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WHITE PAPER

PREPARATION OF THE ASSOCIATED COUNTRIES OF CENTRAL AND EASTERN EUROPE FOR INTEGRATION INTO THE INTERNAL MARKET OF THE UNION

(presented by the Commission)

Transport

Audiovisual

Pages 169 - 213

TRANSPORT

TABLE OF CONTENTS

- I. ROAD TRANSPORT
 - 1. Access to the Market
 - 2. Technology and Safety
 - 3. Fiscal Harmonisation
 - 4. Social Harmonisation
- II. RAILWAYS
- III. INLAND WATERWAYS
- IV. MARITIME TRANSPORT - ACCESS TO THE MARKET
- V. MARITIME SAFETY AND ENVIRONMENT PROTECTION
- VI. AIR TRANSPORT

GENERAL INTRODUCTION

Transport is one of the keys to the success of the single market, contributing as it does to the physical achievement of two of the latter's fundamental objectives, namely free movement of persons and free movement of goods. It is a major industry in its own right accounting for about 7 % of GNP and dovetails, both upstream and downstream, with other key policies such as economic, energy, environmental, social and regional policies.

A Common Transport Policy was slow in taking shape, with the first tangible achievements of any importance coming only after 1985. This was due to a number of factors, e.g. widely differing industrial structures between the Member States and between the different modes of transport; the existence of state monopolies; traditional market structures; disparate tax, administrative and corporate rules; wide reliance on modal-oriented national policies; multitude of different, often incompatible technical rules; strong interest groups which preferred the status quo to increased challenges and opportunities.

The creation of the Internal Market of transport services relied on liberalisation and harmonisation measures:

- the Common Transport Policy progressively eliminated the artificial barriers in each mode of transport (modal policy) erected between Member States by doing away with technical, tax and social distortions of competition and by enabling Community operators to provide, free of discrimination, services in a Member State other than the one in which they are located.

- in liberalizing the Community market, the Common Transport Policy has safeguarded the requirements for its smooth functioning by laying down the rules to be observed by Community carriers in terms of professional competence, safety, social provision and public service obligations.

The complexities of the transport industry and the greatly differing national structures and policies made it necessary to rely, in the most sensitive areas, on transitional periods and temporary exemptions. However, the legal framework of the internal transport market is in place, and Community rules are being satisfactorily incorporated into national legislation.

The effectiveness of the Community system thus created will only become apparent gradually. Initial problem areas can be detected as well as smooth progress. But it is clear that the creation of rules has to go hand in hand with an effective implementation by the authorities called upon to exercise a satisfactory level of control.

The present exercise should also be put in the general context of work underway under the Association Agreements with the Central European Countries as regards approximation of legislation.

Work in the Joint Sub-Committees on Transport has focused on the approximation of legislation in all transport modes with the aim of restructuring the transport sector so as to establish an integrated and balanced multimodal transport system. Approximation of legislation is also a central element in the current negotiations on market access in inland waterways and it will play a major role in the future road and air transport negotiations. Indeed the Central European Countries undertook, under the Association Agreements, to adapt their legislation with the Community *acquis* in so far as it serves to assure a co-ordinated development and progressive liberalisation of transport between the Parties.

The European Commission has presented in December 1992 a Recommendation for a Council Decision on the Opening of negotiations between the Community and third countries concerning the carriage of goods and passengers by road. The matter is still pending in the Council.

I. ROAD TRANSPORT

INTRODUCTION

The market of road transport in the different States was characterised before the completion of the internal market by a plurality of rules concerning both national and international road transport in fields like access to the profession, access to the market, technical standards and control, social conditions, fiscal matters, environmental protection, road safety etc.

As far as road transport is concerned two main subdivisions could be made: the carriage of goods and the carriage of passengers. The existing legislation takes into account this classification in the large majority of cases.

One of the most important principles to make effective the internal market in road transport is to ensure the freedom to provide services without discrimination on the grounds of nationality or place of establishment.

In order to achieve this objective it is necessary to develop a certain degree of harmonisation of competition conditions. That is the reason why for the last 20 years the Community has been adopting measures to establish standards in the fields mentioned before. At the same time the restrictions to provide international transport services based on quota systems have been eliminated. Since 1976 Community quotas have been increased regularly every year until 1993 when quotas were definitively abolished.

The outcome of this process is that national barriers that prevented the provision international road transport services have dropped. The situation of the international market between the Member States is entitled to provide road transport services all over the Community if he complies with the conditions of access to the directives regulating the profession.

Measures concerning the opening of national markets to non residents have as well been adopted as an important part of the completion of the internal market. However, the complete liberalisation of cabotage will only be achieved in the Community on 1 July 1998, after nearly ten years transitional period, when the existing quotas will be eliminated.

Some measures adopted at international level have also been of great importance like the agreement on the international carriage of passengers by road by means of occasional coach and bus services (ASOR)¹ and the European agreement concerning the work of crews of vehicles engaged in international road transport (AETR) negotiated in the framework of the United Nations Economic Commission for Europe.

¹ OJ N° L 260, 5.8.1982, p.38

DESCRIPTION OF THE LEGISLATION

i) **Situation**

From 1 January 1993 with the creation of the internal market and the opening up of the road transport market, the access to the intra-Community road transport market is now open to any road transport operator who satisfies the "qualitative" requirements which govern admission to the occupation of road transport operator. In this liberalized environment competition has increased, therefore it is crucial to the sector to improve the selection procedure and better training measures for those persons wishing to take up the occupation of road transport operator.

ii) **Approach**

The Community has defined the rules for the admission of national and international road transport operators. There are three requirements which persons wishing to exercise as a road transport operator must satisfy : good repute, appropriate financial standing and professional competence. In view of the creation of the internal market, the last Directive adopted in this field in 1989, defines very closely how the three requirements must be fulfilled.

iii) **Experience**

Despite compliance by the Member States with the four directives, there are still considerable differences concerning the admission to the occupation of road transport operator between the legislations applied by certain Member States. This is, because Community directives only lay down minimum conditions for implementation and therefore Member States are free to apply more stringent measures at national level. The Commission considers that more stringent requirements may be necessary at Community level and intends to propose new measures to further strengthen this legislation before the end of 1995.

CONDITIONS NECESSARY TO OPERATE THE LEGISLATION

Legislative approximation in the road transport field presupposes the existence of national regulatory systems like the organisation of access to the national market. In some cases harmonisation measures should be adopted without previous national rules in that field.

Certain harmonisation directives require the existence of specialised administrative units to execute from a practical point of view the obligations set out in the directives; for instance Directives on access to the profession foresee the condition of professional competence which consist in the possession of skills in certain subjects and recognized by the authority or body designated for that purpose by Member States.

Courses, examinations have to be organised by the competent authorities as well as the recognition of diplomas by other states.

Control agents are particularly important in most of the fields of harmonisation in road transport but specially as far as social conditions, technical controls and road safety are concerned. Control on the use of authorizations and licenses to execute national and international transport is essential to avoid illegal transport operation executed by non-authorised operators.

KEY MEASURES

This legislation creates the conditions for the access to the occupation of road transport operator which in turn was established as a precondition for access to the market.

- ***CHOICE OF STAGE I MEASURES***

DESCRIPTION & JUSTIFICATION :

Over 20 years, the Community has refined the rules for the admission to the occupation of national and international road transport operated. The Council adopted the following four directives :

- i) Directive 74/561/EEC on admission to the occupation of road haulage operator and Directive 74/562/EEC on admission to the occupation of road passenger transport operator in national and international transport operations.

These two Directives established for the first time the three requirements to be satisfied by persons wishing to exercise the occupation of transport operator. These requirements are good repute, appropriate financial standing and professional competence. These Directives have laid down a list of subjects of which knowledge is required to obtain the professional competence.

- ii) Directive 77/796/EEC aiming at the mutual recognition of diplomas, certificates and other evidence of formal qualifications for transport operators, including measures intended to encourage them effectively to exercise their right of freedom of establishment within the Community.

- iii) Directive 89/438/EEC amending the above Directives, defines more closely the three requirements which those persons wishing to exercise the occupation of transport operator must satisfy, to ensure a certain common degree of professionalism. In a liberalized environment, it is necessary above all to harmonize these criteria in order to avoid distortions of the competition to the detriment of those States applying more stringent conditions.

STAGE I MEASURES

Council Directive 74/561/EEC (O.J. L 308 of 19.11.74)	Council Directive 74/561/EEC of 12 November 1974 on admission to the occupation of road haulage operator in national and international transport operations.
Council Directive 74/562/EEC (O.J. L 308 of 19.11.74)	Council Directive 74/562/EEC of 12 November 1974 on admission to the occupation of road passenger transport operator in national and international transport operations.
Council Directive 77/796/EEC (O.J. L 334 of 24.12.77).	Council Directive 77/796/EEC of 12 December 1977 aiming at the mutual recognition of diplomas, certificates and other evidence of formal qualifications for goods haulage operators and road passenger transport operators, including measures intended to encourage these operators effectively to exercise their right to freedom of establishment.
Council Directive 89/438/EEC (O.J. L 212 of 22.7.89)	Council Directive 89/438/EEC of 21 June 1989 amending Directives 74/561/EEC, 74/562/EEC and 77/796/EEC.

• CHOICE OF STAGE II MEASURES

DESCRIPTION & JUSTIFICATION :

Parallel to the implementation of the legislation on admission to the occupation of road transport operator in national and international operations - necessary to prepare the liberalization to market access - side measures in the field of state aids and financial compensations to public transport undertakings, had to be laid down in order to avoid competition distortion amongst Member States. The Community legislation determines very closely those cases where State aid and financial compensation are allowed in the road transport sector. The first measures were adopted in the seventies, but a long transitional period was necessary to create a market where fair competition reigns, which is the condition sine qua non for further liberalisation.

STAGE II MEASURES

Council Regulation (EEC) n° 1107/70 (O.J. L 130 of 15.6.70)	Regulation (EEC) n° 1107/70 of the Council of 4 June 1970 on the granting of aids for transport by rail, road and inland waterway.
Council Regulation (EEC) n° 1191/69 (O.J. L 156 of 28.6.69) as amended by Council Regulation (EEC) n° 1893/91 (O.J. L 169 of 29.6.91)	Regulation (EEC) n° 1191/69 of the Council of 26 June 1969 on action by Member States concerning the obligations inherent in the concept of a public service in transport by rail, road and inland waterway.

CHOICE OF STAGE III MEASURES

DESCRIPTION & JUSTIFICATION :

At this stage the rules on access to the market of international and national transport operations for goods and passengers should be completely applicable. These measures constitute an important part of the internal market and presuppose full integration in the European Union. The regulations concerned are the following:

Regulation 881/92 on access to the market in the carriage of goods by road within the Community to or from the territory of a Member State or passing across the territory of one or more Member States. Directly related to this Regulation is Regulation 3916/90 on measures to be taken in the event of a crisis in the market in the carriage of goods by road. Regulation 3118/93 laying down the conditions under which non-resident carriers may operate national road haulage services within a Member State and Regulation 792/94 on cabotage own account.

As far as passenger transport is concerned, Regulation 684/92 on common rules for the international carriage of passengers by coach and bus and Regulation 2454/92 laying down the conditions under which non-resident carriers may operate national road passengers transport services within a Member State.

STAGE III MEASURES

Council Regulation (EEC) n° 881/92 (OJ L 95 of 9.04.92)	Council Regulation (EEC) n° 881/92 of 26 March 1992 on access to the market in the carriage of goods by road within the Community to or from the territory of a Member State or passing across the territory of one or more Member States.
Council Regulation (EEC) n° 3916/90 (OJ L 375 of 31.12.90)	Council Regulation (EEC) n° 3916/90 of 21 December 1990 on measures to be taken in the event of a crisis in the market in the carriage of goods by road.
Council Regulation (EEC) n° 3118/93 (O.J. L 279 of 12.11.93)	Council Regulation (EEC) n° 3118/93 of 25 October 1993 laying down the conditions under which non-resident carriers may operate national road haulage services within a Member State.
Commission Regulation (EC) n° 792/94 (O.J. L 92 of 9.4.94)	Commission Regulation (EC) n° 792/94 of 8 April 1994 laying down detailed rules for the application of Council Regulation (EEC) n° 3118/93 to road haulage operators on own account.
Council Regulation (EEC) n° 684/92 (O.J. L 74 of 20.3.92)	Council Regulation (EEC) n° 684/92 of 16 March 1992 on common rules for the international carriage of passengers by coach and bus.
Council Regulation (EEC) n° 2454/92 (O.J. L 251 of 29.8.92)	Council Regulation (EEC) n° 2454/92 of 23 July 1992 laying down the conditions under which non-resident carriers may operate national road passenger transport services within a Member State.

2. *Technology and Safety*

DESCRIPTION OF THE LEGISLATION

The Common Transport Policy could not fail to include among its objectives that of making an effective contribution to improving the conditions on which means of transport in general, and road vehicles in particular, circulate.

Among the measures taken to this end, those concerning safety and those concerning the drive against pollution and other nuisances are of particular importance.

Road traffic safety not only requires that producers fit their motor vehicles with the necessary safety features, but also that great care is taken to ensure that vehicles in circulation are kept in good operating condition and are equipped to regulation standards.

In the fields of technical harmonisation and road safety, it is of prime importance to ensure the free movement of vehicles or people and to avoid any distortion of competition or discrimination on grounds of nationality in the single market.

Hitherto, the Commission's approach has not been geared to total harmonisation; instead, the aim has been to approximate Member States' legislations with a view to laying down minimum or maximum standards to be observed for the purposes of untrammelled movement across the territory of the European Union.

CONDITIONS NECESSARY TO OPERATE THE LEGISLATION

Roadworthiness tests

To guarantee effective testing, it was indispensable to establish the principle of the Member States' responsibility for roadworthiness testing. However, in response to practical organisational demands and in the interests of making the administrative procedures faster and more flexible, provision had to be made for delegating the task of carrying the test out to approved bodies or experts. These are under the supervision of the public authorities and answerable at all times for the tasks entrusted to them.

The operation of the directives therefore depends on choosing a form of testing among:

- a neutral organisation carrying out the tests on its own premises,
- a neutral organisation carrying out the tests in garages,
- testing by and in approved garages,

and setting up the approval procedures.

The choice of the form of testing will have a clear bearing on the amount of direct and indirect costs (investment costs for land, buildings, facilities, equipment, staff and training, etc.).

Driving licences

This directive, which contributes to achieving the free movement of people, was originally essentially aimed at correcting the existing disparities between the various national regulations on vehicle categories, statutory minimum ages, general mental and physical fitness conditions, the tests to be undergone, etc.

There is a need to:

- specify the authority responsible for actually conducting the examinations (theory, practical and, possibly, medical examinations for professionals) required for obtaining a driving licence;
- establish a procedure for producing and issuing driving licences;
- specify which authorities supervise the suspension, withdrawal, cancellation and reinstatement of driving licences;
- establish a procedure for the recognition or exchange of foreign driving licences when holders take up residence in the territory covered.

It is of the greatest importance that the CEECs issue driving licences on standard conditions guaranteeing satisfactory levels of ability, training and learning for road safety purposes.

Weights and dimensions (including vehicle compliance testing)

It should be noted that international road transport is also governed by other authorities (cf. the Vienna Convention of 1968; the Agreement on the adoption of uniform conditions of type approval and the reciprocal recognition of the type approval of motor vehicle equipment and parts, Geneva, 20.3.1958; the Agreement on the international carriage of perishable foodstuffs and on the special equipment to be used for such carriage (ATP), Geneva, 1.9.1970; the Convention on containers, etc.).

Tachograph

One necessary precondition, of course, is the adoption of the common standards on driving and rest periods in force in the Union cf. social legislation relating to road transport, as laid down by Council Regulation (EEC) No 3820/85, and the ratification of the "European Agreement concerning the Work of Crews of Vehicles engaged in International Road Transport (AETR)", Geneva, 1.9.1970.

Dangerous goods by road (including the vocational training of drivers)

A necessary prerequisite for the operation of Community standards is for the CEECs to become "contracting parties to the ADR" of the UNECE in Geneva which governs the international carriage of dangerous goods by road.

It is important for the CEECs to inform the Commission correctly of all bilateral agreements governed by the ADR which they have concluded with the Union Member States so that the Commission can look into the commercial consequences of any changes to or cancellation thereof.

Speed limitation devices

A necessary prerequisite is the granting of approval to fitters of speed limitation devices in accordance with the requirements of Directive 92/24/EEC.

Safety belts

A necessary prerequisite is to check whether all seats are fitted with anchor points and to copy the type-approval standards for restraint systems from those of the UNECE in Geneva.

KEY MEASURES

These provisions are intended to facilitate free competition and the free movement of people, goods and services, the basic principles of the Treaty on European Union, or to enhance road safety (the Maastricht Treaty).

- ***CHOICE OF STAGE I MEASURES***

DESCRIPTION & JUSTIFICATION :

With regard to the objectives pursued in terms of technology and safety, the measures set out below constitute primary instruments in the correct operation of the single market.

1. Roadworthiness tests

Hitherto, rather than aiming at total harmonisation, Community rules (Directive 77/143/EEC & amendments) have adopted the approach that standardisation should be restricted to the essential items (obligatory nature and frequency of inspection, list of the equipment or vehicle parts generally subject to inspection, minimum standards for braking systems and exhaust emissions, mutual recognition of compliance testing) to achieve the goals mentioned above.

These measures are laid down with a view to guaranteeing an equal level of safety and ecological quality on the roads of the Union.

Given the infrastructure they imply, however, it is recommended (stage I) that commercial vehicles, coaches and buses (frequency and list of items to be inspected) are targeted first (Directive 77/143/EEC).

The extension of these measures to the other categories (light vehicles (Directive 88/449/EEC) and private cars (Directive 91/328/EEC)) can be deferred to stage II. The same may hold for the minimum standards for braking (Directives 92/54/EEC et 94/28/EEC) and emissions (Directive 92/55/EEC), which apply, however, to all vehicle categories. ("small steps" (step-by-step) policy).

2. Weight and dimensions (including vehicle compliance testing)

Hitherto, Community legislation (Directive No 85/3/EEC + amendments) defined the maximum weight and maximum authorised dimensions for certain commercial road vehicles in order to permit better use of these vehicles in international traffic.

It was introduced with a view to remedying the existing differences between the national regulations, which were liable to hamper Community road traffic, bring about distortions in conditions of competition between different countries' carriers and, lastly, to limit the scope for trade in automobiles.

The main difficulty lay in finding a balance which was acceptable to all the Member States between the wish to reduce operating costs and the need to protect the infrastructures.

In order not to hamper free movement, it is recommended that the following are defined as priorities (stage I) :

- the maximum dimensions for all categories of vehicles and combinations
- but only the maximum weights:
 - * for goods vehicles with a GVW in excess of 3.5 tonnes,
 - * for combinations with 5 axles or more and the corresponding trailers,
 - * for the drive axles of road trains and articulated vehicles with 5-6 axles,

given that these vehicles usually carry out international transport. The adoption of the other standards and vehicle compliance test can be postponed to stage II ("small steps" policy).

A proposal aimed at extending Directive No 85/3/EEC to national transport is before the Council.

3. Tachograph

Community rules provide that all vehicles within the scope of Regulation (EEC) No 3820/85 must be fitted with a monitoring unit (tachograph) as laid down by Regulation (EEC) No 3821/85.

The use of this tachograph enables the driving and resting periods concerned in the social legislation to be shown.

This regulation is of prime importance for correct application of the social provisions; it makes a significant contribution to improving road safety, to levelling conditions of competition and to maintaining satisfactory social standards.

4. Tyre tread depth

Directive No 89/459/EEC aims to increase road safety by making compulsory a minimum tread depth of 1.6 mm in the main grooves of the tyres of passenger vehicles with a maximum of nine seats and of goods vehicles with a maximum weight of no more than 3.5 tonnes.

These measures are intended to facilitate the free movement of vehicles and people between the States of the Union and to contribute to the removal of obstacles to trade and distortions of competition.

STAGE I MEASURES

<p>Directive 85/3/EEC OJ N° L2, 3.1.1985, p.14, as last amended by Directive No 92/7/EEC (OJ No L57 of 2.3.1992, p.29)</p>	<p>Council Directive 85/3/EEC of 19.12.1984 adopting the Community standards on the maximum authorised dimensions (length, width, height), the maximum drive-axle weight and the maximum authorised weight for 5- or 6-axle combinations.</p>
<p>Directive 77/143/EEC OJ No L 47, 18.2.1977, p. 47. as last amended by Commission Directive No 94/23/EEC O L 147 of 14.6.1994, p. 6</p>	<p>Council Directive 77/143/EEC of 29.12.1976 adopting the Community standards for heavy goods vehicles and coaches/buses (frequency and list of items to be inspected; possibly defer braking and emission standards to stage II)</p>
<p>Directive 89/459/EEC OJ L226, 3.8.1989, p. 4.</p>	<p>Council Directive 89/459/EEC on the approximation of the laws of the Member States relating to the tread depth of tyres of certain categories of motor vehicles and their trailers</p>
<p>Regulation (EEC) No 3821/85 OJ L370, 31.12.1985, p. 8 as last amended by Regulation (EEC) No 3688/92 OJ No L374, 22.12.1992, p. 12</p>	<p>Council Regulation (EEC) 3821/85 of 20.12.1985 on recording equipment in road transport</p>

• CHOICE OF STAGE II MEASURES

DESCRIPTION & JUSTIFICATION :

The following provisions are essential to achieve the Common Transport Policy. There are therefore grounds for including them in stage II, after the adoption of the measures of prime importance for correct operation on the internal market.

2. Driving licences

Community Directive No 91/439/EEC, based on the minimum conditions for the issue of a driving licence, permits mutual recognition where the tests required in the examination are equivalent. It also harmonises vehicle categories and provides for the possibility of subdividing them so that drivers may progress from one category to the next in the interests of safety and in step with national circumstances.

It also sets up a Community model, harmonisation of which makes it easier to understand and thus facilitates its recognition in an international context.

This Directive aims to improve road safety and to facilitate the movement of people taking up residence in another Member State;

The Community driving licence thus guarantees European citizens' rights, which is grounds for adopting it in stage II.

5. Dangerous goods by road (including the vocational training of drivers)

Directive No 94/55/EEC aims to harmonise the rules applicable to national and intra-Community transport of dangerous goods so as to ensure a high level of safety and the creation of a single market in this field. It also provides for the transposition into Community law of the technical annexes to the European Agreement concerning the international carriage of dangerous goods by roads (A.D.R.).

These measures are necessary to guarantee the safe carriage of dangerous goods and to remove barriers to the free provision of transport services and the free movement of vehicles and transport equipment. The application of such uniform rules to all transport in the Union is indispensable in stage II.

7. Speed limitation devices

Directive No 92/6/EEC provides for the compulsory installation and use of speed limitation devices on lorries and buses.

In order to avoid distortions of competition between carriers, the general fitting and compulsory use of such devices limiting the speed of the vehicles concerned to harmonised upper limits are essential.

8. Safety belts

The Directive establishes the general principle that the drivers and passengers of a vehicle of under 3.5 tonnes are obliged to wear safety belts. Children are also concerned by the Directive, which introduces the compulsory use of adapted restraint systems on seats fitted with safety belts. These systems should be recognised by the Member States pending the laying down of harmonised Community standards.

The Community provisions also apply to vehicles registered in third countries and circulating in the Member States, which explains the need to adopt these in stage II.

STAGE II MEASURES

Directive 85/3/EEC OJ N° L2, 3.1.1985, p.14, as last amended by Directive No 92/7/EEC (OJ No L57 of 2.3.1992, p.29)	Council Directive 85/3/EEC of 19.12.1984 on the weights, dimensions and certain other technical characteristics of certain road vehicles.
Directive 86/364/EEC OJ L221, 07.08.86, p. 48	Council Directive 86/364/EEC of 24.07.1986 relating to proof of compliance of vehicles with Directive 85/3/EEC on the weight, dimensions and certain other technical characteristics of certain road vehicles.
Directive 77/143/EEC OJ No L 47, 18.2.1977, p. 47. as last amended by Commission Directive No 94/23/EEC O L 147 of 14.6.1994, p. 6	Council Directive 77/143/EEC of 29.12.1976 on the approximation of the laws of the Member States relating to roadworthiness tests for motor vehicles and their trailers.
Directive 91/439/EEC OJ L237, 24.08.1991, p. 1	Council Directive 91/439/EEC of 29.07.1991 on driving licenses.
Directive 89/684/EEC OJ L398, 30.12.89, p.33	Council Directive 89/684/EEC of 21.12.1989 on vocational training for certain drivers of vehicles carrying dangerous goods by road.
Directive 94/55/EC OJ L319, 12.12.1994, p. 7	Council Directive 94/55/EC of 21.11.1994 on the approximation of the laws of the Member States with regard to the transport of dangerous goods by road.
Directive 91/671/EEC OJ L373, 31.12.1991, p. 26	Council Directive 91/671/EEC of 16.12.1991 on the approximation of the laws of the member States relating to compulsory use of safety belts in vehicles of less than 3,5 tonnes.
Directive 92/6/EEC OJ L57, 02.03.92, p. 27	Council Directive 92/6/EEC of 10.02.1992 on the installation and use of speed limitation devices for certain categories of motor vehicles in the Community.

3. *Fiscal Harmonisation*

DESCRIPTION OF THE LEGISLATION

Experience in the EU has demonstrated that fiscal harmonization in the field of carriage of goods by road is an essential condition for opening up the national markets but that it is hard to achieve because it affects the States' fiscal sovereignty. It took 25 years of protracted, difficult discussions to reach the current stage of approximation of laws.

Bearing in mind the importance of the objectives of the common policy in this field, i.e. the harmonisation of competition conditions between road carriers of different nationalities and between modes of transport and the allocation of infrastructure costs (and external costs) to the real users of these infrastructures, the measures cited constitute fundamental instruments for the correct operation of the internal market.

CONDITIONS NECESSARY TO OPERATE THE LEGISLATION

The approximation of laws in this field implies the reorganisation of the national systems of vehicle taxes applicable in the CEECs.

The correct operation of the internal market requires fair competition between operators, a condition which makes it indispensable for the tax burden imposed on road carriers to be aligned. It was therefore considered necessary to draw up common rules setting minimum rates for the annual tax on heavy goods vehicles (by different categories according to the total permissible laden weight and the number and configuration of axles) with the aim of avoiding double taxation on the one hand and of creating a set of regulations to be observed by those States which wished to introduce and/or maintain user charges or tolls, on the other.

An administrative infrastructure is needed to calculate and levy taxes, user duties and tolls and to apply reduced rates and/or exemptions.

Community regulations provide, inter alia, that two or more Member States may co-operate to set up a common system of user charges applicable to the whole of their territories. The conditions of such co-operation must be negotiated between the States concerned.

KEY MEASURES

- **CHOICE OF STAGE I MEASURES**

DESCRIPTION & JUSTIFICATION :

In the field of road taxes, healthy competition requires the alignment of the rates of the taxes and charges levied for the use of the roads. The recovery of infrastructure costs by economic mechanisms implies passing these costs on to the users of the infrastructure.

STAGE I MEASURES

Directive 93/89/CEE OJ N° L 279/32 of 12.11.93	Council Directive 93/89/EEC of 25 October 1993 on the application by Member States of taxes on certain vehicles used for the carriage of goods by road and tolls and charges for the use of certain infrastructures
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- **CHOICE OF STAGE II MEASURES**

DESCRIPTION & JUSTIFICATION :

While they constitute interesting information, the statistical data collected under the Regulation in question are not indispensable in stage I for the correct operation of the internal market, and may be considered as an element of stage II.

Statistical back-up is very useful for developing and fine-tuning common rules. For that reason, the Member States are obliged to inform the Commission of expenditure on, and uses of infrastructures in respect of transport by rail, road and inland waterway.

STAGE II MEASURES

Regulation (CEE) 1108/70 (OJ N° L 130 of 15.6.70).	Council Regulation (EEC) No 1108/70 of 4.06.1970 introducing an accounting system for expenditure on infrastructure in respect of transport by rail, road and inland waterway.
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4. *Social Harmonisation*

DESCRIPTION OF THE LEGISLATION

In 1969, provisions were drawn up laying down the maximum driving periods and the minimum breaks and rest periods. In 1985, these provisions were adjusted to make them more flexible in order to take greater account of the industry's need for flexibility and to ensure they were better observed.

While certain professionals wish to have the rules again adjusted to meet the changing needs of the transport sector, the flexibility objective seems to have been achieved (perhaps at the cost of excessive complexity of the rules). On the other hand, the objective of ensuring better observation of the provisions does not seem to have been achieved. The checks made by the Member States were limited and uneven: resources were inadequate, there was little enthusiasm for carrying out checks, not everyone was equally willing to assume the economic and practical consequences of greater rigour and, occasionally, some of the national authorities were unable to assume their responsibilities in this area.

CONDITIONS NECESSARY TO OPERATE THE LEGISLATION

The common rules on drivers' driving and rest periods aim to harmonise the conditions of competition between road hauliers of different nationalities, to improve road safety and to contribute to the social progress of drivers. In this context, they are indispensable for the correct operation of the internal market.

To be effective, the provisions on driving and rest times have to be observed. The major difficulty in this sector is ensuring that the rules are observed more or less uniformly in the different countries. The pressure of international competition, the wish to earn the most money possible, pressure from just-in-time conditions, traffic hazards (congestion) and uneven checks mean that carriers are tempted to infringe the social rules. Only an adequate system of checks and sanctions can achieve a uniform, reasonable level of observance.

Systems of checks and sanctions : e.g.

- the road checks service
- the labour inspectorate
- the road traffic inspectorate
- in NL : Rijksverkeersinspectie (RVI)
- in D : Bundesanstalt für Güterfernverkehr (BAG)
- the police and gendarmerie

KEY MEASURES

- **CHOICE OF STAGE I MEASURES**

DESCRIPTION & JUSTIFICATION :

Healthy competition and road safety make it necessary, on the one hand, to lay down common rules specifying maximum driving periods and minimum break and rest periods (daily and weekly) and, on the other, to establish a minimum check to ensure compliance with these common rules.

STAGE I MEASURES

Regulation (EEC) N° 3820/85 (OJ N° L 370/1 of 31.12.85).	COUNCIL REGULATION (EEC) No 3820/85 of 20 December 1985 on the harmonisation of certain social legislation relating to road transport.
Regulation (EEC) N° 3821/85 (OJ N° L 370/8 of 31.12.85).	COUNCIL REGULATION (EEC) No 3821/85 of 20 December 1985 on recording equipment in road transport.
Directive 88/599/EEC (OJ N° L 325/55 of 29.11.88).	COUNCIL DIRECTIVE 88/599/EEC of 23 November 1988 on standard procedures for the implementation of Regulation (EEC) No 3820/85 and Regulation (EEC) No 3821/85.

- **CHOICE OF STAGE II MEASURES**

DESCRIPTION & JUSTIFICATION :

Specific professional competence requirements were laid down for certain types of driver, i.e. those under 21 years of age engaged in the transport of goods by a lorry with a maximum authorised weight of more than 7.5 tonnes and those engaged in the transport of passengers on journeys beyond a radius of 50 kilometres from the place where the vehicle is normally based. These drivers must satisfy certain initial training conditions. This measure is of limited scope.

STAGE II MEASURES

Directive 76/914/EEC (OJ N° L 357/36 of 29.12.76).	COUNCIL DIRECTIVE 76/914/EEC of 16 December 1976 on the minimum level of training for some road transport drivers
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II. RAILWAYS

INTRODUCTION

Several factors were behind the adoption of a general Community measure concerning the railways (Directive 91/440/EEC on the development of the Community's railways). It was clear that rail was losing market share and not contributing sufficiently to the development of transport in the Community, despite its inherent suitability for certain types of transport and its advantages in terms of the environment and of safety. While one reason was that conditions of competition between different modes of transport were not equalised, another was the inadequacy of relations with the state and of the organisation of the railways.

Railways tended to suffer excessive government interference, which reduced their efficiency and hindered their response to the market. They often lacked a sound financial structure and suffered from a heavy debt burden; their financial management tended to be inadequate and financial relations with the state unsatisfactory. They were organised as national monopolies, that were too remote from the market and without sufficient exposure to competition or incentive to develop the international services that the single market required.

The general Community measure on the railways was designed to tackle these problems through the application of the principles of the single market, in particular the principle of freedom to provide services. It represented, among other things, the first step towards liberalisation and an integrated market for rail services.

This process, however, could only be progressive because of the special characteristics of the railways. It was necessary to take account of the technical links between infrastructure management and transport operation, of the benefits given by an integrated network and of obligations to provide public services.

CONDITIONS NECESSARY TO OPERATE THE LEGISLATION

The directive contains four main measures :

- the management independence of the railways from the state
- the separation of infrastructure management from the operation of transport services (at least in the accounts)
- the improvement by the state of the financial situation of the railways
- certain rights of access for railways undertakings to infrastructure, for the provision of international services.

These measures represent a considerable change in the organisation of the railways and their relations with the state. Their transposal has run behind schedule because of the complexity of the task and concern about the consequences, including for employment.

However all Member States, but two, have implemented the articles on management independence and the separation of infrastructure management from transport operation.

They have done this in a variety of ways including the simple separation of the accounts within an unified company, the creation of separate divisions under an umbrella company (which may evolve into a set of completely independent companies) and, in one case, the establishment of separate companies for many different functions in preparation for privatisation (this goes for beyond the obligations of 91/440).

The implementation of the access rights has proved more difficult. So far five Member States have applied this clause, while others have drafts in the pipeline. One reason is political opposition to a first step towards liberalisation; other reasons advanced are that the Community has not defined the conditions for implementing access rights (see point 5) or harmonised social and safety rules.

The Directive 91/440/EEC is intended to make the railways operate in a more commercial way, better to respond to demand, improve the quality of their services and lower costs. Its successful application requires an appropriate business culture, a separation of the railways from the state, efficient and transparent relations between the state and publicly owned companies and a free market in transport services. In other words, wider economic, commercial and administrative reforms are needed. Some technical assistance may be required to explain the nature and purpose of the directive and the conditions for its successful implementation.

The Directive aims to improve the situation of the existing national railway companies by granting them autonomy in their management. It also seeks to place the national railway companies on a firmer financial footing by a capital restructuring. The Directive opens up access to the rail system for certain types of operations (combined and international groupings) and requires an accounting separation of infrastructure from operators.

KEY MEASURES

The Key measure involved for the CEECs is to create a railway enterprise with management autonomy and a sound financial structure.

• *CHOICE OF STAGE I MEASURES*

DESCRIPTION & JUSTIFICATION :

The railways of the CEECs have been run by the States and do not have managerial freedom. The essential first step of any action is to create a management structure that is separate from but accountable to the State and to implement certain rights of access to railway infrastructure for international services.

STAGE I MEASURES

Directive 91/440/EEC (OJ L 237, 24.8.91).	Directive 91/440/EEC of 29/7/91 on the development of the Community's railways.
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- **CHOICE OF STAGE II MEASURES**

DESCRIPTION & JUSTIFICATION :

The Council has adopted a common position on two complementary proposals for directives designed to ensure the fair and effective implementation of the access rights created by Directive 91/440/EEC. One directive concerns the licensing of railway enterprises, the other the allocation of railway infrastructure and the charging of infrastructure fees. They will form part of the acquis and will closely condition the application of Directive 91/440/EEC.

STAGE II MEASURES

COM (93) 678 Syn 488 JO C 24 28/1/94	*	Proposal for a Council Directive on the licensing of railway undertakings.
COM (93) 678 Syn 490 JO C 24 28/1/94	*	Proposal for a Council Directive on the allocation of railway infrastructure capacity and the charging of infrastructure fees

INTRODUCTION

The only CEECs concerned by the inland waterways sector are those with navigable waterways directly linked to those of the Member States. The Commission is currently negotiating an agreement on inland navigation between the Community and these countries; this agreement is intended to settle a significant number of the problems likely to face the CEECs in their dealings with the Member States in the field of the carriage of goods by inland waterway.

Where contracts of carriage by inland navigation in the Community are concerned, vessels of the Member States' charter fleets are guaranteed free access and the pricing of transport is also free in most of the Member States, and in particular on the Rhine where this freedom is guaranteed by the revised Convention for the Navigation of the Rhine of 1868. On certain traffic routes between the Netherlands, Belgium and France and within these countries, however, a system of chartering by rotation, involving fixed prices, is in force. In the process of achieving the single market and with a view to making inland navigation more attractive to users, the Commission will soon propose to the Council measures aimed at the gradual liberalisation of this segment of the Community river market.

DESCRIPTION OF THE LEGISLATION

Transport safety

Directive 82/714/EEC of 4.10.1982 on technical requirements needs to be revised to bring it into line with the stricter requirements currently made for the safety of inland waterway vessels. The Commission has begun this work, and it will be possible to publish the results in 1996. It should be noted that the technical standards applied on the Rhine on the bases of the International Convention for Navigation on the Rhine are stricter than those of the Community Directive and that this is another reason why the Community Directive will have to be adapted.

Improving the level of carriers' qualifications

Directive 87/540/EEC advocates improving the level of qualifications for the occupation, particularly in very small family undertakings, by permitting carriers to acquire the knowledge necessary for better management of their enterprises and a more dynamic commercial approach to the market.

CONDITIONS NECESSARY TO OPERATE THE LEGISLATION

Transport Safety

Transport safety is considered from the point of view of both the floating installation and those on board. As regards vessel safety, the need has arisen to lay down at Community level standard technical rules to ensure that the circulation of vessels on the Community network takes place on the best conditions in terms of safety and in terms of competition. To this end, a Community certificate of inland navigation attesting that vessels comply with the requisite technical standards has been introduced.

Work on vessels' safety is also proceeding within the United Nations Economic Commission for Europe in Geneva and the Central Commission for Navigation of the Rhine. The latter lays down standards for all vessels travelling on the Rhine (including those of CEEC fleets).

As regards the safety of those on board vessels, standard provisions are being prepared at Community level, more particularly on the composition of crews and work and rest periods. On the Rhine, rules on this subject are already enforced and must also be observed by inland waterway transport companies of the CEECs fleets.

Improving the level of carrier's qualifications

The Directive on this subject (87/540/EEC), governing access to the occupation of carrier of goods by waterway, also makes a contribution to improving the quality of the services provided by inland waterway transport enterprises.

KEY MEASURES

- **CHOICE OF STAGE I MEASURES**

STAGE I MEASURES

Directive 87/540/CEE OJ N° L 322 of 12.11.1987	Council Directive 87/540/CEE of 9.11.1987 on access to the occupation of carrier of goods by waterway in national and international transport and on the mutual recognition of diplomas, certificates and other evidence of formal qualifications for this occupation.
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- **CHOICE OF STAGE II MEASURES**

DESCRIPTION & JUSTIFICATION :

The Directive lays down the technical requirements to be met by inland waterway vessels of the Member States' fleets if they are to obtain the Community certificate authorising them to circulate on the Member States' waterways. This measure, which is soon to be brought into line with current requirements in this regard, is of consequence for the CEECs for reasons concerning transport safety.

STAGE II MEASURES

Directive 82/714/CEE JO L301, 28.10.1982	Council Directive 82/714/CEE of 4/10/82 laying down technical requirements for inland waterway vessels.
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DESCRIPTION OF THE LEGISLATION

Regulation 4055/86 is the foundation stone for the freedom to provide services in maritime transport. It establishes liberalisation of the maritime transport market between Member States and between Member States and third countries. A transition period was allowed for certain restrictions: this transition period ended on 1 January 1993. The Regulation covers unilateral and bilateral restrictions and any other restrictions which might impinge on the general principle of freedom to provide services. The Member States are forbidden to maintain any direct or indirect measures which would prevent access to the market by the beneficiaries of the Regulation. They are forbidden from concluding cargo-sharing arrangements in future bilateral agreements. The beneficiaries are defined in Article 1 of the Regulation and are "nationals of Member States who are established in a Member State other than that of the person for whom the services are intended"; as well as "nationals of the Member States established outside the Community and to shipping companies established outside the community and controlled by nationals of a Member State, if their vessels are registered in that Member State in accordance with its legislation."

The definition given to maritime transport services between Member States and between Member States and third countries is that they are normally provided for remuneration as (a) intra-Community shipping services: the carriage of passengers or goods by sea between any port of a Member State and any port or off-shore installation of another Member State, and (b) third country traffic: the carriage of passengers or goods by sea between the ports of a Member State and ports or off-shore installations of a third country.

The main International Convention which pre-dates the Regulation is the United Nations Code of Conduct for Liner Conferences, which has a chapter on market access for liner traffic. There is a Council Regulation (EEC) No. 954/79 of 15 May 1979 concerning the ratification by Member States of, or their accession to, the Convention (O.J. No. L121 of 17 May 1979). More recently the Europe agreements between the Community and some third countries cover access to maritime transport services which are governed by the Regulation.

The Regulation is implemented by the Commission through an established procedure. Most potential infringements are discovered by the Commission in analysing documents submitted by the Member States, or by Complaints received from beneficiaries of the Regulation.

Regulation No. 4055/86 entered into force on 1 January 1987, albeit with a transitional period for some restrictions. Compliance by the MS has in general been high, although difficult in the case of cargo-sharing arrangements in bilateral agreements with third countries. The Court of Justice has interpreted the principle of freedom to provide services in a very wide sense, and there have been very few examples (if any) of restrictions being allowed that impinge on the freedom to provide services. As a legislative instrument, the Regulation has proved effective in maintaining the

liberalisation granted.

CONDITIONS NECESSARY TO OPERATE THE LEGISLATION

Nothing specific apart from maritime administration.

KEY MEASURES

- ***CHOICE OF STAGE I MEASURES***

DESCRIPTION & JUSTIFICATION :

Regulation 4055/86 is directly applicable, therefore legally binding rules are necessary. The first stage should include a compilation of all restrictions covered by the Regulation, and an examination of how quickly they can be eliminated.

STAGE I MEASURES

Regulation 4055/86 (OJ L378, volume 29, of 31.12.1986)	Council Regulation (EEC) No. 4055/86 of 22.12.86 applying the principle of freedom to provide services to maritime transport between Member States and between Member States and third countries.
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- ***CHOICE OF STAGE II MEASURES***

DESCRIPTION & JUSTIFICATION :

No measures listed.

INTRODUCTION

The European Union is to a large extent dependent on reliable, cost effective and safe shipping services. Its maritime transport policy must therefore ensure that such services are undertaken at a minimum level of risk for all directly or indirectly concerned and for the marine environment.

Shipping disasters in European waters or involving European vessels, deficiencies and ship detention reports by Port States and a rise in the number of work-related accidents on board ships show that the level of risk in shipping activities is still very high.

The Commission's services have prepared a document (the Communication "A Common Policy on Safe Seas" - COM(93) 66 of 24.02.1993) which seeks the enhancement of safety and prevention of pollution at sea through the elimination of substandard operators, vessels and crews from Community waters, irrespective of the flag of the ships. The measures which the Commission considers necessary to reach this goal are listed in the Action Programme attached to the Communication; some of them have already been adopted by the Council, others will be adopted in the course of 1995.

DESCRIPTION OF THE LEGISLATION

The aim of the Community legislation is to achieve a high level of safety within shipping and to protect the marine environment. Achieving this aim will have significant economic implications on the competitiveness of European Union shipping. It is important to ensure that the CEECs do not enjoy a competitive advantage by not adhering to the same standards. Due to the important role the recognized organizations play in this connection, the Council Directive on common rules and standards for ship inspection and survey organizations and for the relevant activities of maritime administrations should be implemented during the first stage.

To avoid distortion of competition also between ports, it is important that the Council regulation on the implementation of IMO Resolution A747(18) on the application of tonnage measurement of ballast spaces in segregated ballast oil tankers and the future Council directive on Port State Control are being implemented from the first stage. The latter will enhance compliance by non-EU flag vessels with the requirements of the international conventions.

Also the Council directive 93/75/EEC of 13 September 1993, concerning minimum requirements for vessels bound for or leaving Community ports and carrying dangerous or polluting goods, should be implemented from the first stage due to its importance in relation to safety of navigation and protection of the coastline.

CONDITIONS NECESSARY TO OPERATE THE LEGISLATION

Shipping is an international industry. All legislation in the area is mainly based on the conventions of the International Maritime Organization (IMO) and the International Labour Organization (ILO). The CEECs with a coastline and/or a Ship's Register should have acceded to all the major instruments drafted under the auspices of the IMO and ILO and in force.

Ships registered in a particular State may often trade far away from that State for extensive periods of time. This requires the State to be in possession of a maritime administration which not only has the qualifications but also the resources to enforce the relevant legislation on ships flying its flag and seldom calling at their home port. If the enforcement of the requirements on ships construction, equipment and operation is being delegated to recognized organizations, such as classification societies, the responsibility still rests with the flag State which should be able to monitor that the recognized organization is acting in accordance with the conditions stipulated in the formal delegation. As a prerequisite, a competent maritime administration capable of implementing the international requirements into national legislation and monitoring and policing their enforcement, should be established.

The Community instruments have been constructed to supplement national legislation and they pre-suppose that a basic legislative structure on maritime safety and protection of the marine environment is already in existence.

KEY MEASURES

The measures listed as "Key measures" represent some of the most important tools on which the EU Policy for "Safe Seas" is based and which have been already adopted at Community level.

• CHOICE OF STAGE I MEASURES

DESCRIPTION & JUSTIFICATION :

Council Directive 93/75/EEC requires the shippers, operators or masters of vessels carrying dangerous or polluting goods and bound for or leaving community ports, to report to the Member States concerned a certain number of information related to the identity, voyage and cargo of the ship before the arrival or departure from sea ports, or in case of an accident at sea.

The aim of Council Regulation 2978/94/EC is to promote the use of segregated ballast tankers in Community waters and to enhance the protection of marine environment by making IMO Resolution A.747(18) on the calculation of port dues for segregated ballast tankers mandatory in the Community.

Council Directive 94/57/EC lays down common criteria for classification societies or other private bodies acting on behalf of the National Administrations of the Member States. These criteria aim to ensure that such bodies are professionally efficient, reliable and able to maintain proper control of compliance with safety and environmental protection standards of the vessels they survey.

Council Directive 94/58/EC fixes a minimum level of training for captains, officers and seafarers and foresees an adequate knowledge of language for seafarers in charge of safety duties on board of passenger vessels and of ships carrying dangerous or polluting goods. The requirements advocated are based upon those the STCW Convention with the aim of their harmonised implementation.

The purpose of the proposal for a Directive COM (94)73 is to drastically reduce the number of substandard ships in the Community waters through a more severe enforcement of compliance to the IMO and ILO Conventions and Resolutions, through controls of ships and crews carried out by authorities of the State of the ports visited by the ships.

Generally speaking, one could argue that the CEECs should adopt these measures in the first stage because they are fundamental steps to enhance safety at sea and reduce the risk of marine pollution in the Community waters.

More specifically, as Flag States members of IMO and signatories of the relevant safety and pollution Conventions, CEECs are bound to comply with their international commitments. Adherence to the EU measures, which are designed to ensure the effective implementation of the International laws, is therefore a coherent step CEECs should take to be consistent with their international commitments and to ensure that their ships are not targeted by Community inspectors for Port State Control action.

STAGE I MEASURES

Council Directive 93/75/EEC (O.J. No. L 247 of 5.10.1993)	Council Directive 93/75/EEC of 13 September 1993 concerning minimum requirements for vessels bound for or leaving Community ports and carrying dangerous or polluting goods.
Council Regulation (EC) No. 2978/94 (O.J. No. L 319 of 12.12.1994)	Council Regulation (EC) No. 2978/94 of 21 November 1994 on the implementation of IMO Resolution A.747(18) on the application of tonnage measurement of ballast spaces in segregated ballast oil tankers.
Council Directive 94/57/EC (O.J. No. L 319 of 12.12.1994)	Council Directive 94/57/EC of 22 November 1994 on common rules and standards for ship inspection and survey organizations and for the relevant activities of maritime administrations.
Council Directive 94/58/EC (O.J. No. L 319 of 12.12.1994)	Council Directive 94/58/EC of 22 November 1994 on the minimum level of training of seafarers.
Proposal for a Council Directive COM (94) 73 final of 16/3/94 OJ C 107 - 15/4/94.	* Proposal for a Council Directive concerning the enforcement, in respect of shipping using Community ports and sailing in the waters under the jurisdiction of the Member States, of international standards for ship safety, pollution prevention and shipboard living and working conditions (Common Position adopted on 14/3/95 OJ C 93, 13/4/95).

- **CHOICE OF STAGE II MEASURES**

DESCRIPTION & JUSTIFICATION :

Having accomplished the implementation and enforcement of the measures under stage I, stage II should mainly include implementation of Regulation EC 613/91 on the transfer of ships within the Community. This regulation lays down criteria which regulates the transfer of ships flying the flag of a Member State between the registers of Member States, in order to impede that technical barriers may create an obstacle to such transfer. As the maritime infrastructure of the CEECs improves, transfer of ships mainly to their registers may take place.

To ensure that any future radio-navigation system fulfils the international objectives and cover the widest possible geographical area in Europe and in neighbouring waters the Council Decision of 25 February 1992 on radio-navigation systems for Europe including compatible Loran - C chains, should be introduced.

Due to the limited geographical scope of the Directive 79/115/EEC of 21 December 1978 on pilotage in the North Sea and the Channel, this is of no relevance to the CEEC States.

STAGE II MEASURES

Council Regulation 613/91/EEC (O.J. No. L 68 of 15.3.1991)	Council Regulation 613/91/EEC of 4 March 1991 on the transfer of ships from one register to another within the Community.
Council Decision 92/143/EEC (O.J. No. L 59 of 4.3.1992)	Council Decision 92/143/EEC of 25/2/92 on radio-navigation systems for Europe.
Council Directive 79/115/EEC (O.J. No. L 033 of 8.2.1979)	Council Directive 79/115/EEC of 21 December 1978 concerning pilotage of vessels by deep-sea pilots in the North Sea and the English Channel.

DESCRIPTION OF THE LEGISLATION

- a. The European Union has developed an air transport policy in the course of a number of years. This policy introduced, step by step, not only a liberal system but also safeguards and harmonization measures with a view to permit time for adaptation and to achieve a level playing field. As a consequence, essential provisions included in the bilateral agreements between the twelve Member States were therefore automatically replaced. This development took into consideration the existence of the international framework established by the Chicago Convention thus avoiding conflicts with world-wide accepted rules. The interrelationship between an open market access system, harmonisation and safeguards is important and must be preserved when the CEEC countries consider adhesion.

In short the European Union has been creating commercial freedom but has also taken steps and may take more with regard to harmonization as well as against unfair competitive advantages. Appropriate safety standards and consumer protection have been established. In other words the Union has gone down the road of liberalization not deregulation. All of this has been done for the whole internal market i.e. both between and within Member States. It is doubtful whether the liberalization efforts could have succeeded if the European Union has not followed a step by step approach and had not introduced the above mentioned safeguards and accompanying measures, in particular those ensuring fair conditions of competitions.

- b. However, in aviation this process cannot be separated from the negotiation which will take place according to the Association Agreements on market access for air transport. In order for market access to be granted in an open manner it is necessary for the CEEC countries to carry out considerable harmonisation and to introduce safeguards. The Association Agreements foresee a two-tier approach: The conclusion of agreements on market access (to be negotiated) for air transport services and adaptation to the remaining part of the Community acquis as a unilateral obligation of the associated countries.
- c. A proposal for a negotiating mandate has been adopted by the Commission on 1 March 1995. It foresees a gradual liberalisation process similar to the Community's three packages and stipulates a number of minimum requirements to any agreements. The key elements of the three core Regulations of the Third Aviation Package (Regulation 2407/92 on granting licences, Regulation 2408/92 on access to routes and Regulation 2409/92 on air fares) will be the subject of such negotiations.

However, the relaxation of market access restrictions between the countries in question demand that a certain effective and enforceable alignment with Community law takes place in the countries in question. The necessary alignment for the purposes of adhesion will, therefore, to a large extent be driven by these negotiations in the aviation sector.

The subsequent remarks refer only to alignment of domestic legislation for the countries in question

CONDITIONS NECESSARY TO OPERATE THE LEGISLATION

The application of the Community aviation legislation demands a comprehensive aviation administration to take care of both economic and technical matters. Without such an administration air transport is particularly susceptible to suffer from safety problems. Since the Community legislation is based on a market oriented framework where air carriers have a great deal of freedom of action it is impossible to assume that self-control is a viable option.

In addition it is necessary to establish an efficient administration to take care of competition problems.

All the countries in question have an aviation administration but it is clear that considerable development is necessary before they can tackle technical and economical control of air carriers effectively. The PHARE programme is being used to achieve improvements but much remains to be done.

The following remarks do not include measures necessary for the implementation of competition rules since they are included in the relevant section.

• **CHOICE OF STAGE I MEASURES**

DESCRIPTION & JUSTIFICATION :

The adoption by the Commission of a negotiating mandate and the prospect of market relaxation, demand that an effective alignment with Community law takes place in the countries in question. Although some countries have shown that they are ready to accept a significant opening-up of their markets, the different economic levels of CEC require a transitional period for the adoption of the third package principles. In this context rules clearly related to market access (slots, computer reservation systems) and the Community's safety and noise standards merit specific attention. It is essential to make sure that countries benefiting from more liberal rules on market access accept the safety and environmental standards established by means of Community legislation. Rules on effective control in air carriers eligible to access to the markets in question will also have to be safeguarded.

The following remarks describes Stage I measures from an ideal point of view. In actual fact it may well be different depending on the outcome of the above mentioned negotiations on market access. Community law aimed at ensuring safe air operations, environmental compatibility and effective market access will belong to such priority areas.

a. Technical fitness and safety in general

The Union has adopted directives on the mutual acceptance of cockpit personnel licenses. It also adopted a regulation with the objective of producing common rules for the certification of aircraft, maintenance organizations and air operators as well as for the licensing of personnel involved in aviation safety and aircraft operations. The Union also adopted a directive enabling the enforcement of common standards required to interconnect the different air traffic control systems using the specifications of EUROCONTROL. Further actions are under way in the fields of implementing the CNS/ATM concept and rationalising air traffic management in Europe.

b. Economic fitness

Operating licenses can not be granted unless the air carriers concerned demonstrate to their competent authorities that they are financially fit. These licenses may also be revoked or suspended when the air carriers are unable to meet their actual and potential obligations. An insurance to cover liability in case of accidents is compulsory.

c. Slot allocation

In order to avoid that congestion at airports and in the airspace becomes a bottleneck blocking the practical effects of the liberalization process, the Union has dealt with the issue of physical access to the infrastructure. Thus, a regulation on slot allocation was developed which acknowledges existing "grandfather" rights and ensures that allocation is based on neutral, transparent and non-discriminatory rules.

d. Computerised Reservation Systems

Normally CRS rules are mentioned as part of consumer protection but there are also quite a few concerns of air carriers in the context of CRSs. Air carriers need to be present in the CRSs and to have their products presented in a non-discriminatory way compared to their competitors. It is also useful to have competition between the systems so that fees are not unreasonable. Whether or not there is competition among air carriers the consumers are interested in having the services presented which are closest to their desiderata be that in respect of schedules or price. The presentation must be as comprehensive as possible and truthful. For all these reasons a code of conduct for CRSs was developed in 1989 and revised in 1993. The code ensures non-discrimination and equal rights of access to the services of the CRSs for air carriers and travel agents. For the consumers the code prescribes a neutral and comprehensive display. The code is compatible with the ICAO guidelines.

e. Noise

The Union, in view of making all operators bear the same burdens, has adopted a number of directives on the gradual phasing-out of noisy aircraft.

STAGE I MEASURES

Council Regulation No. 2407/92 (OJ L240 of 24.8.92)	Council Regulation No. 2407/92 of 23 July 1992 on licensing of air carriers.
Council Regulation No. 3922/91 (OJ L373 of 31.12.1991).	Council Regulation No. 3922/91 of 16 December 1991 on the harmonisation of technical requirements and administrative procedures in the field of civil aviation.
Council Directive No. 94/96/EC (OJ L319 of 12.12.1994)	Council Directive 94/96/EC of 21 November 1994 establishing the fundamental principles governing the investigation of civil aviation accidents and incidents.
Council Regulation No. 2299/89 (OJ L220 of 29.7.1989) as amended by Council Regulation No. 3809/93 of 29.10.1993 (OJ L278 of 11.11.1993).	Council Regulation No. 2299/89 of 24 July 1989 introducing a code of conduct for computerized reservation systems.

Council Directive 80/51 (OJ L18 of 24.1.1980) as amended by Directive 83/206/EEC of 21st April 1983 (OJ L117 of 4.5.1983).	Council Directive 80/51 of 20 December 1979 on the limitation of noise emissions from subsonic aircraft.
Council Directive 89/629 (OJ L363 of 13.2.1989).	Council Directive 89/629 of 4.12.89 on the limitation of noise emissions from civil subsonic jet aeroplanes.
Council Directive 92/14 (OJ L76 of 23.2.1992)	Council Directive 92/14 of 2nd March 1992 on the limitation of the operation of aeroplanes covered by Part II, Chapter 2, Volume 1 of Annex 16 to the Convention of International Civil Aviation, second edition (1988).
Council Regulation 95/93 (OJ L of 22.1.1993)	Council Regulation 95/93 of 18.01.93 on common rules for the allocation of slots at Community airports .

• **CHOICE OF STAGE II MEASURES**

DESCRIPTION & JUSTIFICATION :

Once rules related to market access have been introduced and a more liberal legislation is in place, specific attention should be devoted in order to avoid serious economic disruption and to guarantee the protection of the consumers.

a. Domestic market access relaxation

While market access between the CEEC countries and the Union will be taken care of in the negotiations referred to above the countries will also have to open up market access on the domestic market. This should be done well in time of accession so as to allow for a time of adaptation for their own air carriers.

b. Economic safeguards

Where overcapacity has created serious economic difficulties for scheduled carriers of a given Member State, the capacity to and from that State can be stabilized for a limited period. Fares decreases can be stopped when they have resulted in wide spread losses among all carriers for the services concerned.

c. Public Service Obligations

When the market mechanisms do not result in needed services for example to peripheral regions possibilities exist to impose public service obligations. However, any exclusive concession which might result from this will have to be given on the basis of a competitive process, namely a tendering procedure, in which air carriers from the whole of the EU can participate.

d. Consumer Protection

Consumers should not be made to suffer if the market mechanisms fail. The first element to deal with this is a regulation establishing certain rights of passengers who are denied boarding on overbooked flights. Other measures are not limited to the air transport sector. Thus, the Union has adopted a directive about package tours which create a whole host of consumer rights typically in the tourism area. The Union has also moved in general to act against unfair contract terms including those in aviation.

STAGE II MEASURES

Council Regulation No. 2408/92 (OJ L240 of 24.8.92)	Council Regulation No. 2408/92 of 23 July 1992 on access for Community air carriers to intra-Community air routes.
Council Regulation No. 2409/92 (OJ L240 of 24.8.92)	Council Regulation No. 2409/92 - of 23 July 1992 on fares and rates for air services.
Council Regulation No. 295/91 (OJ L36 of 8.2.91)	Council Regulation No. 295/91 of 4 February 1991 establishing common rules for a denied-boarding compensation system in scheduled air transport.
Council Directive 90/314 (OJ L158 of 23.6.90)	Council Directive 90/314 of 13 June 1990 on package travel, package holidays and package tours.
Council Directive 93/13 (OJ L95 of 21.4.93)	Council Directive 93/13 of 5 April 1993 on unfair terms in consumer contracts.

Remaining key and non key measures not identified in preceding stages

No. 65/93

Council Directive on the definition and the use of compatible technical and operating specifications for the procedure of air traffic management equipment and systems (OJ L187 of 29.7.1993)

No. 670/91

Council Directive of 16 December 1991 on mutual acceptance of personal licenses for the exercise of functions in civil aviation (OJ L373 of 31.12.1991)

AUDIO VISUAL SERVICES

GENERAL INTRODUCTION

The "Television without frontiers" Directive, 89/552/EEC,¹ was adopted on 3 October 1989 after several years of debate within the Community institutions.² The intensity of the discussions reflected the place which television already occupied in the societies of the Member States, at the heart of the major economic, industrial, cultural, social and technological challenges facing them.

The Directive co-ordinates Member States' provisions in a number of areas where differences between them were such as to form a legal obstacle to the free movement of television broadcasts. The adoption of the Directive and the introduction of common rules in the areas where they were required now means that, provided a broadcaster established in a Member State complies with the law applicable in that state, its broadcasts may be received and retransmitted freely throughout the Union. The areas co-ordinated for this purpose go well beyond mere programme promotion to include matters such as jurisdiction, television advertising and sponsorship, the protection of minors and the right of reply.

The deadline for Member States to comply with the Directive was 3 October 1991, two years after adoption. Although most of the Member States did meet this deadline, national implementing measures continued to be notified until July 1994. Acting under its powers to monitor the application of Community law, the Commission launched the infringement proceedings that proved necessary after examination of the measures. Three cases were referred to the European Court of Justice because the national legislation failed to comply with the Directive. They involved the United Kingdom, Belgium.

This Directive was followed by another, adopted in 1993, on copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission,³ to be transposed into national legislation by 1 January 1995 (see contribution : Intellectual, Industrial and Commercial Property). Together the two Directives are intended to create a regulatory environment conducive to the growth of the broadcasting industry.

¹ OJ No L 298, 17.10.1989, hereinafter "the Directive".

² The Commission had presented its proposal on 30 April 1986 (COM(86)146 final, published in the Bulletin of the EC, Supplement 5/86.

³ Council Directive 93/83/EEC on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission (OJ L 248, 6.10.93).

DESCRIPTION OF THE LEGISLATION

The Directive applies only to Member States of the European Union but its principles can be respected by third countries on a mutual basis as well. The European Economic Area Agreement with the EFTA-States has extended the Directive's field of application to these States, with the exception of Switzerland. The Commission welcomes all extension of the area of application of the Directive and therefore invites the CEECs to align with its provisions. In regard of third countries it has been the Commission's policy to insist on negotiating audio-visual matters as a package, containing not only the Directive 89/552/EEC, but also the Directives on copyrights and neighbouring rights 93/83/EEC, 92/100/EEC,⁴ 93/98/EEC⁵ (see contribution : Intellectual, Industrial and Commercial Property).

As regards legislative initiatives by other international organisations, it is to be stated that the European Convention on Transfrontier Television by the Council of Europe covers basically the same area of activities as the Directive. In the process of alignment to the Union's policy in this area, CEECs already party to the Council of Europe Convention will have to adjust their legal systems in some details only. As a general rule, however, Community law prevails over regulations by the Convention: "*In their mutual relations, Parties which are members of the European Economic Community shall apply Community rules and shall not therefore apply the rules arising from this Convention except in so far as there is no Community rule governing the particular subject concerned.*" (Article 27 of the European Convention on Transfrontier Television).

Differences between these two regulations are as follows:

- The Directive covers all broadcasting, irrespective of its transfrontier nature, while the Convention is applicable only to cross border transmissions.
- As regards satellite broadcasters, the Directive uses the criterion of establishment to determine jurisdiction (i.e. which State's law applies to each broadcaster, the principle being that only the transmitting State can regulate). The Convention takes the criterion of the place of up-link.
- Advertising directed specifically at a single Party shall - according to the Convention - not circumvent the television advertising rules of that particular State. This provision is contrary to Internal Market principles and is not compatible with the Directive.
- The Directive is legally binding for all Member States, while the Convention is binding only to those States, having signed and ratified the Document. The following states have ratified the Convention by 27 Oct. 1994: *Cyprus, Finland, France, Germany, Italy, Malta, Norway, Poland, San Marino, Switzerland, Turkey and the United Kingdom.*

⁴ Council Directive 92/100/EEC on rental right and lending right and on certain rights related to copyright in the field of intellectual property (OJ L 346, 27.11.92).

⁵ Council Directive 93/98/EEC harmonizing the term of protection of copyright and certain related rights (OJ L 290, 24.11.93).

CONDITIONS NECESSARY TO OPERATE THE LEGISLATION

Legislative approximation in this field pre-supposes the existence of national regulatory systems in the field of broadcasting. These systems have to address basic notions such as applicable law, regulations of advertising and sponsorship, protection of minors and the right of reply. In the majority of the Member States media policy matters are settled by national or regional regulatory bodies. All legal activities by the Commission and the Council have to be transposed by the national authorities, in the case of the audio-visual policy by the respective regulatory bodies.

Bodies or organisations which have a control, surveillance or regulatory function

Audio-visual policy pre-supposes the existence of national regulatory systems, in most Member States these are independent bodies under the authority of a Ministry. In the United Kingdom, for example, the responsible Ministry is the Department of National Heritage and the Regulatory Authorities are the Independent Television Commission for private broadcasters and the BBC for the public sector. In France, the Ministries for Culture and Communication are responsible and the Conseil Supérieur de l'Audiovisuel is the regulatory Authority. This system of dividing regulation and government ensures the independence of broadcasting from political interference.

In some Member States, audio-visual matters are under the authority of regional governments as in Germany. Each of the Länder has its own regulatory authority and the Ministry of Interior is co-ordinating federal audio-visual policy.

Bodies which organise or represent professions or trades

At the international level two organisations representing broadcasters exist. The public service broadcasters are practically all members of the European Broadcasting Union (EBU) which includes members from CEECs who have been formally members of the OIRT. Private broadcasters have founded the Association of Commercial Television (ACT), representing a large number of private broadcasters all over Europe. At the level of the production of audio-visual works for television, numerous organisations and professional associations exist.

Legislative infrastructure including international conventions

As pointed out in the Fiche from 24 January 1995 the European Convention on Transfrontier Television by the Council of Europe covers basically the same area of activities as the Directive 89/552/EEC. This Convention complements the Union's audio-visual policy by extending the field of application to non-Member States of the Union.

- **CHOICE OF STAGE I MEASURES**

DESCRIPTION & JUSTIFICATION :

The Directive establishes the legal frame of reference for the free movement of television broadcasting services in the Union. The term "broadcasting services" covers all television from point to multipoint, and includes therefore encrypted Pay-TV, pay-per-view and near-video-on-demand. For the purposes of free movement of these services the Directive provides for the Community co-ordination of national legislation in the following areas:

- Law applicable to television broadcasts

The system established by the Directive, which introduces the rule of a single applicable law, hinges on a fundamental and twofold principle:

- each broadcaster shall be subject to the legislation of a single Member State, which is responsible for ensuring compliance (Article 2.1);
- Member States shall ensure freedom of reception and retransmission on their territory of broadcasts under the jurisdiction of another Member State (Article 2.2). The provisional suspension of retransmissions is allowed only in the event of repeated infringement of Article 22 (see below). This will give rise to a special consultation procedure involving the Commission, the transmitting State and the receiving State.

- Promoting the production and distribution of European works

These measures are intended to encourage the European programme industry to adapt to the new audio-visual area created and require broadcasters to:

- reserve a majority proportion of their transmission time, excluding time appointed to news, sports events, games, advertising and teletext services, for European works (Article 4),
- reserve 10% of transmission time, or alternatively 10% of the programming budget, for European works created by independent producers, with an adequate proportion of recent works (Article 5).

A definition of the concept of European works is given in Article 6.

These rules do not apply to local television broadcasts which do not form part of a national network (Article 9).

- Televised broadcasts of cinematographic works

The Directive introduces a mechanism to establish a system of media time-scales: a cinematographic work may not be broadcast on television until two years after it was first shown in cinemas (or one year in the case of a coproduction-production with a broadcaster). A different deadline may be agreed with the rights holders (Article 7).

- Television advertising and sponsorship

In the area of advertising the co-ordinated rules deal with:

- the general provisions to ensure that advertising is recognisable as such (Article 10);
- arrangements for advertising breaks (Articles 11 and 18);
- rules on ethical matters and the protection of minors (Articles 12 and 16); advertising for tobacco products (Article 13), medicinal products (Article 14) and alcohol (Article 15).

As regards sponsorship, the aim of the Directive is to ensure on the one hand that it is recognisable and on the other to prevent any influence being exerted on programme content (Article 17).

- Protection of minors (Article 22)

The Directive contains a general rule concerning programme content:

- a general ban on programmes likely to be seriously harmful to minors; and
- restrictions in the form of selected time of broadcast or technical means on programmes likely to be harmful to minors.

The Directive also contains a general ban on programmes containing incitement to hatred on grounds of race, sex, religion or nationality.

- Right of reply (Article 23)

This Article provides for legal redress for any person whose legitimate interests have been damaged by an allegation in a television broadcast, by appropriate rules of civil, administrative or criminal law.

In addition to these areas that are co-ordinated, the Directive contains a number of general provisions:

- Member States are free to:

- adopt stricter rules for broadcasters under their jurisdiction (Article 3),
- adopt stricter or more detailed rules on the proportions of European works where justified on grounds of language policy (Article 8),
- adopt other rules on advertising breaks for broadcasts intended solely for the national territory that cannot be received elsewhere (Article 20).

- Member States must:

- ensure compliance with the Directive (Article 3),
- ensure that appropriate measures are taken to penalise television broadcasts that do not comply with the rules on advertising and sponsorship (Article 21).

STAGE I MEASURES

<p>Council Directive 89/552/EEC OJ L298 of 17.10.1989</p>	<p>Council Directive 89/552/EEC of 3 October 1989 on the co-ordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities.</p>
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