

# EUROPEAN FILE

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## The European Community and cooperation among small and medium-sized enterprises

TOWARDS A COMMUNITY POLICY

The completion, by the end of 1992, of the large European internal market poses a sizeable challenge to businesses in the Community. In order to draw maximum advantage from the European dimension, these businesses will have to cope with increased competition and adapt to the ever more rapid changes imposed by the economic environment and by technological development.

The challenge is particularly crucial for SMEs (small and medium-sized enterprises), which represent more than 95% of companies within the Community and provide more than two-thirds of European employment. Today all business analysts agree that, because of their size, the dynamism, flexibility and readiness to innovate which SMEs can demonstrate are of major benefit for adapting to new market conditions – and thereby for creating employment and revitalizing the European industrial structure. However, if the size of SMEs encourages flexibility, it can also be a handicap. Cooperation with other SMEs is often required in order to strengthen or supplement the limited resources available to a small company.

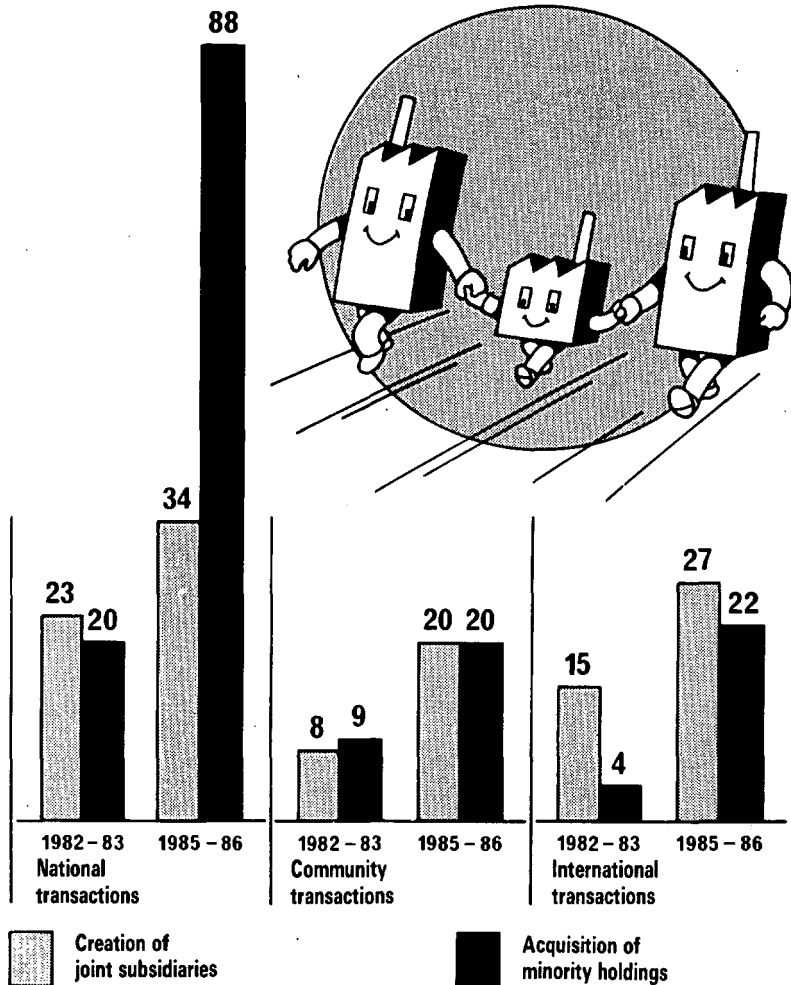
### **How to cooperate?**

A clear distinction must be made between company mergers and cooperative ventures in which each partner retains its own personality and its autonomy. Throughout the last decades, large-scale restructuring through company mergers and take-overs has occurred on an international scale, with the aim of creating companies of European or inter-continental size. To handle this development more effectively, the European Community is endeavouring to institute measures to enable mergers to be controlled.

The idea of cooperation – now given a new emphasis – is to seek out opportunities for economic agents to come together and create synergies: in doing so they do not surrender their originality but rather aim to draw strength from each other. There are good reasons for this.

- In technology, the need to remain up-to-date while keeping production costs continually under control makes for increasing specialization. Each company has an interest in aiming for maximal performance in an area which it makes its own. This tendency has given rise to a veritable explosion of the demand for 'technology transfers'. Also, in increasingly complex production processes there is a new division of competence: in order to function it demands a network in which extremely specialized skills can effectively complement each other.
- In commercial terms, the unprecedented widening of markets and the need to offer customers an ever more finely tuned service encourages companies to join together in order to take advantage of vast distribution networks.
- Finally, from the financial point of view, to obtain the capital needed for development and for carrying out innovation plans, joint technological and commercial initiatives require in turn cooperation in making funds available – sometimes very substantial amounts – both in the form of own resources and by recourse to external sources of financing.

## Creation of joint subsidiaries and acquisition of minority holdings in Community industry



Much remains to be done to promote Community-wide cooperation between companies. Despite some progress in recent years, the statistics show that Community-wide transactions are still often less numerous than national transactions or than those deals which join together Community companies and companies from countries outside the Community.

Source: Commission of the European Communities, *Sixteenth Report on Competition Policy, 1987* (data limited to transactions involving industrial enterprises that are among the 1 000 largest firms in the Community).

Inter-company cooperation takes many forms, according to the type of cooperation and the area in which it takes place.

- From the legal point of view, an agreement to cooperate can be a very simple contract dealing with precise and clearly defined points. However, more advanced types of cooperation can take the form, for example, of the creation of a 'joint venture' by associated partners: a new legal entity which is distinct from each partner. In addition, the type of agreement can vary according to whether the agreement is confined to two partners or involves more participants, in particular through the creation of real inter-company networks.
  
- As regards the field of application of such agreements, they may give rise to forms of cooperation involving commercial, technical or financial matters, or joint management infrastructures, or the implementation of research and development programmes or demonstration projects. Different types of agreement may provide for 'vertical' cooperation, between suppliers and buyers, or 'horizontal' cooperation, when the companies concerned are competitors.

The European Community plays a fundamental role in inter-company cooperation. The European Commission's White Paper on the completion of the internal market<sup>1</sup> confirms this priority, particularly as regards enabling SMEs to benefit fully from the effects of the large European market.

Community action in the field of cooperation between companies is threefold:

- Firstly, cooperation between companies is a necessary and indispensable condition for companies wishing to participate in the European research and development programmes such as Esprit, Brite and RACE.
  
- Secondly, in its legislative and regulatory action, the Community has taken a certain number of measures with direct effect on cooperation between companies.
  
- Finally, such cooperation is the subject of an active policy aimed at encouraging joint action between companies, in particular SMEs, at transnational and inter-regional levels.

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<sup>1</sup> Document COM(85) 310 final of 14 June 1985. See *European File* No 17/87: 'Europe without frontiers: towards a large internal market'.

Although European research and development programmes are open to SMEs – which play an important role in them – this document will deal only with the last two points, as other publications have already dealt with the first one.<sup>1</sup>

## 1. Community legislative and regulatory action

Free competition between companies remains one of the basic determining factors in the building of Europe. It is the essential economic rule which guarantees consumers the widest possible supply of goods and services on the best terms of price and quality.<sup>2</sup> It is also the most active and efficient stimulant for technological progress.

The principle of prohibiting all forms of agreements remains the rule for eliminating practices that could distort competition within the common market. However, a large number of agreements and forms of cooperation have, within certain limits, no effect on the maintenance of healthy competition (*de minimis* agreements) or can even enhance competition (agreements aimed at research, technological innovation, increased specialization, etc.). The Commission has adopted a whole series of statements and regulations which define in this light the conditions for the application of Articles 85 and 86 of the Treaty of Rome.

- The communication on cooperation agreements defines the conditions under which company agreements are not affected by the prohibitions dictated by competition policy.
- A statement on *de minimis* agreements authorizes them as long as they do not significantly affect conditions of competition in the market place. The thresholds laid down, which are aimed in particular at encouraging cooperation between SMEs, provide that the market shares for the products involved should not exceed 5 % of the Community market and that the total annual turnover of the participating companies should be below 200 million ECU.<sup>3</sup>
- Apart from these two general statements, the European Commission has also granted various specific exemptions to encourage particular forms of collaboration between companies. These deal with: exclusive distribution and supply contracts; the establishment of research and development projects and the joint exploitation of their results; manufacturing or supply under subcontract; specialization agreements by which companies either apportion the manufacture of certain products among themselves or, on the contrary, undertake to manufacture the products only jointly; the licensing of patent rights. Finally, there are two other regulations currently being prepared: they concern agreements on the licensing of know-how and the expanding field of franchise contracts. The majority of these exemptions favour agreements between SMEs.

<sup>1</sup> See in particular *European File* No 19/87: 'Research and technological development for Europe'.

<sup>2</sup> For more details, see *European File* No 6/85: 'European competition policy'.

<sup>3</sup> 1 ECU (European currency unit) = about £0.66, Ir. £0.77 or US \$1.23 (at exchange rates current on 3 May 1988).

In addition, the Community is in the process of establishing certain elements of a true Community company law, to enable companies to escape from the narrow confines imposed by the juxtaposition of national laws, which are territorially limited and excessively diversified.

- As a result of a regulation adopted by the Council of Ministers in 1985, economic agents in the Community will from 1989 be able to avail of a new and highly original legal instrument for transnational cooperation. Called the European Economic Interest Grouping (EEIG), this new formula will enable companies, and more particularly SMEs, to merge part of their economic activities in a structure with full legal standing, while continuing to retain their total independence. The formalities for the setting-up and operation of an EEIG are deliberately very flexible: there is wide freedom with regard to the criteria for location within the Community, a broad range of areas for cooperation, open access for highly diversified entities, reduced administrative formalities, significant flexibility as regards financing, simplified management standards, and commercial and fiscal 'neutrality' (the results of the grouping are taxable only at the level of its members).
  
- Furthermore, cooperation between companies is affected by a number of provisions envisaged by the Community as part of the completion, by 1992, of the large European internal market. They involve, in particular:
  - in the field of company law, harmonization of the structures of public limited liability companies and, in particular, the proposed 'European public limited liability company' statute; procedures for transnational mergers; the status of company branches; company relations within transnational groups; rules governing public purchasing tenders; company liquidation; the annual accounts of certain forms of company;
  
  - in the field of intellectual and industrial property rights, the harmonization of national laws on trade marks and the future creation of a 'Community trade mark'; protection of biotechnological inventions and computer software (following on the protection already implemented for semiconductor products, or 'chips'); the entry into force throughout the Community of the Luxembourg European Convention on the Community Patent;
  
  - in the field of company taxation, the removal of various obstacles to cooperation between European companies: the fiscal treatment of parent companies and subsidiaries; a common fiscal system for mergers, divisions and contributions of assets; the elimination of double taxation; the harmonization of indirect taxation applicable to stock transactions; the harmonization of company taxation systems; problems associated with carry forward and backward of losses, etc. New joint action is also envisaged to improve the

fiscal environment for risk capital and innovation, in particular the non-taxation of capital gains made by risk capital companies when they terminate their holdings.

## **2. An active policy to encourage cooperation between European companies**

In recent years, the European institutions have recognized that the strengthening of inter-company cooperation requires not only an appropriate regulatory framework, but also specific Community action to provide concrete assistance for companies to collaborate across national borders. While respecting the constraints imposed by competition policy, such voluntary initiatives fit perfectly into Community strategies to achieve the large European internal market and to promote higher employment.

One of the essential supports for this new 'business policy' was implemented in October 1986 with the launching of the first action programme for SMEs. Administered by a newly created administrative structure in the European Commission, the 'SME Task Force', this programme numbers among its priorities the coordination of all initiatives taken to support the development of cooperation between European SMEs.<sup>1</sup>

- The oldest of these initiatives is without a doubt the one carried out since 1973 by the Business Cooperation Centre (BCC), nicknamed the 'Marriage Bureau'. This service, which was established specifically to encourage cooperation between companies, plays an important role in providing advice and contacts to companies seeking European partners.

In the pursuit of its task, the BCC has recently implemented an efficient new working tool: the 'Business Cooperation Network' (BC-Net).<sup>2</sup> This computerized system, operational since spring 1988, links up several hundred business advisers spread throughout the Community. The network compares in real time the highly diversified requests and offers of cooperation emanating from the thousands of companies which work with the advisers.

The system works like this:

- When a company seeks a business partner in another region or in another Community country, it approaches one of the advisers who are network members. The adviser introduces the company's request into the system using a common language called 'company profile'. The BC-Net system automatically compares the request with its stock of offers.

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<sup>1</sup> See *European File* No 3/88: 'The Community and business: the action programme for small and medium-sized enterprises'.

<sup>2</sup> Document COM(87) 370 final of 27 July 1987.

- When the search is positive, the requesting company gets the results immediately and the firms offering cooperation are also informed that their offer has been matched with a request. If the BC-Net stock of offers provides a negative response, the request is automatically distributed, in the form of a 'flash profile', to business advisers located in the specified geographical area. Such advisers then have a limited time in which to consult their portfolio and reply to the BC-Net system.

By rapidly circulating information and by its effectiveness in linking up business advisers, the BC-Net system:

- ensures a fuller participation of SMEs in Community research and development programmes;
- facilitates cooperation among firms, particularly in liaison with regional development and redevelopment activities;
- extends industrial cooperation to countries outside the Community;
- contributes to the success of pilot initiatives for testing systems of cooperation between firms;
- determines at first hand the nature and the importance of obstacles to cooperation among firms in different member countries.

The BCC also carries out diverse pilot schemes of company cooperation in order to identify methods of instituting cooperation which could be more widely used.

- Cooperation between companies is an important tool for the development of local economies. The BCC has therefore decided to associate its efforts with those of the Commission service responsible for regional policy. The intention is to organize, in Community regions either underdeveloped or in industrial decline, action for promoting cooperation agreements – commercial, technical or financial – between entrepreneurs in the regions and their counterparts in other member countries. This type of action, called 'Euro-partnership', has three major stages: the identification and selection in the chosen area of projects for company cooperation which are then listed in a catalogue; the distribution of this catalogue in other Community countries; the organization of meeting days to put into contact with each other companies from the chosen area and companies from other member countries which had shown an interest in collaboration. A pilot 'Euro-partnership' operation is taking place in Ireland in 1988.
- The BCC is equally active in encouraging transnational subcontracting. For several years it has made available to both sides in the subcontracting process vocabularies of sectoral terminology in nine languages. These are widely used, in particular for the setting-up of data banks and for the administration of subcontracting grants.



The BCC has also edited a practical guide to the legal aspects of subcontracting, a veritable 'vade-mecum' for negotiations between subcontractors and main contractors in other countries.

The indispensable development of subcontracting towards new techniques of management and organization and the growing number of partnerships have led the BCC to set up a true information and advice policy for this important section of industrial production.

- Finally, the BCC helps in defining financing formulas appropriate to transnational schemes, by building on initiatives developed by the Commission in this field, particularly as regards loans and risk capital.
- The Community has already taken several measures to help solve financing problems, which constitute one of the most delicate factors in cooperation between companies from different countries.
- Since 1985, the European Commission has been actively supporting the 'Venture Consort' pilot project, which aims to encourage the joint participation of finance corporations in innovatory projects, in the form of risk capital from different countries. This project was set up with the help of financial organizations participating in the European Venture Capital Association (EVCA), the establishment of which was itself supported as part of the Sprint programme to promote innovation and technology transfer.
  - In the same way, the Commission and the European Investment Bank supported the creation of the European Financial Engineering Company. This public limited company groups together the majority of institutions which specialize in long-term credit and the acquisition of holdings in different Community countries; its task is to offer financial support services for SME transnational transactions.
- Parallel with the action programme to support SMEs, in 1983 the European Commission launched a first plan to assist innovation and technology transfer among companies, particularly among SMEs. Extended until 1989, this programme, which aims to encourage all aspects of the innovation process — from invention up to the financing and successful marketing of new products and services — is called Sprint (Strategic programme for innovation and technology transfer).<sup>1</sup> The Sprint programme has three main components:
- The most important thrust up to now has been to promote in a very concrete manner transnational exchanges of technology between companies. Once again, it involves the establishment of a grid of networks linking up public and private business consultancy organizations with the specific task of promoting transnational technological cooperation between client firms. At

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<sup>1</sup> See *European File* No 18/86: 'The Sprint programme'.

the present time, some 60 mini-networks, directly oriented towards such collaboration and all involving two or more consultants from different Community countries, have been set up within the framework of the Sprint programme. They have enabled Community support, both financial and logistical, to be given to more than 120 concrete agreements for cooperation or technology transfer between companies, in fields as varied as robotics and road traffic management.

- The second axis of the Sprint programme deals with the establishment of a transnational infrastructure of support for innovation. This means encouragement for the setting-up of European networks of experts in risk capital, in technological advice, in advice on strategy or marketing, and experts in design or 'quality'. These networks provide a supporting base for companies in their cooperation and technological development on a European scale.
- The third axis of the programme is concerned with the circulation of available technologies throughout all economic sectors, including traditional sectors. It uses different instruments (conferences, training, data banks, etc.) of which some, such as active collaboration between collective sectoral research centres, have enabled original forms of cooperation to be promoted. One example of this is the transnational dialogue engaged in by manufacturers and equipment users to adapt manufacturing materials in sectors such as ceramics, textiles or footwear.



Thus, in the regulatory and fiscal field as well as in supporting structures, the Community is playing an increasing role in developing among European companies the indispensable transnational cooperation which will enable them to adapt to the possibilities offered by the large internal market and to strengthen their competitiveness at world level ■

For further information

- Supplementary information about the BCC can be obtained from the European Commission, Task Force for Small and Medium-sized Enterprises, 200 rue de la Loi, B-1049 Brussels, tel. 230 39 49.
- For supplementary information about the Sprint programme, contact the European Commission, Directorate-General XIII 'Telecommunications, Information Industries and Innovation', Jean Monnet Building, rue Alcide De Gasperi, L-2920 Luxembourg, tel. 45 30 11, extension 43 71.

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