettre leurs litiges aux tribunaux nationaux avec les avantages qui en résultent.
- (20) Les Etats membres devraient entretenir des relations étroites et permanentes avec les services de la Commission chargés des infractions au droit communautaire ce qui permettrait une résolution plus rapide des cas, basée sur l'idée de partenariat.
- (21) La Communauté a besoin de réexaminer la façon suivant laquelle sont traités les droits des individus qui cherchent à obtenir réparation aux violations du droit communautaire.

- (22) Il existe des incertitudes en ce qui concerne l'efficacité de la protection des droits des consommateurs. Ces incertitudes nécessitent un examen rapide de la part de la Communauté.
- (23) Il est nécessaire que soit rapidement examinée la situation des opérateurs qui en dépit des dispositions de la convention de Bruxelles de 1968 ont des difficultés à obtenir l'exécution dans un Etat membre d'un titre exécutoire délivré en matière civile par une juridiction d'un autre Etat membre.
- (24) Un plus grand effort doit être réalisé dans le sens d'une meilleure formation des juges nationaux et des juristes en droit communautaire.
- (25) Il serait souhaitable que la Commission prépare une communication interprétative sur les suites de l'arrêt Francovich Bonifaci à l'usage des consommateurs, des entreprises et des Etats membres.
- (26) La Communauté devrait réaliser des progrès en vue de favoriser une comparabilité du traitement des litiges judiciaires. Une possibilité serait d'examiner les approches qu'ont les différentes juridictions en ce qui concerne les concepts clé de préjudice et de compensation. Il serait utile qu'un effort soit entrepris dans un premier temps pour préciser le sens de ces expressions dans l'intérêt du droit communautaire lui-même.

(27). Les infractions présumées des autorités publiques nécessitent une réponse ferme et rapide. Pour rendre efficace l'application des directives sur les voies de recours dans les marchés publics, il pourrait être envisagé de mettre en place dans chaque Etat membre des répondants indépendants des soumissionnaires et des entités adjudicatrices.

(28). Les amendes ou les sanctions doivent être prononcées dans une conception et dans un esprit communautaires.

(29). Un système de coopération entre Etats membres devrait être mis en place avec pour objectif le rapprochement des sanctions nationales et la libre circulation, tout en évitant que celle-ci ne se fasse en faveur des Etats ayant les régimes de sanction les plus laxistes.

(30). Des informations relatives aux sanctions applicables devraient être notifiées par les Etats membres à la Commission, en tant que partie intégrante des mesures de transposition nationale de la législation communautaire.

#### SECTION IV - L'APPLICATION DES REGLES PAR LA COOPERATION

(31). Il est important d'étendre et d'intensifier, sans plus tarder, une approche de l'application des règles du marché intérieur qui soit

fondée sur la coopération, comme instrument le plus important de renforcement de la confiance mutuelle entre les Etats membres et la Commission.

(32). Il devrait être établi entre les Etats membres et la Commission un cadre permanent de partenariat administratif à travers l'établissement d'un réseau de points de contact entre les Etats membres et la Commission - qui aurait pour fonction l'application des règles du marché intérieur. La Commission devrait rapidement faire une proposition au Conseil et au Parlement dans laquelle :

- seraient établies les lignes directrices de fonctionnement de cette coopération administrative et les modalités de leur mise en pratique ;

- il soit prévu, si nécessaire, d'intégrer ces lignes directrices dans un cadre institutionnel de partenariat administratif ayant force obligatoire.

(33). La Commission doit présenter rapidement au Conseil et au Parlement une communication sur les compétences attribuées à la Communauté pour régler les cas urgents présentant des problèmes sérieux pour les consommateurs.

(34). La Commission devrait mettre sur pied une unité de coordination pour assurer que lorsque des problèmes urgents se

posent la communication a bien lieu entre les Etats membres eux-mêmes, entre la Commission et les Etats membres et à l'intérieur de la Commission elle-même. Cette unité devrait pouvoir identifier le service compétent de la Commission et vérifier le fonctionnement des systèmes en cause.

(35). Le système de points de contact devrait recevoir de la Commission et des Etats membres des ressources humaines et financières adéquates.

(36). La Commission devrait établir, à l'intention du Conseil et du Parlement, un rapport annuel sur le fonctionnement du marché intérieur qui résume de façon claire les progrès accomplis et les difficultés rencontrées. Tout développement important de la politique législative ou de la doctrine juridique devrait être décrit de façon à permettre aux opérateurs économiques de se tenir parfaitement au courant des grandes évolutions.

(37). Des guides nationaux et communautaires de mise en oeuvre devraient être entrepris pour des groupes de directives et des résumés de ceux-ci devraient être rendus publics. Ils devraient couvrir au minimum toutes les directives qui ne sont pas encore entrées en vigueur.

(38). La Commission devrait aider à établir la confiance des marchés :

- en promouvant l'accord des Etats membres sur la reconnaissance mutuelle des systèmes nationaux d'accréditation des organismes de certification des produits et,

- en proposant le développement de méthodes harmonisées de surveillance des marchés.