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REPORT FROM THE COMMISSION TO THE COUNCIL  
AND THE EUROPEAN PARLIAMENT

# THE SINGLE MARKET IN 1994

The First through the Seventh Reports (1986-1992) were published as *Report of the Commission ... concerning the implementation of the White Paper on completing the Internal Market*. The title of the 1993 report is *The Community Internal Market*. The 1994 and 1995 reports are titled *The Single Market*. The annexes to the 1994 and 1995 reports were published as *State of Community law concerning the internal market* and are on AEI-EU as separate documents. The series ends with the 1995 report.

**NOTE**

References in the body of the report to Council or Commission legislation and to Treaty articles are followed by an asterisk\* without a footnote. Full titles and references of legislation and the text of Treaty articles are given in Annex 2 to the report.

Annexes to the 1993 Report have been replaced by an independent publication "*State of Community law concerning the Internal Market*", which is updated twice yearly and which is available from DG XV.

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## Introduction

For our citizens and European business the completion of the single market and the steady improvement of its operating effectiveness are crucial to the competitiveness and political credibility of the Union. The single market remains at the heart of our efforts to safeguard the competitiveness of our industry, to create jobs and to stimulate economic growth. Its creation and consolidation is a continual and dynamic process which constitutes a cornerstone of the achievement of the convergent economic environment essential to the creation of EMU.

The key message from the Commission in this, its second Annual Report on the Community Single Market, is that, taken as a whole, the single market is working, but there are still problems in several areas. It is therefore necessary to improve and reinforce the legal and administrative framework both at Community and at national level in the interests of citizens and business. The removal of border controls on the movement of goods is being reflected in greater efficiency and lower costs for European business, capital is moving freely between Member States, service providers are operating in new markets and more firms are competing for public contracts. Individuals, too, are availing themselves of the opportunities offered by the single market for working in other Member States. Where barriers persist, administrative machinery is being developed to resolve problems quickly without the need for infringement proceedings.

The central importance of the single market has been reflected in repeated political endorsements from successive European Councils. However, such expressions of political commitment now need to be matched by action. During 1994, little progress was made in adopting the few (but important) legislative measures needed; in particular, no progress was made on the elimination of border controls on people. In some areas, adopted measures are not being implemented in national legislation in accordance with the agreed timetables; a further crucial issue is how the measures which have already been transposed are actually applied. Business and consumer interests have confirmed that, for a number of key sectors, delays in implementation and the inadequate enforcement of Community law remain the greatest threat to the single market.

Consolidation of the internal market requires the Commission and the Member States to ensure strict observance of the existing rules. This should involve stricter monitoring of Community regulations to ensure that national implementing legislation is fully effective and that citizens have the necessary means of action to assert their rights. The completion of the internal market can be pursued, on the one hand, by ensuring that the principle of mutual recognition is applied as broadly as possible, and, on the other hand, by adopting measures, in keeping with the principle of proportionality, designed to eliminate any obstacles that prevent citizens from fully benefiting from the new economic and legal environment.

The single market is one of the most important achievements of the Community, which has led individuals and businesses to expect tangible benefits from Community action. The necessary political effort of the past needs to be renewed to reap the economic and political rewards. Faster and more substantial progress in making the single market work is needed to match expectations.

The Commission continues to work to ensure that the rules of the game are not only in place but also applied in practice. It is pressing on with the Strategic Programme "Making the Most of the Internal Market" (1), which it adopted in December 1993 and which was endorsed by the Council. In particular, the Commission has been vigorously pursuing legal proceedings against any Member State which has fallen behind in implementing single market legislation. A lot of progress has been made in identifying and tackling outstanding trade barriers by the development of contact-point networks between the Member State administrations and the Commission for the rapid solution of practical problems as they arise.

The European Council decided at its Brussels meeting in 1993 that the Annual Report on the Internal Market should be considered as part of the follow-up to the action plan for employment. A summary report was therefore forwarded to the European Council for its Essen meeting in December 1994. In its conclusions the presidency of the European Council stressed the importance of the internal market and the need for uniform and effective application of the rules.

The Commission intends this Annual Report to be an increasingly useful tool for individuals and businesses. It is intended not only to keep them informed of legislative and other developments designed to enhance the operation of the single market, but to provide a basis for discussion and debate on its practical advantages and remaining problems. This was a particular concern of the European Parliament and of the Economic and Social Committee in their reactions to the 1993 report. The Commission has included more concrete information on outstanding problems, although it has not been possible to respond in full to these requests. Representative organizations have also been encouraged to contribute their views on the operation of the single market in the course of the preparation of this report, and contributions from interested parties will continue to be welcome for future reports. The Commission intends to incorporate more economic analysis of the single market in future reports, as the instruments which will facilitate such analysis are developed and data from the major study to be published in 1996 become available (see paras 39 to 42).

The analysis of the state of the single market in this report shows that much still remains to be done to make a really open area in which persons, goods, services and capital move freely and effectively. Existing Community rules must be enforced, the application of the principle of mutual recognition of national legislation must be strengthened, the adoption of the relatively limited number of legislative measures still required must be speeded up.

Among the key issues where progress will have to be made over the next few years, as mentioned in the Commission's annual programme for 1995, are the following:

- completing the single market for citizens, so that they will see the advantages of European integration in their daily lives;
- achieving full freedom of movement of people, through the elimination of border controls within the Union;
- further harmonising tax legislation;
- promoting a more effective single market for business, in particular in the field of company law and intellectual property rights;
- ensuring equivalent enforcement of Community law, including access to justice and effective penalties in the case of infringements;
- preparing the appropriate basic regulatory framework for services relating to the information society;
- liberalizing public utilities;
- assisting the Central and Eastern European countries to adapt to single market requirements, giving priority to the preparation of the White Paper on the subject.

(1) COM(93) 632 final of 22 December 1993.

## PART ONE

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### General Review

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#### Section 1 - Overall assessment of the operation of the single market

**1. The Commission has drawn on various sources for this second assessment of the operation of the single market.**

It increased its own information-gathering activity during 1994. It commissioned enquiries among small and medium-sized enterprises in cooperation with a number of Euro Info Centres in February and November, and a public opinion survey in each Member State in October. During the second half of the year it organized "Internal Market Weeks" in every Member State, in which teams of Commission officials presented policy to audiences in various locations and invited comments, complaints and questions; in most countries widely-advertised telephone hot-lines or radio programmes also provided an opportunity for comment from a wider public. Public hearings were also organized on such subjects as the future development of the value added tax system or intellectual and industrial property protection. The Commission also received a substantial number of formal complaints from national authorities and individual businesses or citizens.

Other institutions and organizations have also helped to shape the Commission's assessment of how the single market is working. The Economic and Social Committee, for example, organized its own hearing on the operation of the internal market in June 1994, for which over forty organizations prepared written submissions. Some fifty organizations responded to the Commission's invitation to contribute their own assessments in time for the drafting of this report. In addition some national administrations have commissioned studies on particular subjects relating to the single market, such as the Danish Ministry of Industry survey on technical barriers to trade and the report of the Spanish Ministry of Commerce and Tourism on problems experienced by Spanish business, or have submitted reports from the departments which have particular responsibility for dealing with complaints concerning the operation of the internal market. The Advisory Committee for coordination on internal market affairs has also provided a forum for regular assessment of the operation of the market.

Although these information flows are incomplete they provide a useful basis for a provisional evaluation of the state of the single market. A more complete view will be obtained from the studies which the Commission is currently launching as part of its preparation of a report on the effectiveness and impact of single market legislation to be sent to the Council in 1996, in accordance with Council resolution 92/1218/EEC\* of 7 December 1992 on making the internal market work.

**2. There is now clear evidence that many benefits of the 1992 legislative programme are already being widely felt as the practical effects of legislative measures feed through to the marketplace, although surveys tend to focus on remaining problems rather than on benefits already being enjoyed.**

For example:

- the elimination of border controls for goods has considerably improved the efficiency of transport services and reduced costs and delivery times for the distribution of goods within the Community. The Euro Info Centre surveys of small and medium-sized companies (2) and the report of the Committee of Enquiry on road freight transport (3), for example, offer plentiful evidence of significant savings in international journey times and greater flexibility in distribution as a result of these measures. This view receives wide support from business sources;
- as regards the opening-up of public procurement, many companies are winning new contracts following the entry into force of the Community legislation but delays in transposition and inadequate enforcement of the legislation by the Member States are still causing major difficulties in some cases;
- the removal of tax barriers: most companies trading across frontiers find the current system for value added tax has brought them considerable savings in terms of reduction of transport costs, abolition of the pre-payment of VAT on intra-Community imports and elimination of charges related to the accomplishment of customs formalities. Smaller firms in particular, however, have found that the system imposed extra accounting costs when it was introduced, and other implementation problems have also arisen (see paras.226 to 230);
- the operation of mutual recognition in the field of the professions: the number of official complaints to the authorities is low, although experience of direct contacts with the interests concerned reveals that some individual problems can be difficult to resolve.

3. In other areas there is a consensus that much more has to be done before the single market can be said to be a reality.

First, there are the serious problems that stem from the Member States' *failure to implement existing Community law on time or to implement it correctly*, or from *difficulties in obtaining redress quickly* when a problem is encountered. Among the subjects which have aroused greatest concern in the past year are:

- the uncertainty in law which results from any significant delays in national transposition of Community rules and from differences of interpretation of those rules at national level. In some cases, over-bureaucratic implementation of Community rules at national level can appear to maintain the barriers that Community legislation was intended to remove. Significant differences in the severity of application of the law and of sanctions are also widely perceived to be a problem. Among the areas where there are significant delays in transposition are public procurement, intellectual property and new technologies and services. The fact that the General Product Safety Directive also falls into this category shows that individual citizens, as well as businesses, are potentially affected;
- the apparent persistence of technical barriers to trade, in particular those which result from the lack of implementation of the principle of mutual recognition of legislation by national authorities in areas which have not been the subject of harmonized legislation. Many traders and manufacturers are concerned that mutual recognition, a central principle of the internal market much publicized before 1992, is proving to be difficult to apply in practice. Problems have been noted in particular with regard to road vehicles, foodstuffs and pharmaceuticals. Further, the adoption of excessive or unnecessary legislation by Member States serves to aggravate this problem. Delay in the preparation of *European standards* to make existing Community rules work effectively has also been cited as a problem for business in the single market;

(2) 1994. Copies available from European Commission, Directorate-General for the Internal Market and Financial Services, rue de la Loi 200, B-1049 Brussels.

(3) July 1994. Copies available from European Commission, Directorate-General for Transport, rue de la Loi, 200, B-1049 Brussels.

- the difficulty in resolving problems which have been brought to the attention of national authorities or the Commission. The informal means of redress, through relevant national authorities, are not sufficiently well known in many cases; only a few Member States have instituted a central point for enquiries and complaints on single market issues. Formal procedures for redress are apparently not often used by potential complainants because they are seen as cumbersome and ineffective.

A second category of problems derives from *gaps in Community law* which inhibit the development of a truly single market. These include:

- the failure to complete the single market by adopting the measures necessary to remove border controls on people;
- the absence of tax harmonization in some fields, particularly in the tax treatment of businesses operating in more than one Member State;
- delays in adapting company law to single market requirements;
- insufficient liberalization of certain sectors, particularly energy and telecommunications, which are perceived as serious distortions of competition and a barrier to European and international competitiveness. The European Council at Corfu emphasized the importance of these two sectors, but while progress has been made in setting a timetable for liberalization in the area of telecommunications, progress in the Council on gas and electricity liberalization has been minimal;
- consumers believe that further action is called for if they are to reap the full benefits of the single market. These include the question of access to justice and guarantees and after-sales service;
- business surveys also continue to show that the absence of European monetary union is perceived as a significant limitation on the benefits of a single market, particularly for smaller businesses;
- difficulties of gaining access to the market, particularly for SMEs.

4. Thus while a few areas of the internal market programme can already be said to have yielded their fruit and others have made important progress, in most a considerable amount of work remains to be done before the impact of already-agreed rules is widely perceived in the market. We do not yet have a European market within which business can operate in the same conditions as within a national market, as UNICE has rightly commented. This must remain our goal. Hence the Commission's insistence on the need to follow a clear and widely publicized programme of work to ensure that implementation of the internal market becomes a reality. The 1993 Strategic Programme (4) forms a basis for action: additional elements may be needed to meet the challenge.

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## Section 2 - Progress in implementing the Strategic Programme

5. The Strategic Programme presented by the Commission in December 1993 identified four main priorities for action to ensure the success of the internal market, namely:

- completion of the basic legal framework
- managing the single market
- developing the single market and
- a dynamic and open external policy.

Detailed targets, with an indicative timetable, were proposed under each of these headings.

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(4) COM(93) 632 final of 22 December 1993.

## § 1 - Completion of the basic legal framework

6. Overall, progress during 1994 has been disappointing, despite the Commission's call in the Strategic Programme for the Council to make a particular effort to complete the outstanding proposals from the 1985 White Paper (5). In fact, only two of the remaining proposals were adopted, namely the Seventh VAT Directive on secondhand goods, antiques and works of art (94/5/EC\*) and Regulation (EC) No 2100/94\* on plant variety rights. Eleven proposals from the original White Paper remain on the Council table.

Little or no progress was made in key areas such as free movement of people, company law and company taxation.

The main features of 1994 are summarized below.

### A. Free movement of people and Union citizenship

7. The failure to remove border controls on persons means that a major component of the single market (as defined in Article 3\* of the EC Treaty) is missing. The Commission followed up its two 1993 proposals – on controls at the external frontier and the list of countries whose citizens require a visa (6) – with a proposal in July 1994 for a uniform model of visa (7). These proposals form part of a coherent approach, outlined in the 1993 Annual Report on the Internal Market (8), designed to bring about freedom of movement for people, as required under Article 7a\* of the Treaty. All remain under discussion in the Council, although Parliament has given a favourable opinion, subject to some amendments.

In 1993 the European Parliament brought an action before the Court of Justice under Article 175\* of the EC Treaty against the Commission for alleged failure to act to eliminate controls on persons at internal frontiers. The Court will probably deliver its judgment in the course of 1995.

Progress has nevertheless been achieved within the context of the Schengen Agreement; the Executive Committee of the Schengen group decided on 22 December 1994 to apply the Schengen Convention irreversibly as from 26 March 1995 for seven of the nine signatory countries which meet all the preconditions.

8. In the report on citizenship of the Union which it published in December 1993 (9), the Commission stressed the role played in European integration by Article 8b\* of the EC Treaty, which confers on citizens of the Union the right to vote and to stand as candidates in municipal and European elections in the Member State where they live.

An initial Directive (93/109/EEC\*), on the right to vote and stand as a candidate in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals, has been implemented and enabled Community nationals living in another Member State to take part in elections to the European Parliament for the first time in June 1994.

Participation by non-nationals in their Member State of residence varied between 2% and 24% of the non-national electorate. A single non-national candidate was elected in her Member State of residence. There appear to be a number of reasons for the low turnout by non-national voters in comparison with national voters: these include the fact that the right to vote was a fairly recent innovation, that insufficient information was provided on the topic and that many voters preferred to vote for candidates in their Member State of origin rather than for candi-

(5) COM(85) 310 final of 14 June 1985.

(6) COM(93) 684 final of 10 December 1993 (OJ C 11, 15.1.1994).

(7) COM(94) 287 final of 13 July 1994 (OJ C 238, 26.8.1994).

(8) COM(94) 55 final of 14 March 1994.

(9) COM(93) 702 final of 21 December 1993.

dates in their Member State of residence. In the course of 1995 the Commission will present a report on application of the Directive during the 1994 elections.

A second Directive, laying down detailed arrangements for the exercise of the right to vote and to stand as a candidate in municipal elections by citizens of the Union residing in a Member State of which they are not nationals, was proposed in February 1994 and adopted by the Council on 19 December 1994 (Directive 94/80/EC\*).

## B. Taxation

9. Business operations in the single market continue to be inhibited by the lack of progress on key issues in the field of company taxation. The Council has failed after four years to reach an agreement on the proposal designed to avoid double taxation of interest and royalty payments between parent companies and subsidiaries (10), and the Commission has therefore withdrawn the proposal.

As mentioned above, the **Seventh VAT Directive** on secondhand goods, antiques and works of art (94/5/EC\*) (which was one of the original White Paper measures) was adopted in February 1994.

## C. Other areas

10. Regulation (EC) No 2100/94\* on plant variety rights provides for a new intellectual property right with effect throughout the Union, to be administered by a future Community Plant Variety Office. However, the last remaining White Paper proposal in the intellectual property field, on the legal protection of biotechnological inventions (11), has been rejected by the European Parliament.

There has been no real progress in the field of company law, where the proposal for a European Company Statute (12) is still blocked. However, the adoption of Directive 94/45/EC\* of 22 September 1994, which provides for the establishment of European Works Councils or procedures in Community-scale undertakings and groups of undertakings, represents a positive contribution in this area.

The proposal for a Directive on freedom of management and investment for pension funds was withdrawn in December 1994. The Commission decided instead to publish a communication setting out its interpretation of the applicability to institutions for retirement provision of the EC Treaty rules on freedom to provide services and free movement of capital. The Commission will now undertake a comprehensive review of the proposal taking account of the discussions held in the Council of Ministers and the Treaty rules.

11. As regards other legislative proposals (not in the 1985 White Paper), a number of proposals in the area of technical harmonization, in particular with regard to food additives, dangerous substances and preparations, the maximum speed of two- and three-wheel motor vehicles, footwear labelling and recreational craft, were adopted. The extension of the scope of Directive 83/189/EEC\* on notification procedures for draft national technical standards and regulations represents an important contribution to preventing the emergence of new technical barriers to trade.

(10) COM(90) 571 final of 28 November 1990 (OJ C 53, 28.2.1991), as amended by COM(93) 196 final of 10 June 1993 (OJ C 178, 30.6.1993).

(11) COM(88) 496 final of 28 September 1988 (OJ C 10, 13.1.1989), as amended by COM(92) 589 final of 16 December 1992 (OJ C 44, 16.2.1993) and COM(94) 245 final of 9 June 1994.

(12) COM(89) 238 final of 24 August 1989 (OJ C 263, 16.10.1989), as amended by COM(91) 174 final of 6 May 1991 (OJ C 138, 29.5.1991 and C 176, 8.7.1991).

12. Significant progress was made in the area of financial services with the adoption of Directive 94/19/EC\* on deposit guarantee schemes and of Directive 94/18/EC\* modifying Directive 80/390/EEC\* on admission prospectuses for stock-exchange listings. A common position was reached on a Directive on the prudential supervision of financial institutions (13) and an amended proposal for a Directive on investor compensation schemes (14) was presented following the opinions of the Parliament and the Economic and Social Committee. An important milestone was reached with the entry into force on 1 July 1994 of the Third Directives on life and non-life insurance (Directives 92/96/EEC\* and 92/49/EEC\*), thereby completing the legislative framework for a single market in insurance.

The adoption in February 1995 of a common position on the Directive on the protection of personal data (15) is an important step towards the removal of obstacles to the exchange of data given the increase in the flows of personal data in the private and public sector as a consequence of the operation of the single market.

13. With regard to accompanying measures for the elimination of frontier controls important instruments were adopted. Council Regulation (EC) No 3295/94\* of 22 December 1994 lays down measures to prohibit the release for free circulation, export or transit of counterfeit and pirated goods in the single market. This Regulation replaces Council Regulation (EEC) No 3842/86\* laying down measures to prohibit the release for free circulation of counterfeit goods. An integrated system of controls on the export of dual use goods, to be introduced with effect from July 1995, was established by the adoption of Council Regulation (EC) No 3381/94\* of 19 December 1994 and Council Decision 94/942/CFSP\*. Council Decision 94/445/EC\* of 11 July 1994 on the data communications network between administrations (Comedi system) takes account of the need to collect statistical data after the elimination of physical frontiers.

14. Energy and telecommunications are perhaps the areas in which the Union is furthest from achieving a single market. Progress in the energy sector has been particularly slow. With regard to telecommunications, the Council resolution of 17 November 1994 on the liberalization of infrastructure on 1 January 1998 means that there is now agreement on the principle of liberalization of the whole sector. This provides a clear signal to industry, as well as to the Commission, which must now address the regulatory issues in order to achieve effective competition. In December 1994 the Council adopted common positions concerning a Decision on a series of guidelines for the development of ISDN as a trans-European network (16) and a Directive on the use of standards for the transmission of television signals (17).

15. The Commission's proposal for a Directive on access to the market in the field of ground handling facilities at airports (18), presented in December 1994, represents a step towards greater liberalization of the air transport sector.

## § 2 - Managing the Single Market

16. Now that the major legislative programme under the 1985 White Paper has been substantially completed, the Strategic Programme underlines the importance of ensuring the

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- (13) COM(93) 363 final of 28 July 1993 (OJ C 229, 25.8.1993) as amended by COM(94) 170 final of 2 May 1994 and COM(94) 549 of 29 November 1994.
  - (14) COM(93) 381 final of 22 September 1993 (OJ C 321, 27.11.1993) as amended by COM(94) 585 final of 13 December 1994 (OJ C 382, 31.12.1994).
  - (15) COM(90) 314 final of 18 July 1990 (OJ C 277, 5.11.1990) as amended by COM(92) 422 final of 15 October 1992 (OJ C 311, 27.11.1992).
  - (16) COM(93) 347 final of 1 September 1993 (OJ C 259, 23.9.1993) as amended by COM(94) 483 final of 17 November 1994 (OJ C 353, 13.12.1994).
  - (17) COM(93) 556 final of 15 November 1993 (OJ C 341, 18.12.1993) as amended by COM(94) 455 final of 25 October 1994 (OJ C 321, 18.11.1994).
  - (18) COM(94) 590 final of 13 December 1994.



practical operation of the internal market. This emphasis continues to receive strong support from business and consumer interests. "Management of the internal market" covers such key issues as:

- implementation of Community legislation (transposition of directives into national law);
- application and enforcement - principally the responsibility of the Member States, with the Commission in a monitoring role. The key issues for effective enforcement are administrative cooperation between the responsible authorities in each Member State and provision for penalties for infringements;
- ensuring effective means of redress for citizens and companies, by easier access to justice and judicial cooperation;
- evaluating the legislation in terms of whether it is actually working as intended.

### A. Implementation of Community law: transposition

17. For the Internal Market Council in December 1994 the Commission prepared a report that gives an indication of the state of play in national transposition of the White Paper measures and other legislation that is critical for the functioning of the internal market (19). This report was the first of a series intended to ensure that Member State transposition becomes fully effective as soon as possible.

Taken as a whole, the Member States had by the end of November 1994 adopted 89.9% of the national measures required in order to implement internal market legislation. The performance of the Member States ranges from substantially higher than average (Denmark: 96.3%; France, the Netherlands and Luxembourg: 93.6%) to significantly below it (Germany: 85.4%; Greece: 80.4%). Table I summarizes this situation.

18. Most infringements are the result of failure to incorporate Community directives into national law in time. Procedural problems related to the national decision-making process or the technical complexity of the texts are often the reason for the delays. The Commission carries out a systematic examination of the state of national implementation of each directive once it has entered into force. In addition it assesses the national legislation notified to it, within the limits of its resources, and vigorously pursues infringements through both consultation with the Member States concerned and, when necessary, formal infringement proceedings.

19. The level of national transposition varies considerably from sector to sector (see Table II). In some sectors the process of transposition has been completed. In others, however, the delays in transposition in a number of Member States are giving cause for concern:

- In the area of public procurement (51% of national measures correctly adopted), where there are nine Directives already in force, there are still 26 cases where there has been no communication of national transposition measures although the deadline passed several months ago. This is in particular the case for the Service Contracts Directive (92/50/EEC\*), the Supplies Directive (93/36/EEC\*) and the Utilities Directive (93/38/EEC\*) (20). There are numerous infringement procedures for incorrect transposition and non-communication of the national transposition measures (altogether 21 cases). In very few cases is transposition fully in conformity with the requirements of

(19) It should be noted that the basis for statistical calculation of the implementation of White Paper measures was modified by the report. Changes have occurred in the course of the years to the original 282 White Paper measures; some became obsolete and were abandoned or replaced. Furthermore, each measure proposed did not necessarily lead to the adoption of one legislative text. If this was true in the majority of cases, in others several legislative texts were required to implement a single White Paper proposal, or, conversely, one legislative text allowed the adoption of several White Paper measures at once. The total number of legislative texts related to the White Paper Programme is now 271. The re-establishment of a more accurate reference point does not markedly change the level of performance of transposition among the Member States.

(20) Spain has a derogation until 1 January 1997, Greece and Portugal until 1 January 1998.

Community law; only three Member States (Denmark, Luxembourg and the Netherlands) have, with the exception of some small points of minor importance, completely fulfilled their transposition obligations.

- In the insurance sector, too, there are considerable delays in transposition (76% of measures adopted). This is the case for the second life assurance Directive (90/619/EEC\*) as well as the so-called "third generation Directives", the non-life insurance (92/49/EEC\*) and the life assurance Directives (92/96/EEC\*), which should have been applied from 1 July 1994. Infringement proceedings have been started against the Member States concerned. The Commission is still examining the conformity of Member State measures concerning the two principal directives on insurance against civil liability in respect of the use of motor vehicles (72/166/EEC\* and 84/5/EEC\*) as well as the second non-life insurance Directive (88/357\*).
- Concerning intellectual and industrial property (67% of measures adopted) the Member States have tended to transpose the directives in this sector after long delays and often only after infringement proceedings have been initiated. In the case of Directive 89/104/EEC\* on trade marks, which entered into force on 31 December 1992, so far five Member States (Belgium, Germany, Ireland, Luxembourg, the Netherlands and Portugal) have not communicated any national implementing measures.
- Considerable progress has been achieved in transposing the Directives relating to pharmaceutical products (85% of measures adopted), although technical difficulties are causing serious delays in the fields of veterinary pharmaceuticals and homeopathic medicines.
- In the field of veterinary and plant-health checks the Member States have transposed most of the directives into national legislation. The average transposition level is 91.5%; although this is satisfactory the performance of Member States varies considerably (whereas Belgium and Spain have communicated transposition of every directive except one, Greece has still to do so in 18 cases, Ireland in 13 and Germany in 10). Most non-communications concern the Directives on marketing of plant protection products (91/414/EEC\*), poultrymeat (92/110/EEC\*), and veterinary derogations (92/120/EEC\*).

## B. Enforcement of Community law

### a) *A framework for administrative cooperation*

20. The internal market cannot be said to be truly complete unless application and enforcement of the rules in the Member States (and not merely transposition into national legislation) are reasonably homogeneous and seen to be so. If Member States' enforcement authorities do not have confidence in their opposite numbers elsewhere in the Community, they are likely to take measures which create technical barriers to the free movement of goods.

Effective enforcement depends to a large extent on the development of administrative cooperation between the enforcement authorities in each Member State. The aim of such cooperation should be to minimize bureaucratic obstacles which create barriers to the free movement of goods, services, persons and capital by applying and enforcing internal market legislation evenly throughout the Union.

In some areas, such as customs, VAT and agriculture, the Council has adopted legislation which requires coordination of enforcement. For foodstuffs this goes as far as setting up a Community foodstuffs inspectorate within the Commission, which will be coming into operation in 1995. However, the Council has been reluctant to pass further legislation requiring particular forms of cooperation, and in view of this the Commission has been conducting a campaign to promote more informal types of cooperation between administrations in the Member States for enforcement purposes. Substantial progress towards this goal was made during 1994.

TABLE I

**State of Implementation of the White Paper Measures**

**Breakdown of Situation by Member State  
(31 December 1994)**

	Measures notified	Not applicable	Derogations	Measures not notified	partial notification	Infringement for non-conformity
DK	209	2	0	5	2	1
F	205	0	0	9	4	1
NL	204	1	0	11	2	1
L	201	4	0	14	0	0
UK	202	1	0	12	3	1
B	194	1	0	14	8	2
P	188	4	3	18	2	4
E	190	1	3	21	1	3
I	190	4	0	22	1	2
IRL	190	3	0	23	2	1
D	184	3	0	23	5	4
EL	169	4	3	39	1	3

273 provisions in force / 219 requiring national implementing measures

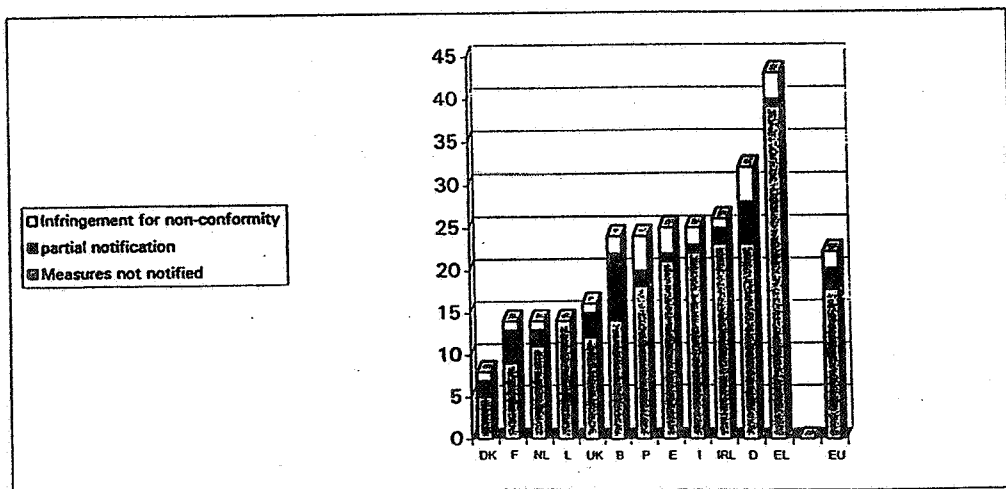
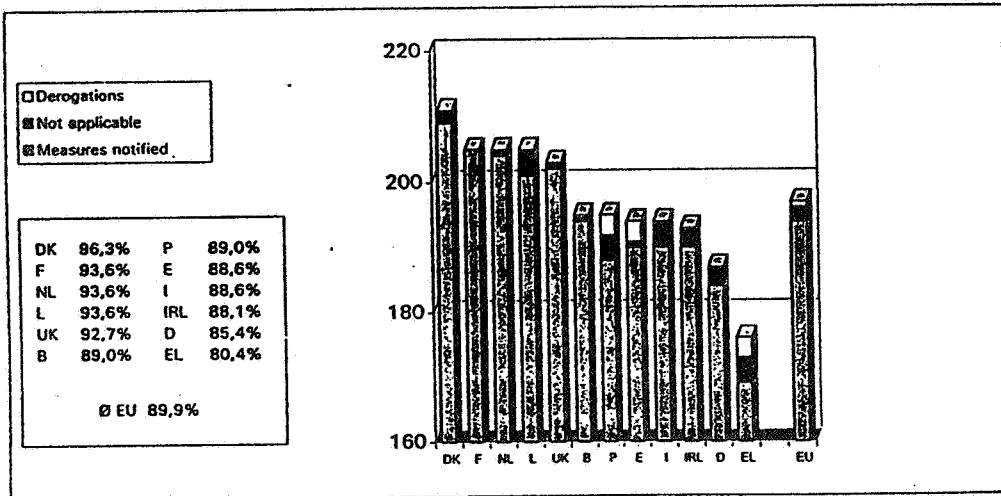
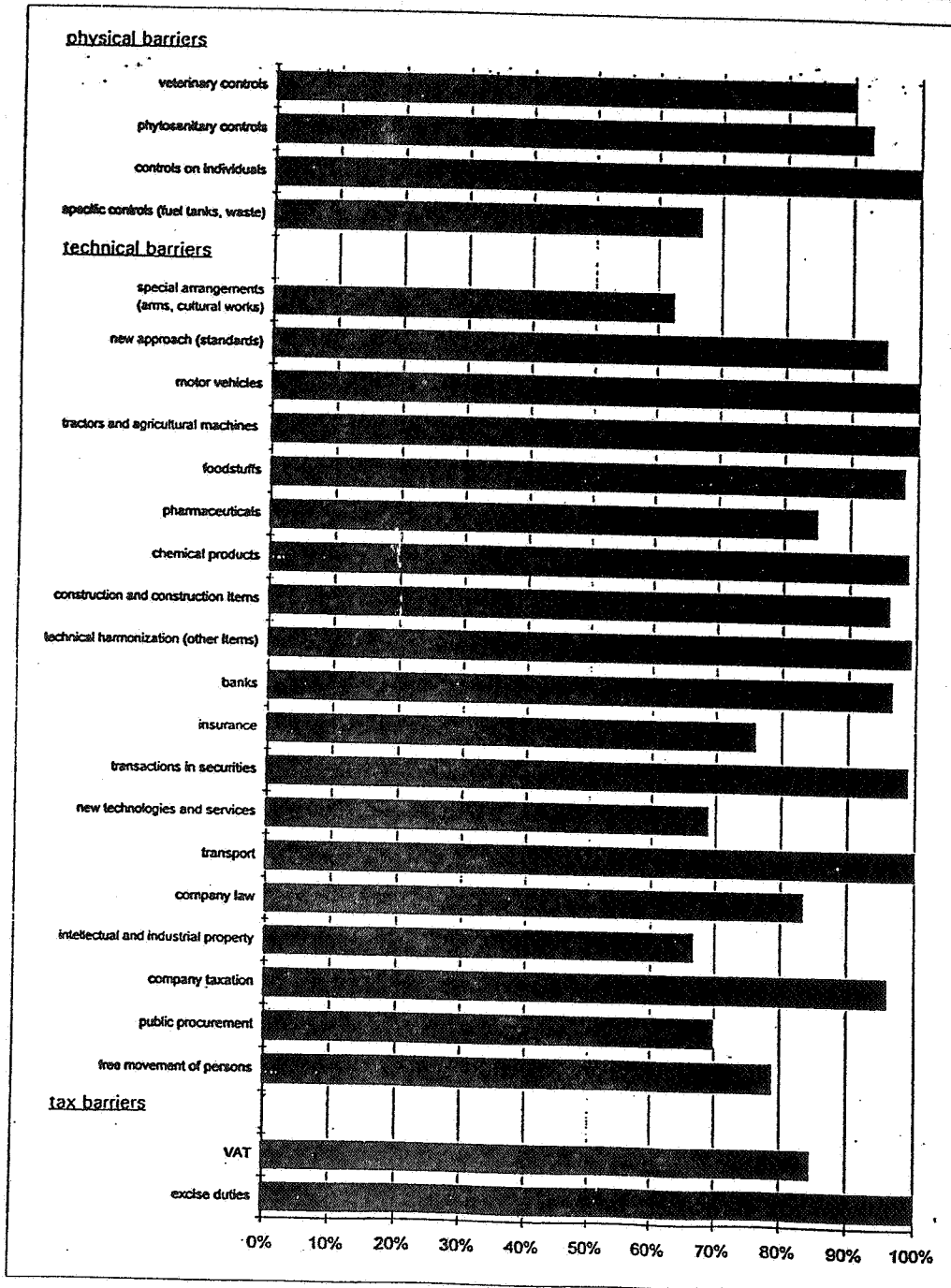


TABLE II

**State of Implementation of the White Paper Measures**  
 Situation by sector  
 (31 December 1994)



21. The Commission communication of 16 February 1994 (21) and the Council resolution of 16 June 1994 (22) on the development of administrative cooperation for the implementation and enforcement of Community legislation on the internal market provide a framework for development in this area. The resolution endorsed the Commission's approach, stressing the need to avoid any increase in red tape, and specifically calling for Member States to notify to the Commission a series of sectoral contact points for communication among national administrations, and between them and the Commission, on enforcement questions. It also called on the Commission to continue the programme of sectoral discussions between the Commission and the Member States on administrative cooperation, which was begun in 1993, then restarted in 1994.

The objectives of the programme of discussions are fourfold:

- to identify the need for mutual assistance in each sector or area of activities (information requirements, means for satisfying them);
- to determine how far these needs have already been satisfied;
- where necessary, to encourage participants in the discussions to introduce or extend administrative cooperation;
- where this has not been done already, to compile lists of contact points for enforcement purposes and information on enforcement structures in the different Member States and ensure that these lists are available to all the administrations concerned.

22. These issues are raised in meetings of committees and working groups organized by the Commission and involving representatives of the Member States' administrations with responsibilities in the area concerned. In parallel, the Advisory Committee for Coordination in the Internal Market Field has been asked to notify contact points in areas where no sectoral committee exists, or where it is difficult to obtain this information for other reasons.

The specialist committees or other bodies consulted fall into three categories:

- those whose sole purpose is to conduct administrative cooperation, (e.g., the Standing Committee in the field of Indirect Taxation)
- those with a regulatory or advisory role, but which spend part of their time on administrative cooperation (e.g., the Standing Veterinary Committee) and
- those which only deal with policy issues rather than enforcement, but which may provisionally act as a channel of information between national enforcement authorities, and between them and the Commission (e.g., the Advisory Committee for Public Procurement).

A minimum requirement is for all administrations involved to have the particulars of their counterparts in each Member State who can quickly relay their messages to the enforcement official concerned. Another means of communication which is used in some areas is computerized networks, and the lessons learnt from those which already exist should be applied to future projects.

The Member States' permanent representatives were asked at the end of 1994 to confirm the provisional lists of contact points received so far and to complete them for all areas of internal market legislation.

23. Both national and Community officials in most of these areas are keenly aware of the need for administrative cooperation, but in many cases have more pressing needs. This is especially true for the technical harmonization directives based on the new approach, some of which are not yet fully in force, as transitional periods have not yet expired. For many of them discussion has been centred on finding common interpretations of the legislation, not allowing much scope for other enforcement questions. A lack of resources has also delayed progress in some areas.

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(21) COM(94) 29 final of 16 February 1994.

(22) OJ C 179 of 1 July 1994.

Those areas where administrative cooperation is well established are almost exclusively those where it is provided for by legislation. The Commission will persist with efforts to facilitate effective and equivalent enforcement in other areas by promoting mutual assistance between administrations, establishing contact points and continuing its support measures such as exchange programmes and seminars. However, the effectiveness of this approach ultimately relies upon Member States' readiness to use the instruments which the Commission is trying to place at their disposal. If, after a period, there is still a feeling that unacceptable differences in enforcement remain, other measures could be envisaged, such as infringement proceedings or further legislation.

24. Discussions will continue in 1995, and the arrangements for mutual assistance between administrations will be kept under review as a permanent feature of enforcement of single market rules. The Commission will keep the Council and Parliament informed of progress.

**b) Support for administrative cooperation**

25. Mutual trust between national administrations is being developed by Community-level cooperation, in particular through exchange programmes for officials concerned with implementation of single market legislation. The Karolus programme is one of the foundations of administrative cooperation. Launched in 1993 for a five-year period, it organizes exchanges of officials between Member-State administrations involved in managing the single market, enabling participants to work for around two months alongside their counterparts in another Member State. The aim of the programme is to arrive at more uniform interpretation and application of Community legislation.

26. Out of over two hundred applications accepted so far, 124 exchanges have taken place, as well as a number of induction and assessment seminars (23 in 1993 and 101 in 1994). The programme has made for better understanding between officials in different Member States working in the same field, fruitful exchanges of experience and the creation of networks of contacts for effective, practical cooperation.

Of the priority areas selected for the programme, public procurement, foodstuffs, conformity assessment and market surveillance, pharmaceutical products, banking and insurance, plant-health products and road transport have accounted for the largest number of exchanges.

27. All Member States have taken part in the Karolus programme as home and/or host countries. Participants mostly come from the national administrations, although local administrations are also well represented, particularly in the case of Spain (autonomous communities) and Germany (*Länder*). The number of exchanges is, however, lower than expected. There are several reasons for the programme's slow startup: language problems, payment by the home Member State of 50% of the participant's subsistence expenses, difficulty for an administration to part with a skilled member of staff for some two months. Given the importance of this method of improving administrative cooperation, every effort should be made to facilitate these exchanges.

28. Other exchange programmes in specific areas - Matthaeus, Matthaeus-Tax and the exchange programme for veterinary officials - are dealt with in Part two, paragraphs 94, 228 and 340.

29. The communication from the Commission to the European Parliament and the Council on trans-European data communications networks between administrations (23) and the accompanying proposals for Council Decisions gave rise to lengthy discussions within the Council. In November 1994 the Council (telecommunications) reached agreement on a Decision concerning the networks for the interchange of data between administrations (IDA). This Council Decision, which will probably be formally adopted in 1995, fixes the Community's contribution to certain priority projects aimed at facilitating cooperation between administrations

(23) COM(93) 69 final of 12 March 1993.

through data interchange. Budget funding was pre-allocated in 1994 to meet the most pressing requirements and avoid any interruption of work under projects already in hand.

By way of example, the information system for public procurement (SIMAP) and several applications in support of administrative cooperation in customs and agriculture received Community funding under IDA in 1994.

The first phase of the project to establish an electronic mail network linking the administrations involved in managing the single market was completed, using existing communications networks. This involved setting in place a support structure with a view to introducing the use of electronic mail within several committees, including the Internal Market Advisory Committee.

30. The bodies involved in the application and enforcement of legislation are not necessarily public administrations, but also include private bodies such as the notified bodies which provide type approval and certification services under the new approach directives. A symposium of notified bodies was held as part of efforts to improve coordination between these bodies. Another symposium, which brought together representatives of the industry and other bodies, was held on the type approval of motor vehicles in November 1994.

#### *c) Penalties for infringements of Community law*

31. The Commission pursued its work on the role of penalties in the implementation of Community legislation in the context of the internal market. In particular, the Commission and the Member States continued their informal discussions on penalties in the customs field (see para. 342).

In accordance with the Strategic Programme, the Commission considered how to improve the transparency of national sanctions, for example by the inclusion in its future proposals for regulations and directives of a clause providing explicitly for the notification of the system of penalties applicable to breaches of the provisions regarding the single market. This has been the subject of a Communication to the Council and the European Parliament (24).

### **C. Access to justice and judicial cooperation**

32. If businesses and individuals are to operate confidently in the single market, they need to know that there are adequate means of redress available to them should they run into problems. In a single Community market covering different national jurisdictions, this cannot be taken for granted. Hence the importance given in the Strategic Programme to improving access to justice and judicial cooperation within the single market.

33. The Commission launched a number of measures in 1994 to:

- improve the training and information provided for members of the legal professions (chiefly judges and practising lawyers) in the field of Community law;
- afford consumers easier access to justice;
- speed up the conclusion of conventions aimed at overcoming the fragmentation of the European legal area.

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(24) COM(95) 162 final, 3.5.95

a) **Training and information provided for the legal professions in the field of Community law**

34. The Strategic Programme for the internal market assigns a key role to judges, practising lawyers and, in general, all members of the legal professions in the application of Community law and the smooth operation of the single market.

The Commission's aim is thus to present the Council at the end of 1995 with a joint programme for providing the legal professions with training and information in the field of Community law.

35. With this in mind, the following measures were set in train in 1994:

- a survey was commissioned in all Member States to pinpoint the difficulties and needs experienced by lawyers as regards training and information in the field of Community law;
- a tripartite expert group (composed of one judge, one lawyer and one academic involved in the training of future judges or lawyers from each Member State) was set up *inter alia* to help the Commission determine the possible scope for Community action to improve training and information for the legal professions in the field of Community law and to assist it in drawing up specific proposals for action;
- the Commission intends to send the Council in late 1995 a proposal for a recommendation on generalizing the obligation to undergo training in Community law before entering certain legal professions.

b) **Access to justice for consumers**

36. The Commission has embarked on wide-ranging discussions on ways and means of affording consumers better access to justice in the single market.

The Green Paper on access to justice for consumers and the settling of consumer disputes in the single market (25), adopted in November 1993, was commented on by Parliament, the Council, the Economic and Social Committee and the Committee of the Regions. Above all, it prompted a large number of written submissions (more than 100) from interested parties which were developed at a public hearing held in Brussels on 22 July 1994.

37. During the consultation, a fairly broad consensus emerged on three of the conclusions set out in the Green Paper, namely the need to:

- harmonize the proceedings that can be brought in Member States to put a stop to certain unlawful commercial practices, and ensure the mutual recognition of the parties entitled to initiate such proceedings;
- promote methods of out-of-court settlement for individual disputes, which should be made more effective by setting minimum criteria at European level;
- create machinery for following up cross-border complaints, in conjunction with cross-border cooperation between consumer associations.

The Commission intends to propose during 1995 the necessary measures for putting these ideas into practice.

c) **Free movement of judgments**

38. The Brussels Convention on jurisdiction and enforcement of judgments in civil and commercial matters is a fundamental feature of the European law-enforcement area. Several projects aimed at consolidating the law-enforcement area are being developed in the context of the Convention:

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(25) COM(93) 576 final of 16 November 1993.



- headway was thus made during the year towards adoption of a European convention on insolvency proceedings, which will lay down rules on jurisdiction for the purposes of the intra-Community effects of insolvency proceedings, establish uniform rules on the conflict of laws for such proceedings and ensure that decisions taken in this area are recognized and enforced;
- discussions are continuing on a draft protocol extending the Brussels Convention to family law;
- work is already well in hand on drawing up a new legal instrument to simplify the international transmission of judicial and other documents in civil and commercial matters within the European Union.

## J. Evaluation of the effectiveness of the legislation

39. Although the single market is still in its infancy, much attention has already focused on the extent to which this initiative has delivered on its promise. In a resolution adopted in December 1992 (26) the Member States called on the Commission to prepare a thorough evaluation of these issues, by providing, during 1996,

*"an overall analysis of the effectiveness of measures taken in creating the single market, taking particular account of promoting throughout the Community a harmonious and balanced development of economic activities, sustainable and non-inflationary growth respecting the environment, a high degree of convergence of economic performance, a high level of employment and of social protection, the raising of the standard of living and quality of life, and economic and social cohesion, and solidarity among Member States. This analysis could, in addition, consider the impact on improving the competitiveness of European business in world markets."*

This analysis must take into account the fact that the single market is still not fully in place. Nevertheless, as a first overall assessment, it should serve as a navigational aid to help steer Community action in this field.

### a) Objectives and scope of the report

40. The scientific and theoretical difficulties of the exercise are considerable. The analysis must come to grips with the problem of disentangling the impact of the single market from other driving-forces for change which have been operating simultaneously on the Community economy - notably globalization and multilateral trade liberalization, technological change, the opening-up of Central and Eastern Europe, the global economic climate, the economic consequences of German unification, and developments specific to individual Member States.

41. The Commission's analysis will have a twin focus:

- *the effectiveness of legislation* - It is hoped that extensive field research will shed light on the strengths and weaknesses of the legislative and administrative framework, and identify areas where further fine-tuning is required to eradicate non-tariff barriers and other obstacles to free circulation.

This analysis constitutes a "bottom-up" quest for problems and solutions. Detailed research in about twenty sectors, supplemented by business surveys (and by additional research on specific issues such as public procurement, technical barriers or monetary integration) is designed to deliver a "grass-roots" perspective on progress to date and remaining shortfalls. The findings from this analysis can then be drawn upon

(26) Resolution 92/C 334/01 of 7 December 1992 (OJ C 334/1, 18.12.1992).

to adjust and develop the legislative and administrative framework with a view to delivering the full benefits of a single market.

The study is intended to focus primarily on the consequences of measures taken to liberalize the four freedoms. However, it will inevitably address other Community and national policies which influence the business dynamics and adjustment mechanisms unleashed by the single market. Foremost amongst these policies will be progress towards monetary integration and national and Community measures which affect competition.

- *the impact of the single market* - As required by the Council resolution, the report will attempt to determine whether market integration has made the expected contribution to overcoming the Community's perceived competitiveness problems, fostering job creation and promoting regionally balanced economic growth.

The analysis will at best only be able to deliver partial and largely qualitative responses to these broad macroeconomic questions, as many of these issues do not lend themselves to the formulation of testable hypotheses.

Studies will tend to concentrate on changes at the level of individual economic operators and markets - trying to ascertain whether market integration has resulted in access to wider marketplaces and increased competition, and whether and how it has shaped corporate strategies and behaviour. From the information gathered at microeconomic level, the study will attempt to build up a picture of the broader effects of the internal market programme.

#### **b) *Launching of background research***

42. **Market studies** are under way on the following sectors: food and drink processing machinery, pharmaceuticals, textiles and clothing, telecommunications value-added services, construction site equipment, road freight transport, air transport, banking, insurance and distribution.

Additional market studies are envisaged for the following sectors: telecommunications equipment, boilers and metal containers, advertising services, chemicals, motor vehicles, processed foodstuffs, audio-visual services and a single information market.

A series of studies is also under way on wider issues, including the abolition of tax and customs formalities at internal frontiers, the dismantling of technical trade barriers, the evolution of pan-European markets, the achievement of economies of scale, capital market liberalization, trends in foreign direct investment and trade flows, the costs of multi-currency management, the liberalization of public procurement, and competition policy.

Other issues that may be considered include: protection of industrial property rights, the external dimension of the single market, trans-European transport networks, the regional consequences of market integration and a quantitative analysis of the implications for the labour market.

A wide-ranging survey of business perceptions of the impact of single market measures and corporate strategies within the single market will also be undertaken. This will be supplemented by a review of representative bodies and industry opinion leaders.

Results from these studies will become available in early 1996 and will provide the input for the Commission report which will be finalized in mid-1996.

## E. Statistics

### a) *Assessment of the impact of the single market*

43. In the light of the demands being made on the statistical system to provide reliable and up-to-date statistics for an assessment of the impact of the single market programme, Eurostat has responded by proposing an approach which distinguishes between what can be provided in the short term and in the long term.

In the short term, work has begun on the provision of data which will be used as input for the 1996 study. This data collection is based on three pillars:

- the exploitation of existing information at the level of Eurostat and at the level of the national statistical institutes;
- the use of longitudinal analysis, especially in evaluating enterprise performance and behaviour in response to the single market;
- specific studies for the remaining data needs which cannot be satisfied either by existing data or by the longitudinal study.

These three exercises are being organized in close cooperation with the Member States.

44. In the longer term, appropriate measures are being taken to adapt the existing statistical programme to satisfy the statistical requirements of the internal market. An examination is taking place into areas where current data collection is weak and could be profitably extended. For example there is a significant imbalance between the availability of manufacturing and services statistics, an imbalance which needs to be rectified over the coming years. Similarly there is a recognition that statistics on public procurement are inadequate.

### b) *Intrastat*

45. Intrastat, the system for collecting statistics on intra-Community trade in goods, entered its third year of operation. There were many signs of improvement in most Member States, in terms of not only the availability of data (a Commission Regulation laying down time-limits for transmission was adopted), but also their quality, essentially when aggregated. Further progress is expected, particularly through the Edicom (electronic data interchange in commerce) project, which was given strong legal backing and allocated considerable financial resources by a Council decision, and through the development of checks carried out by the national administrations.

In the short term, Eurostat will focus its efforts chiefly on improving the rate of response from businesses and seeking further simplifications (a new threshold per transaction, enabling results for low-value operations to be grouped together, has already been introduced). It will begin looking into the options for Intrastat II by sending out a questionnaire and organizing a seminar to be attended by both suppliers and users of statistics.

## § 3 - Developing the Single Market

### A. Introduction

46. The section of the Strategic Programme on "Developing the single market" announced a number of actions designed to improve the quality of single market legislation and public awareness of it. These are described below. Part Two deals with other actions announced in the same section of the Strategic Programme, designed, in particular, to improve the environment for business and consumers in the single market.

## B. Regulatory policy

47. In line with the undertakings it gave in the Strategic Programme and to fulfil its obligations under the Treaty on European Union, the Commission is endeavouring to define a new approach to its future legislative and regulatory activity. Rather than devising new procedures, the aim here is to follow a **strictly orthodox regulatory approach** at each stage in the Community decision-making procedure. These new policy lines should be adopted by the Commission in 1995.

48. Draft general regulatory policy guidelines are currently being drawn up by Commission staff in order to codify the procedures to be followed to achieve this objective.

## C. Deregulation/simplification of legislation

49. Community legislation completing the single market is by nature a deregulation exercise, since it is aimed at eliminating national measures that create barriers to trade. In the "new approach" directives in particular, the choice offered to businesses between compliance with essential requirements or voluntary use of harmonized standards, or the possibility open to manufacturers of choosing between several certification procedures, bears witness to a long-standing concern for simplification. The Commission's commitment to simplification can also be seen in legislative proposals designed to streamline existing Community rules, e.g. in the foodstuffs sector.

The Commission has voiced its concern to the Member States at the growing number of regulatory initiatives taken by national authorities, either centrally or at local level, as reflected in the statistics produced by information-exchange procedures such as the one operating under Directive 83/189/EEC\*. It has called upon Member States to apply to their own legislative activities the same principles of caution and restraint which the Community legislator has to observe; it hopes that they will thereby refrain from adopting unnecessary national rules and regulations that are superimposed on Community rules during transposal.

50. The Commission has asked a group of independent experts chaired by Mr Bernhard Molitor (the "Molitor Group") to look into the scope for simplifying legislative and administrative provisions at both national and Community level. This exercise includes some areas of the single market. The Group is to report to the Commission by June 1995.

A Committee on the simplification of the business environment has also been established, with the objective of focusing, on a longer term basis, on the possibilities for easing the burden on business, especially small and medium-sized enterprises, through legislative and administrative simplification.

## D. Legislative and declaratory consolidation

51. In the interests of transparency and simplification of the Community rules, legislative and declaratory consolidation work was speeded up and diversified. The adoption on 20 December 1994 of an interinstitutional agreement on an accelerated procedure for the consolidation of legislation marked a major step forward: the agreement streamlines the decision-making machinery for legislative consolidation. Consolidation work in progress on legislation relating to credit institutions, life and non-life insurance, and stock exchanges and transferable securities should be completed in 1995. As far as declaratory consolidation is concerned, compendiums of coordinated legislation on pharmaceuticals and company law have been produced.

## E. Communication and information policy

52. The Strategic Programme emphasized the importance of communication and information policy for the further development of the single market. Businesses and individuals need to know about their rights and about the possibilities open to them in a frontier-free Union. But information needs to flow also from businesses and citizens to the Community and national authorities, if they are to know how the single market is working out in practice.

53. For this reason, the Commission, in conjunction with Member States, and in many cases with the active participation of Euro Info Centres, held during 1994 a series of "Internal Market weeks" in all Member States. The exact form of the events varied, to take account of local circumstances and special areas of interest. Generally, a telephone "hotline" or a series of radio "phone-ins" was set up, to allow callers to express their views or make enquiries regarding the single market. Business people and other interests were invited to participate in seminars and discussions around each country, attended by Commission officials. The overall outcome of the initiative was satisfactory, both quantitatively (use of freephone lines and attendance at meetings) and qualitatively (feedback received on the operation of the single market).

Most of those attending the 106 conferences that took place were representatives of the business community. Some 3 000 people used the freephone lines set up during the Weeks: these were mainly members of the public, who preferred, and greatly appreciated, this method of obtaining information and expressing their views.

54. In addition to the programme of Internal Market Weeks, single-market information policy focused on the following activities in 1994:

- a conference held in March 1994 and attended by over 250 representatives of trade associations, at which Mr Vanni d'Archirafi, then Member of the Commission with special responsibility for the single market, took stock of how the single market was working and presented the Strategic Programme;
- publication and distribution of the first annual report on the internal market;
- sectoral conferences, notably on intellectual property and public procurement;
- sectoral publications.

55. A survey was conducted of users of the INFO 92 database to find out who was using it, and what their information needs were. The 341 respondents, divided approximately equally between the EU institutions (mostly the Commission) and outside users, included a high proportion of intermediaries - information officers, Euro Info Centres, consultants and the like. The completed questionnaires received showed that INFO 92 provided a useful contribution to meeting the needs of this group of users, although much of the information they require can also be obtained from other databases, such as CELEX. The very simple search procedure used in INFO 92 clearly contributes to this. However, very few SMEs or individuals other than in-house users answered, indicating a gap in the provision of on-line services on the single market. It was decided to concentrate the scarce resources available for this type of information on this more general user group in future.

## § 4 - External aspects

56. The Strategic Programme for the internal market stressed that if firms were to reap the full benefits of the single market, it was necessary to ensure both a dynamic commercial policy and the effective management of external borders. 1994 saw a number of important developments in both these areas, a detailed account of which may be found in Part Two, Section 10.

## **PART TWO**

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### **Detailed Review**

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#### **Introduction**

57. Part Two of the Report reviews the year 1994 in each major area of the single market, starting with the "four freedoms". It describes developments on the legislative front as well as other initiatives designed to improve the operation of the internal market, such as administrative cooperation. As far as possible, it indicates how the single market is functioning in practice in the area concerned and responds to major preoccupations which have been brought to the Commission's attention.

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#### **Section 1 - Free movement of persons**

##### **§ 1 - Abolition of controls at internal frontiers**

58. The accompanying measures necessary for abolishing controls on individuals at internal frontiers have not yet been implemented. The Member States have not officially abolished such controls at Union level, although seven of them have agreed to do so at Schengen Group level (Belgium, Germany, France, Spain, Luxembourg, the Netherlands and Portugal).

However, systematic checks on individuals have been abandoned at most frontier posts, particularly at land frontiers, and controls have actually been entirely eliminated at some border-crossing points.

At airports and ports, by contrast, systematic checks have been maintained almost everywhere on passengers on intra-Community flights and sea-crossings.

As almost all Member States have also introduced legislation on carrier liability, checks made by carriers on travel documents have been stepped up, even in respect of intra-Community travellers.

## § 2 - Free movement of persons in the Community

### A. Right of residence

59. Member States' transposal of the last three directives on the residence of non-economically active Community nationals (27) does not seem to the Commission to be satisfactory. Although these directives have now been transposed into national law by all the Member States, except Germany, the Commission's examination of the transposal measures has led it to initiate infringement proceedings against nine Member States. In most cases, the incorrect transposal relates to the condition regarding students' resources and to the period of validity of the first residence permit issued to beneficiaries of Directives 90/364/EEC\* and 90/365/EEC\*.

60. The application of Community law in this field also gives some cause for concern. The administrative difficulties encountered by Community nationals exercising their right to freedom of movement which have given rise to complaints to the Commission relate mainly to two points:

- possession of a residence permit - Even though the residence permit issued to individuals setting up residence under the right to freedom of movement on the territory of a Member State other than their own is simply a material expression of the rights directly conferred on Community nationals by the Treaty and the legislation adopted pursuant to it, Member States are continuing to subject the granting of certain benefits (in particular social assistance or services) to presentation of that permit. Furthermore, obtaining the residence permit in the first place sometimes constitutes a real obstacle course for Community nationals.
- proof of sufficient resources - Although the resources condition is laid down only in the two Council directives on retired persons, pensioners or other non-economically active persons, proof of sufficient resources is sometimes required of Community nationals carrying out a self-employed activity and their families and of members of the families of Community wage- and salary-earners.

61. A final point should be emphasized regarding the effects on Community nationals of expulsion measures (deportation, entry ban, etc.). As some Member States do not provide for a subsequent review of measures taken - and this contrary to Community case-law (28) - the individuals concerned are permanently denied access to those States.

### B. Recognition of qualifications

62. In order to simplify the updating of the specializations in Council Directive 93/16/EEC\* facilitating the free movement of doctors and the mutual recognition of their qualifications, the Commission proposed (29) in December 1994 that it be given the power to carry out this updating through a committee procedure involving the Committee of Senior Officials on Public Health set up by Council Decision 75/365/EEC\*.

(27) Directives on the right of residence for persons who have ceased their occupational activity (90/365/EEC\* and 93/96/EEC\*) and for persons not covered by other provisions of Community law (90/364/EEC\*).

(28) See in particular joined Cases 115/81 (Adoui) and 116/81 (Cornaille) - judgment of 18 May 1982 [1982] ECR 1665-1713.

(29) COM(94) 626 final of 16 December 1994.

63. A proposal for a Directive to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained (30) was presented to the European Parliament and the Council. The proposal seeks to permit practice of the profession under the home-country professional title for a given period with a view to eliminating or possibly simplifying the aptitude test required by Member States for access to the profession in the host Member State under the general system for the recognition of qualifications (Directive 89/48/EEC\*). The proposal also aims to facilitate practice of the profession of lawyer on a joint basis. The main difference compared with the text proposed by the Consultative Committee of the Bars and Law Societies of the European Community (CCBE) is that establishment under the home-country title is conceived not as an unlimited means of practising the profession but as a period designed to facilitate full integration into the profession in the host Member State.

64. A vade mecum has been produced to facilitate application of the general system for the recognition of qualifications (Directives 89/48/EEC\* and 92/51/EEC\*), thereby helping to solve the problems of interpretation referred to in the 1993 annual report (point 63). It is accompanied by a small guide for migrant workers. In addition, some training courses have been classified at a higher level: that of the diploma within the meaning of Directive 92/51/EEC\*, at the request of Germany and Italy through Directive 94/38/EC\*.

65. With regard to the state of progress in transposing legislation in this field, two Member States (Greece and Belgium) have still not notified the Commission of national measures transposing Directive 89/48/EEC\* into national law, and the matter has been referred to the Court of Justice. As to transposals already carried out, difficulties have arisen in particular concerning the recognition of teachers' qualifications, especially in the State sector. However, there has been an improvement in the situation for paramedics. With regard to Directive 92/51/EEC\*, which came into force on 18 June 1994, only three Member States have notified the Commission of transposal measures (Luxembourg, Italy and the Netherlands).

66. As regards training acquired in third countries, the Court has confirmed (31) that a Member State's recognition of qualifications awarded by a third country does not commit the other Member States in respect of Directives 78/686/EEC\* and 78/687/EEC\* concerning dentists. This case-law may also apply to other similar directives (doctors, nurses, etc.). The Court also stressed the obligation on the host Member State to take account of the professional experience which Mr Haim, the applicant, had acquired in another Member State.

67. Many obstacles still have to be overcome regarding access to non-regulated activities and employment.

In December 1994 the Commission presented a communication on the recognition of qualifications for academic and professional purposes (32). This communication analyses differences, similarities and complementarity between the various types of recognition. While continuing to respect their specific characteristics, it should be possible to develop a series of synergies to further a real European area for the professions and for training. Four main areas for action are identified in the communication: information, the creation of academic and professional networks, jointly agreed adaptation of training, and quality assessment. The communication aims to promote discussion on appropriate measures within the Community institutions and at all levels in the Member States (competent authorities, academic and professional circles).

68. In April 1994 the Commission invited proposals for promoting initiatives relating to the mutual recognition of professional and vocational qualifications.

The Commission's aim was to encourage model cross-border cooperation initiatives relating to the comparison of professional and vocational qualifications and their mutual recognition by market operators. To do that, it asked market operators - public bodies, employers, trade

(30) COM(94) 572 of 21 December 1994.

(31) Judgments given on 9 February 1994 in Cases C-319/92 (Haim) and C-154/903 (Tawil) [1994] ECR I-0425 and I-0451.

(32) COM(94) 596 of 13 December 1994.



unions, trade associations, professional organizations, training establishments - to inform it of agreements concluded and of cooperation projects in progress or envisaged in the fields in question. It provided for grants to be made for the launching or carrying out of cross-border cooperation projects which it considered to be particularly worthwhile.

Of the 171 proposals received, 29 were finally adopted. These figures provide proof - if there is need of such proof - of the multiplicity and variety of initiatives taken by market operators in connection with the mutual recognition of qualifications.

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## **Section 2 - Free movement of goods**

### **§ 1 - Instruments provided by Community law for ensuring free movement of goods**

#### **1° Articles 30 à 36 du Traité CE**

##### **A. Introduction**

69. Articles 30 et seq.\* of the EC Treaty prohibit quantitative restrictions on imports and exports and measures having equivalent effect (33).

In 1994 the Commission recorded 232 new cases complained of by economic operators or trade associations or detected by it in the course of its work, which proves that non-tariff barriers to trade still exist. This was further emphasized by economic operators at the "Internal Market Weeks" organized in Member States and at the Copenhagen conference held in September 1994 on technical obstacles to trade.

During the year:

- 217 cases were terminated;
- only two cases were referred to the Court of Justice.

The difference between these figures shows the Commission's wish to settle cases submitted to it through dialogue with Member States rather than through legal proceedings. This partnership takes the form of "package" meetings held periodically with the Member States. In 1994 such meetings were held with Germany, Spain, Italy, Greece, Portugal and, for the first time, the Netherlands. Of the 217 cases terminated, 74 were terminated as a result of "package" meetings.

70. This approach, which is designed to solve problems through transparency, also underlies the proposal for a European Parliament and Council Decision establishing a procedure for the exchange of information on national measures derogating from the principle of free movement of goods within the Community (34) (see para. 161).

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(33) See the 1993 report on the internal market (points 70 to 85).

(34) COM(93)670 final of 15 December 1993 (OJ C 18, 21.1.1994), as amended by COM(94) 250 final of 15 June 1994 (OJ C 200, 22.7.1994).

## B. The main fields in which the Commission acted to eliminate obstacles to trade in 1994

71. As the statistics relating to the 202 complaints received from economic operators in 1994 show (see Table III), government measures taken with the aim of, or having the effect of, directly or indirectly restricting intra-Community trade, whether actually or potentially, were particularly prevalent in the foodstuffs, pharmaceuticals and medical products, and road vehicles sectors. All the Member States are involved, albeit to varying degrees. The kinds of obstacles encountered by economic operators and the objectives pursued by Member States vary from one field to another but are not substantially different from those outlined by the Commission in 1993.

TABLE III - COMPLAINTS CONCERNING OBSTACLES TO TRADE RECORDED IN 1994 (ARTICLES 30 ET SEQ.)

Member State	Foodstuffs	Road vehicles	Pharmaceutical and medical products	Chemicals	Commercial legislation (advertising, sales ban)	Construction	Public procurement	Waste	Telecommunications	Other	TOTAL
B	2	5	0	0	0	0	0	0	0	7	14
DK	0	0	4	1	1	0	0	0	0	1	7
D	11	1	8	4	1	1	1	3	0	14	44
EL	5	4	1	0	2	1	1	0	0	5	19
E	1	4	0	1	3	1	0	0	0	1	11
F	9	11	3	3	2	3	0	1	1	20	53
IRL	0	0	0	0	0	0	0	0	0	1	1
I	2	3	15	3	1	4	3	0	1	4	36
L	1	1	0	0	0	0	0	0	0	0	2
NL	4	0	0	1	1	0	0	0	0	0	6
P	0	3	0	0	0	0	0	0	1	1	5
UK	0	1	0	0	0	0	0	0	0	3	4
TOTAL	35	33	31	13	11	10	5	4	3	57	202

### a) Foodstuffs

72. The foodstuffs sector is the main field in which commercial rules are introduced that can be assessed in the light of Articles 30 et seq.\* of the EC Treaty. The Court of Justice has delivered many judgments in this field, notably the Rewe judgment known under the name "Cassis de Dijon" (35).

73. In 1994 the Commission found that the principal obstacle was, the requirement concerning national prior authorization procedures, whether or not involving the issuing of certificates designed to control the composition of foodstuffs and in particular the presence of food supplements (nutrients, vitamins) and/or additives.

The cases terminated in 1994 included the following:

- the requirement that an accompanying note be produced when sugar is imported into Italy, this in order to control its use in wine;
- the requirement imposed by the Spanish authorities that an official health certificate of the country of origin be produced as evidence that products have been manufactured in accordance with the rules in force in the country of origin and that their consumption presents no health risks;
- the ban in France on the use of sorbic acid in milk chocolate fillings;

(35) Judgment of the Court of 20 February 1979 in Case 120-78 [1979] ECR 649-665.

- the ban on the importation and marketing in Germany of syrups coloured with tartrazine (E 102).

The Commission pointed out in this connection that a marketing ban or a prior authorization for importation or sale constitutes a barrier which can be justified only by such imperatives as the need to protect public health. Furthermore, it should be appropriate and proportionate to the aim in view.

74. Some obstacles also stem from legislation governing the names under which food-stuffs are sold. Cases which were terminated in 1994 included the following:

- names such as "saucisse", "terrine" and "pâté" could be used in France only if the conditions laid down by law as to the composition of such products were fulfilled;
- in the Netherlands' legislation required lemonades to contain at least 10% fruit-juice in order to qualify as authentic fruit lemonades.

The Commission had to remind the Member States concerned that a State may not prohibit products from other Member States from being marketed on its territory under the same generic name as that used for its domestic products. However, where the characteristics of the imported product do not correspond to those of the domestic product, the importer must inform the consumer of the nature of the product by means of appropriate labelling.

75. Finally, the Commission recorded obstacles stemming from government legislation relating to origin marking or to labelling imposed in the interests of consumer protection (36).

The origin marking of products is likely to impede trade in that it imposes additional costs or may devalue the imported product. Moreover, the Court has ruled that such provisions cannot be justified on consumer protection grounds since they are bound to be regarded as being clearly applicable to imported products alone (37).

Though an imperative need protected by Community law, consumer protection by no means entails banning the marketing of products on the grounds that they do not satisfy national "quality" criteria. Very often, adequate, reasonable and proportionate information for the consumer is sufficient.

In Italy, for example, the use of the Italian language alone is no longer compulsory for the presentation to the final consumer of products from other Member States, as previously laid down in Law 126 of 10 April 1991.

#### *b) Pharmaceutical and medical products*

76. Obstacles to the free movement of pharmaceutical products mainly involve marketing authorization procedures. In the case of medical products, the obstacles stem from approval procedures. These were regarded either as excessive in relation to the principle of mutual recognition or as being carried out in such a way as to present a de facto obstacle to the free movement of products.

Such authorization procedures are legitimate where they aim to check, for example, that a product is not harmful. It is the responsibility of Member States to take all necessary measures to protect public health. However, those measures should not constitute an indirect means of protecting domestic markets. The Commission therefore examines very carefully whether they are in fact necessary and proportionate to the aim in view.

77. Some obstacles stem from the failure of the national authorities to reimburse the cost of imported medicinal products, or even from the need for an import licence in the case of parallel imports (38). For example, a licence certifying compliance with German rules

(36) See points 79 and 83 of the 1993 report on the internal market.

(37) Origin marking of 25 April 1985.

(38) See point 81 of the 1993 report on the internal market.

was required for all pharmaceutical products entering German territory. This requirement particularly penalized products marketed following reprocessing.

The Commission had to point out that, while Member States may justifiably prohibit the parallel importation of products manufactured in another Member State but without the marketing authorization provided for in the legislation in force having been obtained, the situation is different where the product in question has already been marketed or where a medicinal product with identical therapeutic characteristics exists on the market.

### c) *Road vehicles*

78. National registration procedures, which will continue to exist until 31 December 1995 alongside the EEC type-approval system introduced by Council Directive 92/53/EEC\* of 18 June 1992, call for a certificate of conformity that is sometimes difficult to obtain where vehicles have been imported. These difficulties stem in particular from the non-recognition of documents, containing the necessary information, issued in another Member State. Other problems arise from the public authorities' delegation of certain functions to manufacturers or their representatives without the speed and low cost that should be associated with such public-law functions being guaranteed. Difficulties also stem from the non-recognition of technical checks and national technical standards (e.g. towing hooks).

Some cases were terminated in 1994:

- The Spanish authorities now permit vehicles belonging to Union nationals not in possession of a Spanish resident's permit to be permanently registered on their territory. Nevertheless, it is necessary for a reference location in Spain to be notified to the authorities so that the responsibilities arising from the use of the vehicle can be met.
- Certain provisions of the new Italian Highway Code (39) laying down mandatory dimensions for caravans had the effect of prohibiting the use in Italy of caravans legally manufactured or marketed in other Member States which failed to comply with those dimensions.

Following the Commission's intervention, the Italian authorities amended the legislative decree in question.

### d) *Other fields and sectors*

#### Construction

79. In the absence of effective measures implementing Community legislation, the problems encountered in the construction sector stem from the lack of mutual recognition of certification and control procedures and of environmental protection rules. Such problems were caused, for example, by a German rule stipulating that materials, components and equipment could be used in construction only if they carried a mark attesting to the fact that they had been approved. This rule was a particular handicap to imported products.

#### Chemicals

80. The obstacles which the Commission had to assess stemmed from the imposition of approval procedures or the banning of manufacturing or importation. Authorization procedures sometimes entailed excessive delays or called for a disproportionate amount of information to be provided. The Member States in question invoked the need to protect public health and the environment in support of their cases.

(39) Legislative Decree No 285/92.

The cases which were terminated in 1994 included the following:

- any product containing a higher proportion of dioxin than the level laid down by a German rule could not be manufactured on, or imported into, German territory. In the case of recycled products, however, this strict rule applied differently according to whether the products containing the dioxin had been recycled in another Member State and then reimported or whether they had been recycled on German territory.

### Energy

81. This is a sector which is still largely dominated by importation, marketing and network management monopolies that are the subject of actions before the Court of Justice. Furthermore, national legislation in some Member States imposes storage obligations on distributors which in effect tie them to the national refiners - obligations which they are unable to meet owing to insufficient capacity.

## **C. The main judgments of the Court of Justice**

82. The Union Treaty does not define the concept of a measure having equivalent effect to a quantitative restriction. Articles 30 et seq. of the EC Treaty do no more than prohibit such measures. Hence the importance of Court of Justice case-law in this field for uniform and effective application of these Articles by national authorities. It also enables the Commission to clarify and develop, in interpretative communications, the principles of Community law established by it.

### **a) *Name under which a cosmetic product is sold* (40)**

83. The Court held that a German measure prohibiting the importation and marketing of a product classified and presented as a cosmetic on the grounds that it bore the name "Clinique" was incompatible with Articles 30\* and 36\* of the EC Treaty and with Council Directive 76/768/EEC\* on the approximation of the laws of the Member States relating to cosmetic products.

In the Court's view, the ban in question was not a necessary requirement for protecting consumers or public health. The products in question were presented as cosmetics and not as medicinal products. Furthermore, such products were regularly marketed in the other Member States under the name "Clinique" without the use of such a name apparently misleading consumers.

### **b) *Approval procedure laid down for the marketing of radiocommunication transmitters/receivers* (41)**

84. In line with its case-law, the Court held that a Belgian approval system applied without distinction to all radiocommunication receivers, with the sole exception of sets designed exclusively to receive radio or television broadcasts, was incompatible with Article 30\* of the Treaty and could not be justified as a mandatory requirement or under Article 36\* of the Treaty.

(40) Judgment of the Court of 2 February 1994 in Case C-315/92 [1994] ECR I-0317.

(41) Judgment of the Court of 24 March 1994 in Case C-80/92 [1994] ECR I-1019.

**c) *Ban on carrying out certain commercial activities on Sundays* (42)**

85. The Court held that Article 30 of the Treaty had to be interpreted as not applying to national legislation governing shop opening hours - in this case in Italy - which covered all economic operators carrying out activities on national territory and which affected, de jure and de facto, the marketing of domestic products and products from other Member States in the same way.

In so doing, the Court applied the conditions laid down in paragraphs 16 and 17 of the above-mentioned Keck and Mithouard judgment (43).

**d) *Systematic frontier checks on exports of skimmed-milk powder* (44)**

86. In line with its "Simmenthal" case-law, the Court held that Community legislation (45) on arrangements for the payment of aid for skimmed-milk powder intended for animal feeding-stuffs on the territory of another Member State had to be interpreted as meaning that it did not permit the carrying-out of systematic frontier checks - in this case in Germany - designed to ensure compliance with the conditions regarding the composition and quality of skimmed-milk powder to which the granting of export refunds was subject. However, that legislation did not prevent sample checks from being carried out.

**e) *Free movement of articles made of precious metal - compulsory hallmarking* (46)**

87. In line with its "Robertson" case-law (47), the Court held that a Member State - in this case the Netherlands - could prohibit the sale of metal articles not stamped with a hallmark meeting the requirements of the rules it had laid down where such articles had not been stamped, in the Member State of exportation, with a hallmark containing information equivalent to that provided by the hallmarking prescribed by the rules of the Member State of importation and intelligible to consumers of that State.

## **2° Technical harmonization and standardization**

### **A. Adoption and implementation of legislation in the various sectors**

88. The application of the Treaty provisions and of the principle of mutual recognition constitute the foundation of the single market. However, in many areas, they are not, in themselves, sufficient to guarantee the free movement of goods. For this reason, the Community has developed a body of secondary legislation designed to eliminate technical barriers and ensure free movement. In the course of 1994, certain legislative measures required to ensure the proper functioning of the single market or to adapt existing provisions to technical change were adopted, while the Commission continued and intensified its activity designed to ensure effec-

(42) Judgment of the Court of 2 June 1994 in joined Cases C-69/93 and C-258/93 [1994] ECR I-2355.

(43) Judgment of the Court of 24 November 1993 in joined Cases C-267/91 and C-268/91 [1993] ECR I-6097; see point 77 of the 1993 report.

(44) Judgment of the Court of 22 June 1994 in Case C-426/92 [1994] ECR I-2757.

(45) Regulations (EEC) Nos 1624/76\*, 1725/79\* and 1726/79\*.

(46) Judgment of the Court of 15 September 1994 in Case C-293/93 [1994] ECR I-4249.

(47) Judgment of the Court of 22 June 1982 in Case 220/81 [1982] 2349-2363.

tive implementation and enforcement of the legislation, including the publication of the first edition of the "Guide to the new approach directives".

**a) Agricultural products**

89. In the veterinary and zootechnical sector the internal market programme has led to the establishment of a significant and coherent set of legislation governing animal health, zootechnics and animal welfare questions relating to live animals and animal products. Although a number of implementation decisions remain to be adopted, harmonized conditions already exist for the internal movement and for the import from third countries of live animals and animal products. A number of proposals to update and/or improve existing legislation are under examination in the Council. In the field of crop products and animal nutrition, Community regimes, adapted to the requirements of the internal market, exist for seeds and propagating material, plant health, animal nutrition, pesticides, pesticide residues and organic farming. In some cases, further measures to refine and update these regimes are under examination in the Council or in preparation.

**Veterinary Legislation**

♦ *Legislative developments*

90. *Animal health* - In June the Council adopted Decision 94/370/EEC\* comprising a series of amendments to Council Decision 90/424/EEC\* on expenditure in the veterinary sector, which will permit better strategic planning and utilization of Community funds in combating animal diseases. The Council also adopted a Directive amending Council Directive 64/432/EEC\* on health problems affecting intra-Community trade in bovine animals and swine.

91. *Public health* - Harmonized health rules on the health requirements for the placing on the market and importation of animal products (meat, meat-based products, dairy products and fishery products) are in place. In December the Council adopted Directive 94/65/EC\* concerning the placing on the market of minced meat and meat preparations and Directive 94/71/EC\* amending the rules on the production and placing on the market of raw milk, heat-treated milk and milk-based products.

In December the Council adopted Decision 94/936/EC\* amending Decision 90/218/EEC\* and prolonging until 31 December 1999 the moratorium on the administration of bovine somatotrophin to dairy cows, while providing the possibility for Member States to organize limited trials to obtain further scientific data.

In February the Council adopted Decision 94/117/EC\* concerning certain small establishments to ensure the distribution of fisheries products in Greece.

92. *Zootechnics* - In June the Council adopted Directive 94/28/EC\* fixing the principles for the zootechnical and genealogical conditions for the import from third countries of animals, their semen, ova and embryos, and amending Directive 77/504/EEC\*.

♦ *Implementation and enforcement of legislation*

93. *Transposal* - In the veterinary field, the situation regarding directives dealing with the abolition of physical inspections at frontiers has improved considerably since only Ireland has not yet taken the necessary legislative measures.

The situation concerning the other veterinary directives varies from Member State to Member State and from directive to directive, but, in general, there are many delays which are difficult to reduce.

Thus, delays in the transposal by the Netherlands of directives in the field of artificial insemination and reproduction were not resolved until the end of 1994, despite the judgment by the

Court of Justice of 2 August 1993 (48) censuring that Member State for failure to communicate any measures incorporating Directives 87/328/EEC\*, 88/661/EEC\*, 89/361/EEC\*, 90/118/EEC\* and 90/119/EEC\* into national law.

94. *Administrative cooperation* - The implementing rules in the veterinary and zootechnical sector are applied within the framework of the Standing Veterinary Committee and the Standing Committee on Zootechnics. These committees, on which the Member States are represented by the appropriate experts, meet for at least five days a month and operate in the same way as regulatory committees. They delivered well over two hundred opinions in 1994. In addition there are regular technical meetings with representatives of the Member States in legislation or expert sub-groups addressing particular issues.

The programme for the exchange of veterinary officers between the Member States has continued, focusing in particular on harmonizing the inspection techniques used at the Community's external frontier posts.

95. *Enforcement of rules on animal health* - The setting-up of the new regulatory framework for the veterinary inspection of live animals and the abolition of internal border controls has been followed by a significant increase in movements of live animals. The ANIMO system, connecting more than two thousand local units in the twelve Member States, now fully meets its objectives and provides advance information to the point of destination of the arrival of animals in the Member State of destination. The number of messages transmitted through the ANIMO system rose rapidly during 1994, with 125 000 messages during the second half of the year from a total of 160 000.

The Commission has continued to apply measures to restrict trade in and import of live animals and products to avoid the spread of disease, especially foot-and-mouth disease, classical swine fever and swine vesicular disease. Action was also required to restrict imports from Australia following an outbreak of a serious equine disease.

96. *Enforcement of rules on public health* - Following an outbreak of trichinae in France, the Commission had to take measures to reinforce the testing requirements on horse-meat from North America pending the results of scientific study. Following an opinion from the Scientific Veterinary Committee, Directive 94/59/EC\* was adopted, amending the trichina testing arrangements for imported and Community horse-meat.

97. *Scientific Cooperation* - Scientific cooperation with experts from the Member States is organized by the Commission within the framework of the Scientific Veterinary Committee set up on 30 July 1981. The Committee comprises three sections: animal health, public health and animal welfare. In addition to plenary sessions, numerous sub-groups meet at the Commission's request. During 1994 the Committee examined, among other subjects, the testing requirements for trichinae, and continae, and continued to monitor and advise on the situation with regard to bovine spongiform encephalopathy (BSE).

98. *Cooperation with Industry* - The Commission consults the profession via the Advisory Veterinary Committee, which is made up of representatives of agricultural producers, agricultural cooperatives, industry, commerce, workers' and consumers' organizations and the veterinary profession. Subjects addressed during 1994 included provisions for the placing on the market of fresh meat and the rules governing small slaughterhouses.

## Plant Health

### ♦ *Legislative developments*

99. The new plant health regime was extended to the Canary Islands from 1 January 1995 by Council Directive 94/13/EC\* amending Directive 77/93/EEC\* establishing the plant health regime.

(48) Judgment of the Court of 2 August 1982 in Case C-303/82, ECR I-4739.



This Directive also adapted the same Directive to provide for derogations from certain plant health rules in respect of trials, scientific and varietal selection work, the movement of small quantities of plants, plant products and other objects for personal use, and the growing, production or use of such material in frontier zones between Member and non-Member states.

Commission Directive 94/3/EC\* established a procedure for the notification of interception of a consignment or a harmful organism from third countries presenting imminent phytosanitary danger.

Consolidation of Community legislation in this area is due to be completed by the end of 1995.

**100. Seeds and Propagating Material** - Despite early harmonization in this area, certain aspects of seed quality legislation had to be updated to ensure total compatibility with the internal market. The Commission made a proposal to the Council to this end which was actively discussed during 1994 and is expected to be adopted early in 1995 (49).

Intensive work has been undertaken throughout the year on the consolidation of the seven basic directives on the marketing of agricultural and vegetable seed, which should be completed by the end of 1995.

**101. Pesticides** - In 1991 the Council adopted Directive 91/414/EEC\*, which contains the basic rules under which pesticides will circulate in future in the European Community. A number of provisions which were necessary to make the regime fully operational were adopted in 1994. In particular, in July the Council adopted Directive 94/43/EC\* establishing the principles to be applied by Member States in authorizing plant protection products.

Work is being undertaken to harmonize the data requirements for acceptance of active substances and plant protection products. Proposals are being prepared to include in Directive 91/414/EEC\* a fee scheme to cover the costs of evaluating active substances and to include appropriate genetically-modified organisms in the scope of the Directive.

In June 1994 the Council adopted Directives 94/29/EC\* and 94/30/EC\*, which provide for the establishment of maximum pesticide residue levels in a wide range of agricultural products.

On 11 November 1994 the Commission made a further proposal to the Council to develop the list of pesticide residue levels covered by Community measures (50).

**102. Organic farming** - With regard to organic farming, the Commission adopted several implementing measures under the basic Regulation (EEC) No 2092/91\* and the Council continued its examination of the Commission's earlier proposal to improve the regime's functioning in the light of the first year's experience (51). On 20 June the Council adopted Regulation (EC) No 1468/94\* delaying for one year the current provisions concerning the labelling of products under conversion.

A proposal to include animal products in the scope of the Community regime is in preparation and should be submitted to the Council in 1995.

**103. Plant variety rights** - In the field of plant variety rights, the Council adopted Regulation (EC) No 2100/94\* on Community plant variety rights. This measure was initiated by the Commission in the White Paper.

The Regulation provides for an intellectual property right for a new plant variety with effect throughout the territory of the European Union. Such protection will be granted by the future Community Plant Variety Office, the location of which has yet to be determined. The Regulation will enter into force on 27 April 1995.

(49) COM(93) 598 of 26 November 1993 (OJ C 29, 31.12.1994).

(50) COM(94) 482 of 11 November 1994.

(51) COM(93) 558 of 12 November 1993 (OJ C 326, 3.12.1993) as amended by COM(94) 292 of 7 July 1994 (OJ C 222, 10.8.1994).

**104. Animal nutrition** - On 22 July the Commission adopted Directive 94/40/EC\* adapting the guidelines for the evaluation of additives to cover two new categories of additives, enzymes and microorganisms, and on 25 July Directive 94/39/EC\* establishing a list of intended uses of feedingstuffs for particular nutritional purposes (commonly referred to as "dietetic feeding-stuffs"), to define clearly the intended uses, nutritional characteristics and conditions of use permitted. A proposal was submitted to Council during the year fixing specific rules for raw materials used in feedingstuffs (52) and the Council for its part continued its examination of the Commission's earlier proposals concerning a modified procedure for the admission of certain classes of additives (53), the official inspection of feedingstuffs (54) and the approval of certain categories of establishments operating in the feedingstuffs sector (55).

The imminent adoption by the Council of three proposals concerning official controls in animal nutrition\*, the licensing of certain establishments operating in the animal feed sector and the fifth amendment to Directive 70/524/EEC\* concerning additives in animal nutrition, which establishes a new procedure for the authorization of additives, will provide a reinforcement of the safety conditions and an important contribution to the free circulation of all products intended for animal nutrition.

On 20 July 1994 the Commission submitted a proposal to the Council concerning labelling declarations on feed materials (56) with a view to preventing the possible distortion of trade due to the lack of harmonized rules.

A new proposal establishing the rules for authorization and use of particular feed materials derived from non-conventional products or technologies is anticipated by July 1995 in order to ensure the safety of use of feedingstuffs.

Discussions are taking place with national experts with a view to submitting a Commission proposal during 1995 to reformulate and update Directive 70/524/EEC\* concerning additives in feedingstuffs as a result of developments in scientific or technical knowledge.

♦ *Implementation and enforcement of legislation*

**105. Transposal** - In the plant-health sector, the new Community rules on protection measures against the introduction into the Community of organisms harmful to plants and plant products and against their propagation within the Community have been in force since 1 June 1993. Apart from a number of recent amending directives, all the essential directives in this field have been transposed except by Greece.

On the other hand, as regards seeds and seedlings, delays in transposal have become substantial, except in Denmark, Ireland and the Netherlands, and the Commission has had to initiate infringement proceedings under Article 169\* of the Treaty against the Member States concerned.

**106. Administrative and scientific co-operation** - Co-operation is ensured through the relevant regulatory committees and numerous dependent committees of experts and working groups (see p. 71 of 1993 Report).

Additionally, in the plant health area, committee work is complemented and supplemented by the activities of the Community Inspectorate, whose work during 1994 focused on verifying the correct application by the Member States of the new plant health regime which came into force on 1 June 1993.

Some difficulties have been encountered in the interpretation of the legislation by a number of Member States, resulting in further clarification by the Commission of certain definitions used in the area of plant-health controls.

(52) COM(94) 313 of 20 July 1994 (OJ C 236, 24.8.1994).

(53) COM(94) 372 of 3 August 1994 (OJ C 242, 30.8.1994).

(54) COM(93) 510 of 21 October 1993 (OJ C 313, 19.11.1993) as amended by COM(94) 371 of 3 August 1994 (OJ C 242, 30.8.1994).

(55) COM(93) 587 of 26 November 1993 (OJ C 348, 28.12.1993).

(56) COM(94) 313 of 20 July 1994 (OJ C 236, 24.8.1994).

Inspection visits have also been made to various third countries, in particular those known to have exported material to the Community that did not comply with Community legislation.

107. The third phase of the "Europhyt" project was launched in July 1994 and is scheduled to end in July 1995. The aim of this project is to:

- organize and implement a network of mutual notification and exchange of information concerning the interception, appearance and/or presence of organisms harmful to plants and plant products;
- establish a database of technical and biological information for national inspectors and Community experts.

The pilot database for managing third-country notifications is already operational and statistics of notifications received can be generated automatically. At the end of the third phase it will be possible to update and consult the database for managing third-country notifications direct from the Member States and to update the database automatically with statistics on the notifications exchanged.

Completion of this project will greatly facilitate the joint efforts by national and Community authorities to combat harmful organisms, thereby helping to ensure the safety and quality of the fruit, vegetables, flowers and plants sold to the European consumer.

108. *Enforcement of plant health rules* - Overall the new plant health regime which came into force in June 1993 has achieved its main objective - to ensure the free movement of plants and plant products whilst at the same time safeguarding plant health. A need has been identified for further standardization and clarification of certain implementing measures to ensure uniformity of application. Key areas of concern are procedures for notification of interception of harmful organisms, charging systems for plant passporting activities, customs procedures for identification and initial interception of material of plant-health concern from third countries.

109. *Enforcement of rules on pesticides* - With the completion of the arrangements for the placing on the market of plant protection products, Member States have started to work on the first phase of the programme for the re-evaluation of existing active substances contained in such products.

Remaining differences in Member States' pesticide residue standards, which have not yet been harmonized, could result in trade problems. The situation will improve with the gradual harmonization of legislation on pesticide residues. Meanwhile, the Commission has proposed a conciliation procedure for resolving trade problems which may arise as a result of the absence of harmonized maximum pesticide residue levels.

#### Complaints

110. Obstacles to the free movement of agricultural products brought to the Commission's attention during 1994 consisted, first, of technical barriers such as the fixing at too low a level by the German authorities of maximum permissible concentrations for certain contaminants in olive oil, and the fixing by the Italian authorities of limits for pesticide residues for medlars below those laid down by Community rules and, second, of the retention of administrative requirements abolished by the "White Paper" directives, such as the requirement by the Italian authorities for a health certificate for fresh meat, and that for prior authorization for transport on French territory of live animals from other Member States intended for export to third countries.

#### **b) Foodstuffs**

##### ♦ *Legislative Developments*

111. The most significant achievement of 1994 was the adoption by the Council on 30 June 1994 of Directive 94/35/EC\* on sweeteners and Directive 94/36/EC\* on colours, and the adoption by the Council on 15 December 1994 of the Directive on additives other than colours and

sweeteners. Implementation of these directives will remove barriers to trade within the internal market resulting from different national rules concerning the use of additives, which constitute a significant proportion of the complaints received by the Commission relating to the free movement of foodstuffs. The Council also adopted in June an amended version of the framework Directive 89/107/EEC\* on food additives (Directive 94/34/EC\*) in order to allow Member States to maintain their legislation on the prohibition of use of additives in traditional products subject to certain conditions.

112. In addition, the Council and Parliament adopted Directive 94/52/EC amending Directive 88/344/EC on extraction solvents.

113. During the course of 1994, the Commission continued its review of the detailed provisions of Community food legislation requested by the Edinburgh summit with a view to rationalizing and simplifying the Community rules applicable to coffee extracts, sugars, preserved milks, honey, fruit juices and nectars, chocolate and jams, jellies and marmalades. The Commission has decided to cease work on the elaboration of certain specific directives relating to foodstuffs for special nutritional purposes and has proposed to delete the references to low-sodium foodstuffs, gluten-free foodstuffs, foods for diabetics and high-energy foodstuffs for sportspersons from the list of specific directives contained in the annex to Directive 89/398/EEC\*. In addition, the Commission has presented a proposal to update the provisions of Directive 80/777/EEC\* relating to natural mineral waters.

114. In April, following Parliament's opinion, the Commission presented a revised proposal for the amendment of Directive 79/112/EEC\* relating to food labelling. This proposal contains several important provisions for the elimination of remaining technical barriers to trade in the foodstuffs sector, notably in respect of the quantitative labelling of ingredients, and the inclusion of the list of ingredients on the labelling of alcoholic drinks.

♦ *Implementation and enforcement of legislation*

115. As in previous years, high priority has been given to the development of administrative cooperation between the Member States in the foodstuffs sector. A third coordinated programme for the control of foodstuffs was established on 12 January 1995 on the basis of Directive 89/397/EEC\* on the official control of foodstuffs. Furthermore, the Commission took the first steps towards the introduction of a system for monitoring and evaluating the equivalence and effectiveness of the official food control systems operated by the Member States; the first missions to individual Member States were scheduled to take place in early 1995. In addition, it was possible to use the network of contacts established within the framework of the Standing Committee for Foodstuffs to resolve several questions relating to the implementation and application of Community law, and, as necessary, bilateral meetings were organized between Member States to consider specific problems for the functioning of the internal market.

116. In the field of food hygiene, the Commission used for the first time the powers conferred by Article 10 of Directive 93/43/EEC\* to take measures to protect the Community market from serious health risks arising in third countries. Following an outbreak of cholera in Albania, temporary measures were taken to prevent the importation of certain foodstuffs which could act as a vehicle for transmitting the disease.

117. In order to prevent the emergence of new barriers to trade within the internal market, Directive 79/112/EEC\* on food labelling, Directive 93/43/EEC\* on food hygiene and Regulation (EEC) No 315/93\* lay down specific procedures by which Member States are required to notify draft legislation to the Commission. During 1994, the Commission decided to block the adoption of several such measures in order to allow time for appropriate provisions to be adopted at Community level.

118. The Commission also drew up the first detailed inventory of tasks to be undertaken in the field of scientific cooperation between the Commission and Member States. Scientific institutes from the Member States will consequently participate in the examination of questions relating

to flavouring substances and the chemical or microbiological contamination of food, and studies of dietary intakes in the Member States.

119. Finally, the Commission has initiated studies on the implementation of Community food legislation. The results should make it possible to identify any specific problems resulting from non-transposal or incorrect implementation of the legislation by Member States.

**c) Mechanical and electrical engineering, pressure vessels, medical equipment and measuring instruments**

♦ *Legislative developments*

120. Legislative activity was continued and resulted in:

- the adoption by the European Parliament and the Council of:
  - Directive 94/9/EC\* concerning equipment and protective systems intended for use in potentially explosive atmospheres: this Directive replaces the existing 'old approach' directives (i.e. detailed technical rules) requiring continual adaptations to technical progress, and extends the scope of Community law beyond electrical products to include all equipment and protective systems intended for use in potentially explosive atmospheres;
- the adoption by the Commission of:
  - Directive 94/26/EC\* adapting to technical progress Council Directive 79/196/EEC\* concerning electrical equipment for use in potentially explosive atmospheres;
  - Directive 94/1/EC\* adapting to technical progress Council Directive 75/324/EEC\* on aerosol dispensers.

♦ *Implementation and enforcement of legislation*

121. In 1994 the Commission stepped up its activities relating to the implementation and enforcement of directives covering these different fields, in particular by increasing the number of exchanges of experience between the certification bodies designated by the Member States for the implementation of the directives, and by continuing its work with the Member States with a view to distributing implementation guides for each directive.

122. It also published lists of notified bodies and harmonized standards in the Official Journal of the European Communities. Progress on notifications concerning the certification bodies at the end of January 1995 demonstrates that the bodies are now in place to enable the 'new approach' directives to be implemented effectively (57).

Although there has been a delay in the adoption of harmonized standards in some sectors (machinery), this is an isolated occurrence (personal protective equipment). The delays are due mainly to lack of industry involvement.

123. In addition, consultations with experts in the Member States have continued in each sector with a view to determining the needs and possible procedures for cooperation between the authorities responsible for market supervision. Progress has been slow because the 'new approach' directives are just beginning to enter into force. Thus, national administrations have focused on the difficulties in interpreting the directives.

(57) Directive 87/404/EEC\* - simple pressure vessels  
 Directive 89/336/EEC\* - electromagnetic compatibility  
 Directive 89/392/EEC\* - machinery  
 Directive 89/686/EEC\* - personal protective equipment  
 Directive 90/384/EEC\* - non-automatic weighing instruments  
 Directive 90/385/EEC\* - active implantable medical devices  
 Directive 90/396/EEC\* - gas-burning appliances  
 Directive 93/42/EEC\* - medical devices

The Commission has also continued its action under Article 169\* of the EC Treaty in order to ensure that the directives are effectively and correctly transposed and properly enforced.

**d) Construction products**

124. Directive 89/106/EEC\* on construction products has been transposed by eleven Member States, and Belgium has presented draft legislation which should soon be signed by the Head of State.

As part of the implementation of this Directive, on 30 January 1994 the Commission, after obtaining the opinion of the Standing Committee on Construction, adopted a communication with regard to the six interpretative documents (58) setting out in detail the six essential requirements in the Directive.

These documents are neither regulations nor technical specifications. They are information and reference documents providing the indispensable link between the essential requirements concerning construction works and technical specifications (harmonized standards and European technical approvals) for construction products. The interpretative documents constitute the indispensable basis for formulating mandates for standardization and guidelines for European technical approvals.

In addition, in September 1984 the Commission adopted a decision on the classification of products according to their reaction to fire (59).

These various decisions enabled the Commission to finalize the first mandates for standardization for specific product groups, which have been sent to the European Standards Organizations.

The effective application of this Directive is based on the adoption of European technical specifications. The standardization bodies are carrying out important work to this end.

**e) Motor vehicles**

125. The completion of the internal market in this sector involves the gradual replacement of a body of national technical rules on construction requirements to ensure the safety of users and third parties and to protect the environment, by a single body of harmonized rules for the whole Union. This technical harmonization through specific directives on each vehicle component results in the introduction of a single system of type-approval for vehicles, which will eventually replace all the existing national systems. Thus, it will be possible to sell and register within any Member State a vehicle with a valid certificate of conformity issued under this system, without any other technical formality.

126. This technical harmonization was completed for private cars in June 1992. The procedure for Community type-approval entered into force on an optional basis on 1 January 1993 for private cars and is scheduled to become compulsory by 1 January 1996. It will be extended to other categories of vehicle as soon as the last specific directives concerning them are adopted, a process which is currently under way.

127. Following a symposium held in November 1994 on the first applications of the procedure for Community type-approval, the Commission will prepare a report and will propose, where appropriate, amendments to rectify any problems in the system.

(58) OJ C 62 of 28 February 1994.

(59) OJ L 241 of 16 September 1994.

**f) Pharmaceuticals**

128. Completion of the internal market in the pharmaceuticals sector involved substantial harmonization of legislation, which was finished at the end of 1992. A major step towards increased integration of the market was the adoption by the Council in June and July 1993 of the regulation and the directives concerning the new system of authorization for placing on the market and the establishment of a European Agency for the Evaluation of Medicinal Products.

The Agency will have its headquarters in London. The Community procedures for authorization for placing on the market came into force on 1 January 1995. Thus, within a period of eighteen months, it was necessary to adopt the secondary legislation needed to start the new system under favourable conditions, not to mention the tasks involved in setting up any new international organization. The Community now has a mechanism providing easier and quicker access for medicinal products to the single market while guaranteeing patients assessments of medicines of the highest scientific quality.

129. In March 1994 the Commission sent to the Council and to Parliament a communication on the outlines of an industrial policy for the pharmaceutical sector in the European Community. In so doing, the Commission wished to attract attention to the difficulties currently facing this industry. The emergence of new technologies, increases in the cost of research and development for new medicines, the international trend to greater concentration of financial resources and increased global competition are drastically changing this industry's usual framework for activity.

At the same time, the Member States are increasing the reforms of their pricing and reimbursement systems with a view to controlling health expenditure. If it is legitimate for the Member States to seek to limit public expenditure in this way and make the best use of limited financial resources, the question also arises whether these measures are not likely to have a serious impact on the future of an industry whose performance is largely determined by investment today in research and development.

A discussion and guideline document, the communication seeks to create a permanent dialogue enabling national authorities and their socio-economic partners to engage in a substantive debate on the causes of the decline of the European pharmaceutical industry and on the measures to be adopted by the Community and by the Member States in order to remedy the situation. It calls on the Member States, in the fields for which they have direct responsibility, to take the measures capable of guaranteeing both balance in the systems for financing pharmaceutical expenditure and the long-term pursuit of therapeutic innovation by the European pharmaceutical industry.

**g) Narcotic drugs and psychotropic substances**

130. The aim of Council Directive 92/109/EEC\* on the manufacture and placing on the market of certain substances used in the illicit manufacture of narcotic drugs and psychotropic substances is to set up intra-Community surveillance of these substances in order to prevent their being diverted from lawful trade.

The Directive includes provisions on the monitoring of the placing on the market of classified substances, in particular with regard to the documentation accompanying each operation leading to placing on the market, and labelling of substances. It also contains provisions on administrative cooperation between the competent authorities in each Member State.

The deadline for transposing the Directive, and for Directive 93/46/EEC\* introducing technical amendments, was 1 July 1993. To date, Belgium, Greece, Ireland and the United Kingdom have communicated measures incorporating the two Directives into national law, and Denmark has notified only the transposal of Directive 92/109/EEC\*. The consequences of the delay in transposal in most of the Member States may be serious. If Member State A, in accordance with the Directive, makes placing on the market subject to authorization, and the delay in transposal in Member State B means that these authorizations are not in place, Member State A will not be able to accept the placing on the market of products from Member State B.

## ***h) Chemical products***

**131.** Large and small firms operating in the chemicals, plastics and rubber sectors perceive that the single market is very much a reality. This single market comprises not only the twelve Member States but also the EFTA countries so that the effective internal market is the European Economic Area and Switzerland. Some 100 000 substances and several million preparations move freely within this market. The remaining problems concern:

- the control exercised by governments over exports of precursors for chemical weapons, an area in which industry is disappointed that the Commission was unable to persuade Member States to have a fully harmonized system at Union level;
- a very limited number of cases where there are scientific uncertainties leading to disagreement among Member States about the danger posed by certain substances.

### **♦ *Special arrangements for free movement***

**132.** Three amendments to Directive 76/769/EEC\* limiting marketing and use of dangerous substances and preparations were adopted during 1994. Their purpose is to maintain the single market in the goods in question while ensuring a high level of protection for consumers, and, in the case of the fourteenth amendment, for workers too.

- The twelfth amendment limiting nickel lays down harmonized rules for the use of nickel in objects coming into contact with the skin, such as jewellery. It provides a high level of protection for consumers against nickel allergy whilst maintaining a single market in the products concerned. It was adopted in June 1994 and will enter into force when CEN has developed the necessary test methods to be used in demonstrating the conformity of the products with the Directive.
- The thirteenth amendment lays down harmonized rules for the use of flammable gases in aerosol products likely to be accessible to children such as artificial snow, silly string, etc. It provides a high level of protection against fire, at the same time maintaining a single market in the products concerned. It was adopted in November 1994 and will enter into force when test methods are available, towards mid-1996.
- The fourteenth amendment deals with creosote, substances which are carcinogenic, teratogenic and toxic for reproduction (referred to as CMT substances - carcinogenic, mutagenic and toxic for reproduction) and certain chlorinated solvents, and lays down harmonized rules for the marketing of these products. It provides a high level of protection for consumers, workers and the environment against the risk of cancer from creosote; by prohibiting the sale to the general public of all chemicals classed as CMT (categories 1 and 2) and of seven chlorinated solvents, it makes an important contribution to protecting public health. The Directive was adopted in December 1994 and will enter into force towards mid-1996.
- A proposed sixteenth amendment would phase out the use of hexachloroethane by the non-ferrous metals industries. It is a transposal into Community law of two Decisions of the Paris Commission (PARCOM) which have been adopted by some Member States and not by others. By providing for harmonized rules it will preserve the single market whilst providing a high level of protection for the environment. The proposal was adopted by the Commission in December 1994.

### **♦ *Single market problems***

**133.** There is evidence of problems regarding the single market in toxic and very toxic substances, substances containing dioxins and asbestos products.

- Some Member States prohibit the marketing of toxic and very toxic substances to the general public; the question may be examined by experts in 1995 with a view to a possible directive.



- Technical barriers have resulted from German limits on dioxins in chemicals (Dioxinverbotverordnung) and from bans on asbestos by Germany, Denmark, the Netherlands, and Italy. The diversity of national approaches in these areas is likely to make progress difficult.
- In cases of harmonized rules under Article 100a\*, newly adopted on the basis of a qualified majority, there is an increasing tendency for Member States to seek derogations from the harmonized rules under Art. 100a(4)\*. A precedent for such action was recently established by Commission Decision 94/783/EC\* allowing Germany to derogate from Council Directive 91/173/EEC\* on the restrictions on marketing and use of pentachlorophenol.

## i) Explosives

### • Legislative developments

134. The single market in the field of explosives for civil uses was completed with the entry into force on 1 January 1995 of Council Directive 93/15/EEC\* on the harmonization of the provisions relating to the placing on the market and supervision of explosives for civil uses.

This Directive contains two types of provision:

- First, it contains provisions on the placing on the market of explosives, using the 'new approach'. Initial work on standardization began in CEN in September 1993 with a view to allowing European standards to be drawn up with a presumption of conformity with the essential requirements.
- Second, it introduces a mechanism for monitoring transfers of explosives and ammunition within the Community. These checks are no longer carried out as checks at internal frontiers but solely as part of the normal checks carried out in a non-discriminatory way, throughout the Community. In order to transfer explosives, the recipient must obtain an authorization for the transfer from the competent authority in the place of destination. The competent authority ensures that the recipient is legally empowered to acquire explosives and that he is in possession of the necessary licences or authorizations. The transit of explosives via the territory of one or more Member States must be notified by the persons responsible for the transfer to the competent authorities in that (those) Member State(s), whose approval is required. The Directive also contains specific instructions for cases where the transfers of explosives must comply with specific safety requirements.

### • Implementation and enforcement of the legislation

135. Although all the provisions of Directive 93/15/EC\* have been in force only since 1 January 1995, the Member States had to introduce the provisions necessary to comply with the rules on the transfer of explosives by 30 September 1993, and the provisions transposing the other aspects of the Directive by 30 June 1994.

So far only Luxembourg, the Netherlands and the United Kingdom have notified the transposal of all the provisions of the Directive (Belgium, Germany, Denmark, Italy, and Ireland have notified partial transposal). However, a detailed examination of the contents of the transposal in Luxembourg still has to be carried out.

136. The effective operation of Directive 93/15/EC\* requires cooperation among the public authorities involved in its application. The main aspects of this cooperation are:

- Article 5, which provides that disagreement over whether harmonized standards satisfy the essential requirements of the Directive shall be brought before the Directive 83/189 Committee;
- Article 9(4), which provides that where a Member State considers that there is a problem regarding the verification of the entitlement to acquire explosives, that

Member State shall forward the available information on the subject to the Commission, which will put the matter before the Explosives Committee.

- Article 12, which sets up an information exchange network on transfers of explosives and ammunition.

#### *j) Toys*

137. The fifteen Member States have incorporated Directive 88/378/EEC\* on the safety of toys into national law. Its implementation has not given rise to any major problems and it has achieved its objective of the free movement of products. But the assessment of the operation of the market-control mechanisms on the conformity of toys with essential safety requirements must be qualified. The market-control mechanisms were correctly introduced by the Member States. However, according to the information available to the Commission, market controls are not being carried out in the same way throughout the European Union, and the consequence is variable effectiveness depending on the Member States concerned.

138. This information comes from two sources. First, the Directive requires the Member States to submit to the Commission every three years a report on the application of the Directive in their country. To date, and despite a reminder from the Commission, only Spain, Denmark, Germany, the Netherlands, the United Kingdom and Portugal have submitted such a report. Second, the Commission is notified of certain measures to withdraw or restrict the placing on the market of toys regarded as not complying by the supervisory authorities through notifications that it receives on a regular basis from some Member States under the safeguard clause in Directive 88/378/EEC\*. During the period 1990-1994, the safeguard clause was used one hundred times. The Commission considered that ninety-seven times, or almost all cases, were justified, and it informed all the Member States immediately. Ninety-five notifications were made by the United Kingdom; one notification was made each by Germany and Denmark.

To these must be added the notifications made under the RAPEX system and dealt with under the safeguard clause in Directive 88/378/EEC\* since the Commission took the view that the risk represented by the toys in question was not serious and immediate. Seven notifications, one Danish, two German, two from the United Kingdom and two from Portugal, were also redirected.

139. The Commission finally received notification from Germany under the safeguard clause in Directive 87/357/EEC\* concerning products which, appearing to be other than they are, endanger the health or safety of consumers ("Dangerous imitations" Directive), which it also dealt with under the safeguard clause in Directive 88/378/EEC\*.

Cases of toys notified for failing to conform to safety requirements concern essentially imports from third countries, mainly in Asia.

#### *k) Footwear*

140. Community legislation on footwear labelling was drafted in response to the concerns of industry; there had been hundreds of complaints due to the serious obstacle to the free movement of footwear in the EC caused by the existence of divergent national laws in France and Spain, and the likelihood that other Member States would enact similar measures.

After extensive examination and consultation with all parties concerned, it was found that the varying national laws and practices were likely to create barriers to trade. Neither the application of Articles 30 et seq.\* of the Treaty, recognition between Member States of existing legislation, nor voluntary harmonization within the industry (which furthermore would not apply to imports from third countries, which account for 46% of consumption) seemed able to eliminate the barriers satisfactorily. The consensus was that a Directive to facilitate the free circulation of footwear and to provide a high level of consumer protection and information was the most effective way of resolving the unsatisfactory situation.

The Commission presented a proposal providing for the presentation of information on the constituent materials of footwear by means of agreed pictograms or a series of harmonized written indications. The Directive (94/11/EC\*) was adopted by the Council on 23 March 1994. It enjoys the support of consumers and has been publicly welcomed by the footwear and leather industries, and the retail and distribution sectors. It will enter into force on 23 March 1996.

*l) Cosmetics*

141. Although Directive 76/768/EEC\* relating to cosmetic products is one of long standing which has been regularly amended to take account of technical advances, the situation concerning its incorporation into national law is still not entirely satisfactory. Some Member States' legislation still contains market-control measures which are incompatible with the Directive. Accordingly, the Commission has initiated several infringement proceedings.

Commission Directive 93/47/EEC\* of 22 June 1993, adapting to technical progress for the sixteenth time Directive 76/768/EEC, entered into force on 30 June 1994. The aim of this Directive is to either prohibit or allow definitively, or allow temporarily, a number of substances, preservatives and ultra-violet filters in the composition of cosmetic products. A Directive adapting to technical progress for the seventeenth time Directive 76/768/EEC was adopted in 1994 (Directive 94/32/EC\*).

In addition, Directive 93/35/EEC\*, amending Directive 76/768/EEC\* for the sixth time, which is not due to enter into force until 14 June 1995, has already been transposed by a number of Member States.

*m) Cableway installations*

142. On 31 January 1994 the Commission adopted the proposal for a European Parliament and Council Directive relating to cableway installations designed to carry passengers. This proposal is currently being examined by the Council's Working Party on economic questions. Parliament has not yet delivered its opinion. A mandate for a programme of standardization is being carried out by CEN/CENELEC/ETSI.

*n) Recreational craft*

143. Directive 94/25/EC\* on the approximation of the laws, regulations and administrative provisions of the Member States relating to recreational craft was adopted on 16 June 1994.

The purpose of the Directive is to abolish the obstacles to trade caused by specific national laws, and to lay down the essential safety, health and consumer-protection requirements for the construction of recreational craft. It must be incorporated into national law by 16 December 1995 and the Member States have to apply it with effect from 16 June 1996.

144. Harmonized European standards and international standards have a very important role to play in certifying that products conform to essential requirements. A mandate covering thirty-three draft standards was given to the CEN in 1993 and 1994, which, for this sector, is referring to work by the ISO in view of the global nature of the market for recreational craft. A new package covering some fifteen further draft standards is currently being prepared.

Initially, the recreational craft construction industry strongly encouraged the preparation of a draft Directive and its adoption by Parliament and the Council. It also played an active part in technical discussions on standardization.

During the consultations which preceded the Commission proposal, consumer representatives (owners/users of craft) were in favour of the proposal; following their requests, derogations were provided for certain 'traditional' or specific categories of craft, such as house-boats.

## B. Standardization policy

145. The continuing development of European standardization remained of importance for the functioning of the single market. In 1994 some twenty additional mandates were issued, some completing or revising earlier mandates.

Significant progress has been achieved in the areas of the new approach and public procurement, though much remains to be done. Mandates continue to be issued for new work in both these areas, though to some extent European standardization is approaching a period of consolidation here. In information technology and telecommunications a major review of activity is already under way following the issue of the Bangemann Report on the Global Information Society and the Genval Conference on this topic in November 1994.

With the development of the single market, European standardization has begun to reach a critical mass in relation to national and international standardization. Ten years ago, European standardization was a very small proportion of total work; it now constitutes a significant part of the activities of the national standards bodies. For instance, ten years ago 80% of new activities taken up by DIN concerned German initiatives, whereas today 80% concern international or European initiatives. Furthermore, European standards are beginning to be issued on a substantial scale, with over 300 technical committees working on some 10 000 standardization projects.

The extent to which European standardization has the support of economic players is indicated by the fact that, of these 10 000 items, some 3 000 are mandated, the remainder being undertaken at the initiative of European industry. This scale of work is resulting in the issue of approximately 1 000 European standards per year. While significant progress has been made on efficiency, and output is impressive, it remains true that issue of standards is still too slow; further improvement is needed.

146. The second amendment to Directive 83/189/EEC\* was adopted; it includes an adaptation to the information system for national standardization activities that will reduce the administrative burden and improve efficiency.

The process of recognition of ETSI as a European standards body is approaching completion with the listing of the ETSI national standards bodies. The process of designation of these bodies by the Member States, and the preparation of the necessary further amendment to the Annexes to Directive 83/189/EEC\*, are under way.

147. The Commission has commenced discussions on a review of the way in which European standardization could be financed over the medium term. This follows up a commitment given in the Strategic Programme on the Internal Market (60). The review will aim to determine the nature and extent of the standardization infrastructure that will be needed to meet the needs of European Union policies, particularly the process of integration of the internal market, and needs of industry and society as a whole for an open and transparent system for the elaboration of standards, and the way that such an infrastructure should be financed.

148. The Commission will shortly issue a communication to the Council and Parliament on the broader use of standardization in Community policy. The communication will provide an overview of the use of standards in the policies of the European Union, and outline intentions for the development of the role of standardization in the immediate future. The Council, in a Resolution on the role of standardization in the European economy (61), has encouraged the further use of standardization as an instrument of European integration and as a technical basis for the support of legislation, and has called for reference to standards to be used, where appropriate, in European legislation.

The Commission has initiated a number of standardization measures outside the main policy areas in which the use of standards has become established, particularly in energy saving,

(60) COM(93) 632 final of 22 December 1993 (OJ C 128, 9.5.1994).

(61) OJ C 173 of 9 July 1992.

protection of the environment, and analysis of foodstuffs. The development of European standards in these areas will not only advance the European Union's policies in the specific areas addressed but will also contribute to the integration of the European market through the establishment of commonly accepted specifications.

### **C. Quality, certification, and conformity marking policy**

149. A certification policy has been put in place alongside the standardization policy as part of the process of implementing the Community's technical legislation, in particular the 'new approach' directives, and to facilitate the free movement of goods generally.

This has had the effect of enhancing the overall consistency of conformity assessment, both between the various sectoral directives and in those areas where statutory and private systems coexist. As a result, operators are beginning to perceive the internal market as a unified economic area in which a product can be freely placed on the market under cover of a single certificate.

The Community is thus establishing, within the legislative framework, common principles and implementing rules for the certification procedures laid down in the directives, for the choice and notification of the bodies appointed by the Member States to implement those procedures. On 13 July 1993 the Council adopted Decision 93/465/EEC\* laying down certain common rules concerning arrangements for notification and operation.

150. With regard, more specifically, to the problems concerning the affixing of the common EC conformity mark, in July 1993 the Council adopted Directive 93/68/EEC\* introducing a common system of affixing the conformity mark for all the 'new approach' directives. The Member States had to take the necessary measures to transpose the Directive by 1 July 1994, which was to enter into force on 1 January 1995. In fact, only one Member State, the Netherlands, has notified the transposition measures amending all twelve directives. Spain had not notified any measures by 20 January 1995, while Ireland and Greece had each notified a measure transposing one directive, Luxembourg and Portugal two and the other Member States (of the twelve) three or four. The necessary infringement proceedings have been initiated.

151. With regard to voluntary certification, Community policy has begun putting into place a European infrastructure with the aim of ensuring transparency equivalent to that achieved by the directives, in particular by promoting the same technical instruments. In 1994 the European Organization for Testing and Certification (EOTC) entered its mature phase. Accordingly, this organization is now focusing on the promotion of European certification systems to make it easier to have the results of tests and certificates accepted throughout Europe, where operators feel that they require such tools to gain access to the market.

In this connection the structural progress should be noted in particular, with the setting-up of sectoral committees for new sectors such as water, fire and safety of buildings, and the acceptance of new groups of agreement such as for recreational craft. In addition, the EOTC organizes a large number of forums to facilitate discussion of all problems concerning certification, for example, on the role of accreditation, agreements with third countries and on sources of information in Europe on testing and certification.

152. These different elements are enabling the Community to establish a uniform and consistent policy towards third countries during current negotiations (see para 330).

153. **Quality promotion policy** - From now on, the Commission is moving towards a more ambitious policy, which, while strengthening the cohesion of the internal market, will provide a genuine springboard for European businesses, enabling them to develop their activities on a stronger competitive base.

In 1995 the Commission will present a communication, under the White Paper on growth, competitiveness and employment, on a quality policy for the Community using a two-pronged approach:

- improving the quality culture of businesses through promotion activities;
- redirecting the various activities of public authorities and private services in the quality field towards a common goal under a programme bringing together all the necessary tools (finance, budget, infrastructure, etc.).

#### Quality policy for agricultural products and foodstuffs

154. In 1992 the Council adopted two regulations which introduced a Community procedure on recognition of the specific character of agricultural products and foodstuffs. The first deals with products carrying designations of origin or geographical indications (Council Regulation (EEC) No 2081/92\*) and the second with certificates of specific character (Council Regulation (EEC) No 2082/92\*).

Community work in 1994 relating to the application of these two Regulations was mainly concerned with examining applications for registration of designations of origin and geographical indications notified by the Member States (thirteen hundred cases); the Scientific Committee was consulted about technical and legal questions concerning these cases at its ten meetings and additional information was requested from the Member States. With regard to certificates of specific character, the Community symbol and indication to be used by producers were defined (Commission Regulation (EC) No 2515/94\*).

### 3° Prevention and control instruments

#### A. Prevention of new obstacles - Procedure 83/189/EEC\*

##### *Information procedure in the field of technical standards and rules*

155. The information procedure introduced by Directive 83/189/EEC\*, in particular with regard to notification by the Member States of their technical legislation at the draft stage, continues to prove its worth as basic instrument for preventing obstacles to the exchange of mutual information.

TABLE IV

Year	Notifications	Comments		Detailed opinions		Intention to propose	
		MS	COM	MS	COM	Art. 9(2)	Art. 9(2)a
1992	362	184	165	66	121	19	25
1993	385	104	80	64	88	4	5
1994 (62)	389	136	209	78	85	2	-
1994 (63)	442	137	248	79	99	2	-

The statistics in the above table show a steady increase in national notifications over the period since 1992. This sizeable volume of technical legislation is surprising given the activities linked to the completion of the internal market, with harmonized approaches in strategic areas of the market. The level of national legislation remains very high. The logical effect of the primacy of the political objective of the internal market is not evident since Member States are not reducing the number of measures likely to delay or jeopardize the realization of that objective.

(62) Provisional figures calculated on 1 March 1995.

(63) Figures for the 15 Member States.

156. In 1994 the Commission's departments continued to ask the national authorities in the Member States to include mutual recognition clauses in their draft technical legislation affecting non-harmonized sectors and notified under Directive 83/189/EEC\*.

Those requests, which were the subject of detailed opinions under the procedure provided for in Article 9(1) of the Directive, lead to:

- clauses on the mutual recognition of national standards, rules and technical specifications;
- clauses on the mutual recognition of tests and certification stemming from registered laboratories.

157. On 23 March 1994 the Council and the European Parliament adopted Directive 94/10/EC\* amending for the second time Directive 83/189/EEC\*. It will come into force on 1 July 1995. The amendments are designed to make the instrument more effective by extending the scope of the definition of technical regulations (inclusion of other requirements imposed on a product after it has been placed on the market, voluntary agreements, tax incentives and financial measures in the definition of de facto technical regulations), by clarifying certain procedures (request for application of the emergency procedure) and by extending the duration of the status quo deadlines (18-month suspension of national measures once the Council has adopted a common position).

158. In the agricultural sector, 42 draft technical regulations were notified by Member States and by EFTA countries. The analysis of the draft legislation notified led the Commission to request in most cases that amendments be made to ensure that its adoption did not create new obstacles to the free movement of goods. In two cases, a standstill was imposed for 12 months with effect from the notification, either because of the Commission's intention to present a proposal to the Council or because the measures proposed were covered by a proposal already presented.

159. The Commission is continuing to detect, through national publications, technical rules adopted in violation of the prior notification obligations of Directive 83/189/EEC\*. Some 700 items of legislation were analysed to establish whether they should have been notified under the Directive. Infringement proceedings were initiated in 31 cases in the industrial sphere in 1994. In such cases, Member States normally propose the repeal of the legislation in dispute and/or notify the Commission, as appropriate, of a new draft. However, some refuse to suspend the legislation in question; four such cases were referred to the Court of Justice in 1994.

## B. Control procedures

### a) *General product safety*

160. Directive 92/59/EEC\* on general product safety, which is intended to build up confidence on all sides in the smooth operation of the single market, came into force on 29 June 1994.

Within the framework of the administrative cooperation arrangements, and with a view to ensuring optimum transposal of the Directive, bilateral meetings were organized with Member States between November 1993 and February 1994. As a result of those meetings, a seminar was held on 24 and 25 February, providing an opportunity for experts and representatives from the Member States and the Commission to hold an informal discussion on the use of the Directive's concepts in national law.

It should be noted, however, that only five Member States (Belgium, Denmark, France, the Netherlands and the United Kingdom) have so far notified the Commission formally of the legislation transposing the Directive into national law.

On 9 August 1994 the Court of Justice rejected the action for annulment brought by Germany against Article 9 of the Directive under Article 173<sup>a</sup> of the EC Treaty (64).

**b) Enforcement of the mutual recognition principle**

161. The Commission considers that the proper operation of the principle of mutual recognition is a fundamental requirement of the internal market if further legislation is to be avoided. It has therefore put forward a proposal for a procedure to ensure transparency of national measures derogating from the principle of the free movement of goods within the Community (65). This would result in a requirement for a Member State to notify the Commission and other Member States of its decisions taken to refuse free movement to goods legally manufactured and/or marketed in another Member State.

The proposal has received a favourable first reading in Parliament but is still under discussion in the Council. Member States have recently agreed to carry out the procedure on a one-month trial basis to assess its feasibility in administrative terms.

## **§ 2 - Special free movement arrangements applicable to the new member countries in the agricultural sphere**

162. In 1993 most of the transitional mechanisms connected with the accession of Spain and Portugal were dismantled as part of the completion of the single market. However, supplementary trade mechanisms were retained for a very limited number of products and subject to a system of controls to be carried out other than at frontiers. There is every indication that the arrangements established have functioned correctly. No complaint has yet been brought to the Commission's attention.

163. In the case of the accession of Austria, Finland and Sweden, application of the CAP to the new Member States was arranged for 1 January 1995 specifically to ensure full compliance with the principle of the single market.

Unlike the systems provided for in the previous Act of Accession, the last Act entails neither a gradual alignment of the agricultural prices of the new Member States on common prices nor a gradual abolition of customs duties and other import charges and quantitative restrictions and equivalent measures in trade between the old and the new Member States. The alignment will take place instantaneously on 1 January 1995.

Similarly, in trade with third countries the new Member States will apply on that date the import charge applied by other Member States.

The only transitional arrangements provided for are degressive national aid schemes and the application, without any frontier checks, of the safeguard clauses in the event of market disruption. These arrangements are to apply for five years for the two countries whose price level currently exceeds the level of common prices (Austria, Finland).

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(64) Judgment of the Court of 9 August 1994 in Case C-359/92 [1994] ECR I-3681.

(65) COM(93) 670 of 15 December 1993 (OJ C 18, 21.1.1994), as amended by COM(94) 250 of 15 June 1994 (OJ C 200, 22.7.1994).



## Section 3 - Freedom to provide services and right of establishment

### § 1 - Introduction

164. Services account on average for more than 60% of total GDP (and in some Member States for more than two thirds of the national economy) and they employ altogether some 60% of the Union's labour force. The publication of the Commission's interpretative communication concerning the free movement of services across frontiers (66) represents both a synthesis of the main principles so far established by Court of Justice case-law in this field and a basic instrument for contributing to the development of an internal market in services that is commensurate with their importance at national economic level, based in particular on Articles 59 *et seq.*\* of the Treaty.

165. The basic idea underlying the communication is the affirmation of freedom of movement throughout Community territory for a service legally provided in the Member State in which the supplier is established under the principle of mutual recognition between different but non-antithetical national systems and in line with the principle of subsidiarity. This idea has led first of all to a steady increase in calls for the Commission to act. It is increasingly requested to intervene, particularly by initiating infringement procedures, in order to settle cases of State restrictions which are frequently non-discriminatory but still unjustified or excessive in their effects on non-national suppliers and therefore inadmissible.

The communication has also provided an opportunity for ever more frequent and coordinated discussions with trade associations and with operators in the services sector generally (for example, market, tourist, port, cleaning, rental, security, advisory and public relations services), who have also attended specific meetings such as the "Internal Market Weeks".

166. In addition to general topics, special attention has been paid to certain non-harmonized specific fields, including the following:

- *employment agencies*: there are major obstacles to the activities of placement-agencies (cross-frontier activity is limited by the existence of monopolies or the need for a licence in the country of destination of the service) and to those of temporary employment agencies (licence requirement in the host country or even a ban on activity in some countries);
- *private security services*: some countries still discriminate on grounds of nationality, and the cross-frontier supply of services is very often made impossible by regulatory obstacles (need for a licence in the country of destination of the service) or technical barriers (armour-plating of vehicles);
- *port activities*: existence of exclusive rights and restrictions on self-handling;
- *fairs and exhibitions*; certain rules or practices may impede the cross-frontier organization of such events or the access of goods and firms to them.

167. On the case-law front, the Court of Justice continued in 1994 to favour a dynamic interpretation of the free movement of services, for example in its "tourist guides" judgment of 22 March and its Van der Elst judgment of 9 August (67). In the first, it declared the inadmissibility of national legislation requiring a supplier of services to hold a licence issued only on the

(66) OJ C 334 of 9 December 1993.

(67) Judgment of the Court of 22 March 1994 in Case C-375/92 [1994] ECR I-0923 and judgment of the Court of 9 August 1994 in Case C-43/93 [1994] ECR I-3803.

basis of a given qualification; in the second, it ruled that the requirement that a firm established in another Member State should have administrative authorization was restrictive.

In the Van der Elst judgment, it also confirmed the principle that a Member State could not subject the execution of a supply of services to observance of all the conditions required for establishment, thereby again emphasizing the different nature of these two fundamental freedoms.

In March the Court also delivered an important judgment concerning lotteries, certain aspects of which touched on the question of gambling generally. This was the judgment in Case C-275/92 ("Schindler") (68) in which it confirmed that even the organization and promotion of a lottery was an economic activity and as such was covered by the Treaty, and in particular by the provisions relating to freedom to supply services. The possibility of applying especially strict national rules in this entirely distinctive economic sector on social and fraud-prevention grounds was, whatever the circumstances, subject to the condition that they were not discriminatory.

## § 2 - Regulated areas

### A. Financial services

168. It is still too early to draw conclusions about the functioning of the single market in financial services since the "third generation" insurance Directives have been in force only since 1 July 1994 and the Directive on investment services will come into force only on 1 January 1996.

By contrast, the second banking Directive (89/646/EEC\*) has been in force since 1 January 1993. Its application has not caused any major difficulties for the Member States, except that some of its provisions, in particular those on the supply of services and the concept of the general good, are giving rise to certain problems of interpretation which the Commission and the Member States are trying to clear up in the Working Group on the Interpretation of the Banking Directives (GTIAD) and in the Banking Advisory Committee.

169. The Commission has examined a number of cases of non-compliance either with the Treaty (Articles 52\* and 59\*) or with the directives, the most significant of which is probably the "SIM" case which stems from Italy's adoption of a law requiring Community intermediaries in securities to establish a company under Italian law prior to carrying on business in Italy, thus making it impossible to exercise the freedom to supply services and to set up as a branch. This case is currently before the Court of Justice.

170. The Commission is monitoring the situation itself, as far as its powers and resources allow, but it relies considerably on economic agents themselves to draw its attention to any cases where the mechanisms introduced are not working. It is also determined to monitor actively and systematically the transposal of the directives in the financial sector without, however, ruling out the possibility of seeking assistance from outside experts in this task.

The Commission will be particularly vigilant in monitoring the way in which Member States require Community operators to comply with their rules relating to the general good. It will ensure in particular that Member States observe the principles established by the Court of Justice in this area.

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(68) Judgment of the Court of 24 March 1994 in Case C-275/92 [1994] ECR I-1039.

a) *Credit institutions*

♦ *Legislative developments*

171. On 30 May 1994 the Council and Parliament adopted Directive 94/19/EC\* on deposit-guarantee schemes. This Directive introduces minimum deposit cover of ECU 20 000 throughout the Union. This guarantee is intended to cover all deposits held with a credit institution on Union territory which has its head office in a Member State, including deposits with branches established in other Member States. However, Member States remain free to introduce schemes providing greater cover. In that event, branches from a Member State in which the cover offered corresponds to the minimum laid down by the Directive or is lower than that provided for in the host country are entitled to join the scheme in force in the host Member State. For a five-year transitional period, however, branches established in a host country in which the level of cover is lower than that provided for in the country of origin will have to limit their cover to that provided for in the host country in order to avoid market disturbance in the latter country.

172. On 6 June 1994 the Council adopted a common position on the proposal for a Directive designed to strengthen prudential supervision in the field of financial institutions, including credit institutions (69). This proposal clarifies the concept of groups of financial institutions, requires such groups to have their registered and head offices in the same country, extends the arrangements for the exchange of information between supervisory authorities belonging to different categories and requires external auditors to notify the supervisory authorities of any circumstances likely to undermine the stability of the institutions whose accounts they audit.

173. On 25 April the Commission sent to Parliament and to the Council a proposal for a Directive amending Council Directive 89/647/EEC\* with respect to the recognition by supervisory authorities of contracts for novation and netting agreements (contractual netting) (70). This proposal provides for the possibility of own funds requirements for covering certain operations to be calculated on the basis of a net rather than a gross amount. The aim is to promote this type of contract and agreement with a view, firstly, to reducing the risks incurred by banks in their off-balance-sheet transactions relating to interest rates and exchange rates and, secondly, to reinforcing the competitiveness of Union credit institutions vis-à-vis those from third countries which are already applying a recommendation of the Committee of Governors of the Group of Ten that only the balance of the abovementioned transactions be taken into account in calculating the solvency ratio, thereby reducing their own funds requirements.

♦ *Transposal and implementation of legislation*

174. The situation regarding the transposal of directives is satisfactory. Only three directives have not been fully transposed by all Member States. These are Directive 91/308/EEC\* on money laundering, which is only partially transposed into Irish and Greek law, and Directive 92/30/EEC\* on consolidated supervision and Directive 92/121/EEC\* on large exposures, which, although transposed by Germany, will not apply in that country before 1 January 1996.

During the course of 1994 the Commission analysed national provisions transposing Directive 91/308/EEC\* on money laundering. A number of Member States were requested to provide additional information.

The Commission issued an invitation to tender for the carrying out of a study on the transposal and application of Directive 82/299/EEC\* on own funds and Directive 89/647/EEC\* on the solvency ratio of credit institutions. This study is to be carried out in 1995.

(69) COM(93) 363 final of 28 July 1993 (OJ C 229, 25.8.1993), as amended by COM(94) 170 final of 2 May 1994 (OJ C 213, 3.8.1994).

(70) COM (94) 105 final of 27 April 1994 (OJ C 142, 25.5.1994).

175. The dialogue with Member States, established in particular within the framework of the Working Group on the Interpretation of the Banking Directives (GTIAD) and the Banking Advisory Committee (BAC), continued in 1994. It concentrated mainly on the problems raised by the interpretation of the concept of the supply of services compared with that of establishment and on the conditions for applying national rules on the general good. The uncertainties connected with these two topics are frequently cited by credit institutions as a major obstacle preventing the mechanisms introduced by the second banking Directive from having full effect. The Commission plans to initiate wide-ranging consultations and to publish an interpretative communication on these two topics in 1995.

On 18 April the Commission also convened a meeting of the Committee of Credit Associations, which is made up of nine European Federations in the credit sector. This Committee, which provides a useful framework for consultations and the exchange of information, will meet again in 1995.

**b) Insurance services and pension funds**

♦ *Legislative developments*

176. On 7 December 1994 the Commission formally withdrew its proposal for a Parliament and Council Directive relating to the freedom of management and investment of funds held by institutions for retirement provision (71). At the same time, it adopted a communication on an internal market for pension funds (72). In this communication the Commission states that the basic principles underlying freedom to supply services, freedom of establishment and free movement of capital apply to the management and investment of funds held by institutions for retirement provision. The Commission will ensure that the restrictions in force in Member States are compatible with the prudential and legal considerations set out in the communication and that the principle of proportionality is observed.

♦ *Implementation and enforcement of the legislation*

177. There has been considerable delay in some Member States in the transposal of directives in the insurance field into national law, including, for example, Directive 90/619/EEC\* (second life assurance Directive).

Major delays have also occurred in connection with the "third generation" Directives (the non-life insurance Directive 92/49/EEC\* and the life assurance Directive 92/96/EEC\*). These Directives, which have recast the previous main directives and will fully open up the internal market in insurance, were to have been transposed into national law by 31 December 1993 in order to be effectively applied as from 1 July 1994. On 23 January 1995 Spain, Greece, Italy and Luxembourg had still not notified the Commission of their national transposal measures, while Belgium and France had partially notified theirs.

The Commission is continuing infringement proceedings under Article 169\* of the Treaty for failure to notify national implementing measures.

178. The Commission is currently examining the conformity of national measures implementing Directives 72/166/EEC\* and 84/5/EEC\* (the main Directives on civil liability insurance on motor vehicles). These Directives have been transposed into national law in all Member States. In the light of the findings of these studies, the Commission has contacted three Member States in which the transposal of the Directives has been found not to be correct. The problems encountered included the incorrect transposal of the obligation on Member States to take any measure necessary to ensure that civil liability in respect of the movement of vehicles is covered by insurance and of that requiring the body responsible for repairing damage caused by an uninsured or unidentified vehicle to justify its action.

(71) COM(93) 237 final of 26 May 1993 (OJ C 171, 22.6.1993).

(72) Communication 94/C 360/08 (OJ C 360, 17.12.1994).

179. Directive 88/357/EEC\* (second non-life Directive) has been transposed by all Member States except Greece. On the basis of studies carried out by independent experts, the Commission is currently carrying out a detailed analysis of the practical effects on the non-life insurance market.

180. The highly complex nature and fundamental importance of the "third generation" Directives have led the Commission to seek external technical assistance through an invitation to tender for the task of carrying out a comparative law study to facilitate the Commission's examination of the conformity of national legislation with these Directives.

181. With regard to sectoral statistical data, the Commission is finalizing its company statistics instrument. During the course of 1995 Eurostat will be in a position to:

- submit to Member States a methodology for the compilation of sectoral statistics based on a product nomenclature that is as detailed as possible;
- publish statistics based on data collected from the relevant national authorities in all the Member States and also the EFTA countries.

### c) *Stock Exchanges and Securities*

#### • *Legislative developments*

182. In order to facilitate multilisting (simultaneous quotation of the same securities on different stock exchanges) in the Community, the Council and Parliament adopted on 30 May 1994 a new Directive (94/18/EC\*) amending the Listing Particulars Directive (80/390/EEC\*).

The two main aims of the directive are:

- to simplify the cross-border listing requirements for the securities of companies of high quality, large size and international standing, listed in the Community for at least three years and showing a good record of compliance with European Union listing directives. These companies will be able to be listed in other Member States without publishing a new listing prospectus; a simplified set of documents will be made available to investors;
- to facilitate the transition to official listing of those companies on certain junior markets when such companies are subject to disclosure requirements equivalent in substance to those imposed on officially listed companies in the same Member State.

The Directive is expected to bring about a more efficient single market in the securities field. In particular, the simplification of the cross-border requirements will facilitate the launching by the Federation of European Stock Exchanges of the Eurolist project. This project aims at providing deeper and more liquid markets for those European Union companies of large size, high quality and international standing by listing their shares simultaneously in a number of Member States.

183. Work continued in the course of the year on the Commission proposal for a Directive on investor compensation schemes (73). The Economic and Social Committee and Parliament delivered their opinions in January and April respectively. Both opinions were broadly supportive of the Commission proposal.

In December 1994 the Commission tabled its amended proposal. This takes account of most of Parliament's amendments and of a number of suggestions made by the Economic and Social Committee. The Commission also took the opportunity to align its proposal in a number of areas on the parallel Directive on deposit guarantee schemes, which was finally adopted by Parliament and the Council in May.

(73) COM(93) 381 final of 22 September 1993 (OJ C 321, 27.11.1993).

184. In 1993 the Commission presented a proposal amending Council Directive 85/611/EEC\* on undertakings for collective investment in transferable securities (UCITS), with the aim of extending its scope to include money market funds and funds of funds, investing in a number of other UCITS.

Following the opinion of the European Parliament (74), the Commission adopted on 20 July 1994 (75) an amended proposal which incorporated some important changes as compared with its initial draft. Two new items were the inclusion of Feeder funds which invest 100% of their assets in other UCITS (called Master-Feeder funds) and the freedom for European credit institutions and investment firms to provide depositary services to UCITS on a cross-border basis.

♦ *Transposition and implementation of the legislation*

185. The Commission notes with satisfaction that all the directives in force have been transposed by all Member States.

It continued to check the conformity of transposition measures; in particular, it sent the Member States a questionnaire on application of the Directive on the admission of securities to stock exchange listing (79/279/EEC\*)

It initiated a dialogue with the Member States to prepare for transposal of the Directives on investment services (93/22/EEC\*) and capital adequacy (93/6/EEC\*) and to prevent faulty transposal due to differences of interpretation.

## B. Transport

186. The basic legal framework of the single transport market is in place and the rules are being properly incorporated into national legislation. A number of important qualifications must, however, be made. Some of the most important parts of the legal framework, though in place, are only gradually being phased in; certain transitional periods last up to the end of the century and beyond: this is in particular the case in cabotage (transport in another Member State) where:

- full liberalization of road haulage cabotage is scheduled to take effect on 1 July 1998;
- air transport cabotage will be fully liberalized by 1 April 1997;
- maritime cabotage has a number of transitional rules taking into account maritime specificity (land-to-land; land-to-island; island-to-island).

The application of single transport market rules will lead to important structural changes and new relationships between enterprises. The Commission, in seeking to ensure uniform and reliable application of the rules, monitors both their transposal and their practical implementation.

### a) *Air transport*

187. Following the adoption of the so-called Third Package measures, the internal aviation market has been completed in legislative terms. Cabotage will be liberalized as from 1 April 1997. The priority now is to ensure proper implementation of the new rules.

In 1994 two standard-setting decisions concerning the application of the Community's air transport legislation were taken in relation to access to domestic routes in France as well as to the airport system of Paris (76).

(74) OJ C 315 of 22 November 1993, p. 152.

(75) COM (94) 329 final of 20 July 1994 (OJ C 242, 30.8.1994).

(76) OJ L 127 of 19 May 1994.

These decisions oblige the French civil aviation authorities to grant all Community air carriers access to Orly airport on a non-discriminatory basis, and to open up a number of important domestic routes to and from that airport.

In some instances, however, the full use of the new market access opportunities is obstructed by infrastructure bottlenecks: thus, at airports such as London-Heathrow and Frankfurt, the demand for slots exceeds the available physical capacity.

188. A major policy effort is required in this area. On the basis of the recommendations of the "Committee of Wise Men" for air transport the Commission decided to issue a detailed communication announcing a series of initiatives, notably in the area of infrastructure (77). The main objective of this action programme is to complement the efforts of the airline industry itself to restructure in response to single market conditions by improving efficiency in areas beyond the control of the airlines, such as the rules for using air transport infrastructure.

#### **b) Road transport**

189. To create an internal market in the field of road haulage measures have already been taken to liberalize the transport of goods between and within Member States (cabotage will be completely liberalized from 1 July 1998), and to harmonize social standards (driving hours), technical standards (weights and dimensions) and tax policies (setting minima for fuel and vehicle taxes and allowing Member States at the same time to introduce a common user charge).

190. In July 1993 the Commission appointed a "Committee of Wise Men" to investigate the economic and social situation in the road haulage sector. One of the reasons for creating the Committee were concerns expressed by certain representatives of the road haulage industry about the instability and the lack of profit in the sector. The report of the Committee was completed in July 1994 and can be seen as a first evaluation of the functioning of the internal market in the field of road transport.

As far as the economic situation is concerned, the Committee concluded that the recent general economic crisis strongly affected the sector. Deregulation attenuated these difficulties in some recently deregulated markets, but this can be seen as a transitional process, given the fact that the long-established liberal markets have shown remarkable stability. The Committee supported the policy of liberalization as a means of establishing the single market.

On the other hand it recognized that competition in the single market is not always fair. This is due both to widespread infringement of regulations and to incomplete harmonization of standards.

The Committee recommended that enforcement should be improved, for instance by the use of information technology. The Committee also recommended further harmonization in the fields of access to the profession of road haulage operator, tax policy, technical standards and the social framework in which hauliers have to operate. The Commission is preparing proposals in several of these fields.

#### **c) River transport**

191. There is structural overcapacity in inland waterway transport, and despite the environmental and safety advantages it offers in comparison with certain other modes of transport it is still not commercially attractive enough. Action is therefore continuing to reduce excess capacity with a view to balancing supply and demand. New measures were taken in this area in 1994 by the Council and the Commission. On the organization of the market in river transport, the Commission advocates in a report to the Council (78) gradually liberalizing the market while

(77) "The Way Forward for Civil Aviation in Europe", COM(94) 218 final of 1 June 1994.

(78) SEC(94) 921.

taking action to help operators adjust to a liberal regime and to strengthen the competitiveness of the sector. Other work in progress concerns extension of the Community rules on technical aspects, vessel crews, ongoing negotiations with third countries with a view to concluding a multilateral agreement and the introduction of a European boatmasters' certificate for inland waterway navigation.

#### **d) Railways**

192. The Commission presented two proposals (79) for directives to complement the Community's basic railway policy measure, Directive 91/440/EEC\*, by defining general principles and procedures to ensure that access rights under the Directive are implemented effectively and fairly. New possibilities for rights of access to railway infrastructure created by Article 10 of the Directive constitute a first step towards a more open and integrated market and create a new situation for public authorities, which must ensure safety and allocate infrastructure on the basis of appropriate charges.

The first proposal deals with the creation of a licence for railway undertakings and requires that they satisfy criteria of professional competence, financial standing and good repute. The second concerns the allocation of infrastructure to railway undertakings and the charges imposed for its use. The Directive would establish a system for the allocation of train paths to railway operators and create a structure for the calculation of access charges. It is hoped that the rapid approval of these proposals will help the railways achieve the goals set out in the Commission's White Paper on transport policy.

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## **Section 4 - Free movement of capital**

193. The Treaty on European Union introduced a new regime with regard to capital movements and payments. With effect from 1 January 1994, Articles 73b\* to 73g\* of the Treaty under Chapter 4, "Capital and Payments", replaced Articles 67 to 73 of the EEC Treaty. Freedom of capital and payments is now a directly applicable right under the Treaty; secondary legislation is no longer necessary. Also, under the new regime the obligation for liberalization was extended, with limited exceptions, to third countries.

194. The introduction in the Treaty of the principle of complete capital liberalization with direct effect was necessary for two reasons:

- first, in order to align Treaty provisions on the reality of complete liberalization already introduced by the capital movements directive of 1988 and raise the freedom to the same level as other freedoms in the Treaty;
- second, to adapt the capital movements provisions of the Treaty to the objective of economic and monetary union, for which free movement of capital is an indispensable condition.

The last Member State with a derogation from the general obligation to permit free movement of capital, Greece, lifted, with effect from 16 May 1994, all remaining restrictions on the movement of capital which that Member State was authorized to maintain until 30 June 1994. Consequently, a regime of free movement of capital is now in place throughout the Union.

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(79) COM(93) 678 final of 15 December 1993 (OJ C 24, 28.1.1994), as amended by COM(94) 316 final of 14 July 1994 (OJ C 225, 13.8.1994).



195. Free mobility of capital has provided the conditions for progress towards integrating national financial markets to the benefit of the users of financial services and of the European financial industry. There is evidence that economic agents are taking advantage of the elimination of restrictions on the movement of capital and the increasing openness of Member States' financial markets. Cross-border flows of capital within the Union, as well as capital inflow from third countries have risen considerably in recent years. These capital movements include direct investment, motivated mainly from industrial and commercial considerations of companies in the unified European market, as well as portfolio investment, principally attracted by the opportunities offered by government bond markets. Gross flows of portfolio capital in EU countries rose to unprecedented levels in 1993 accounting for around 80% of the industrial countries' total compared with 64% in 1992 and 40% in 1991. With inflows estimated at ECU 370 billion and outflows at ECU 235 billion, the net inflow of portfolio capital in the EU was about ECU 135 billion in 1993.

196. Direct investment flows in the Union rose sharply in the second half of the eighties and peaked in 1989-90. Since then, despite the considerable contraction of foreign direct investment in the industrial countries, direct investment in the Union remained relatively high. For example, cumulative inflows of foreign direct investment during the period 1991-93 amounted to ECU 147 billion compared with ECU 48 billion in the United States. Investments originating outside the EU are estimated to account for over 40% of total foreign direct investment in the Union.

197. Indirect obstacles to capital movements remain, however, in some areas. Such impediments can take the form of constraints on investment abroad by institutional investors not justified by prudential considerations, tax discrimination not compatible with Community law, rules concerning the issue of securities, the transfer of means of payments and others. The Commission has taken action in order to obtain the elimination of such indirect impediments both by consulting with the Member States concerned and by formal letters of notice to national authorities where necessary. Where remedial action was not taken, the Commission has proceeded to the next stage of infringement proceedings, the issue of a reasoned opinion.

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## Section 5 - The business environment

### § 1 - Competition policy<sup>(80)</sup>

198. To ensure that the single market functions smoothly, a central role is assigned to developing its interaction with competition policy. Such interactions derive from the fact that these common policies serve the same fundamental objective, namely to strengthen the capacity of the Community economy to generate wealth through better allocation and more efficient use of productive resources. Strict application of the competition rules is an essential counterpart to the drive to remove all legal and administrative barriers to trade across the Union: it will ensure that any anti-competitive behaviour by businesses or national authorities does not restrict the healthy competition that should provide the driving-force behind the economic benefits expected from completion of the single market. A vigorous competition policy will mean that firms endeavouring to take advantage of openings created by the single market will not see their action frustrated by anti-competitive practices (81). The Commission is pursuing these aims both by banning restrictive agreements between businesses aimed at walling off markets

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(80) For details see Commission's Competition Report, published annually.

(81) Twenty-third Competition Report, points 150 to 154.

and by preventing the abuse of dominant positions and monitoring mergers, monopolies and state aid.

199. The policy of dismantling monopolies remains one of the Commission's priorities; 1994 was a milestone in the development of a Community reference framework for telecommunications infrastructures.

In the wake of the Bangemann report (82), the Commission's action plan entitled "Europe's way to the information society" (83) identifies infrastructure liberalization as the key to developing the information society.

The first stage will involve lifting restrictions on the use of the infrastructures for mobile and satellite communications services. The next phase should see liberalization of the infrastructures for public voice telephony services (after 1 January 1998). In sensitive areas, such as the guaranteeing of a universal service, major safeguard clauses should be adopted; these will be drawn up on the basis of the consultation that will follow publication of the Green Paper on infrastructures adopted by the Commission on 25 January 1995.

Following the resolution of 22 July 1993 on reassessment of the situation in the telecommunications sector and the liberalization of international voice telephony services by 1 January 1998 (84), in February 1994 the Commission published a Green Paper on mobile and personal communications (85). It also took action under the Treaty rules on competition against the three Member States (Belgium, Ireland and Italy) that were maintaining exclusive rights for the GSM service (standards established by ETSI for pan-European personal mobile communications), calling on them to grant licences to at least two operators.

200. With regard to the control of state aid, it should be stressed that by artificially propping up non-viable businesses, aid to ailing firms has a highly distortive effect on competition in an integrated market. It unduly delays adjustment by the recipient and shifts the burden of structural change and social problems onto other firms and other Member States.

Since more and more of this kind of aid is being granted, against a background of stiffer competition and slower growth, the Commission decided in July 1994 to codify in a notice to the Member States its strict stance on state aid for rescuing and restructuring firms in difficulty: aid of this kind must be accompanied by a restructuring plan that will make it possible to restore the firm's long-term viability within a reasonable period and must be limited to the strict minimum needed to implement the plan, to which the firm must make a sizeable contribution from its own resources. Where there is a structural excess of production capacity in the relevant market in the Community, the plan must contribute to the restructuring of the sector through irreversible plant closures or capacity reductions.

The successive surveys of state aid in the Community which the Commission has published since 1989 have shown that the overall level of aid remains high, particularly in the Community's central regions. Although the fourth survey, now being finalized, notes a slight drop despite the adverse business conditions prevailing in 1991 and 1992, the overall level of aid is still very high. As it announced in its September 1994 communication on an industrial competitiveness policy for the European Union, the Commission will therefore continue its efforts to reduce the overall level of state aid.

201. As regards merger control, Regulation (EEC) No 4064/89\* provides a one-stop shop for the rapid, uniform vetting of mergers, acquisitions and joint ventures with a Community dimension.

To improve the operation of this system of control in the interests of deepening the single market, and in line with the undertakings it gave in its report to the Council in 1993, the Commission adopted on 21 December 1994 a number of measures aimed at boosting trans-

(82) "Europe and the global information society. Recommendations to the European Council", Brussels, 26 May 1994.

(83) "Europe's way to the information society: an action plan", COM(94) 347 final of 17 July 1994.

(84) Resolution 93/C 213 (OJ C of 17 July 1994).

(85) COM(94) 145 final of 27 April 1994.

parency and efficiency in application of the Merger Control Regulation (86). These cover certain technicalities or legal aspects, such as questions of competence, the calculation of turnover and the definition of what constitutes a merger.

202. As far as rules applicable to undertakings are concerned, Articles 85\* et 86\* of the EC Treaty have for a long time been used as powerful instruments for opening and unifying markets. In this context the Commission embarked in 1994 on a revision of Regulation (EEC) No 123/85\* on motor-vehicle distribution and of Regulations (EEC) Nos 2349/84 and 556/89 on patent and know-how licensing. The aim of these revisions is to prevent certain obstacles being put in the way of parallel imports between Member States, thereby facilitating the penetration of national markets, and to help the dissemination of technologies within the common market.

At the same time, the Commission continues to combat vigorously all price-fixing or market-sharing agreements, imposing fines commensurate with the seriousness of the infringements established (total fines amounting to ECU 132.15 million in the cartonboard case and, under the ECSC Treaty, total fines of ECU 100 million in the steel beams case (87)).

203. In 1994 the Commission energetically pursued measures to increase competition in the field of transport.

Liberalization of air transport has revealed the importance of ground handling services, which constitute a genuine barrier to market entry. To ensure that all operators can compete on an equal footing, the Commission is convinced of the need to bring the monopolies currently existing in several Member States to an end and to ensure that there is at least some competition in the provision of these services. Consultation of interested parties has thus been organized in order to assess the technical feasibility and the possible impact of action to liberalize them. A proposal for a Directive was adopted by the Commission on 13 December 1994.

Several cases are currently being investigated in connection with liberalization of ground handling services at a number of Community airports.

## § 2 - Cross-border payments

204. The Commission adopted a communication in November (88) which includes a proposal for a Directive which would lay down minimum transparency and performance rules applicable to cross-border credit transfers. The proposal aims at ensuring that banks provide customers with the necessary information and comply with contractual obligations in respect of execution time for transfers, that double-charging is avoided and that lost payments are refunded.

This proposal followed a study, carried out in the first half of 1994, confirming a number of shortcomings related to the transparency and performance of cross-border transfers. These shortcomings had also been reflected in continuous requests from individual businesses and their associations, the distributive and retail trades and consumers for improvements in this area.

The communication also contained a draft notice on the application of the EC competition rules to cross-border credit transfer systems. This deals, *inter alia*, with the conditions for accepting certain types of inter-bank fee arrangements which might be needed to avoid the occurrence of double-charging. The draft will be open to comment from all interested parties with a view to its final adoption in 1995.

(86) Commission Regulation (EEC) No 3384/94\* and documents 94/C 385/01, 94/C 385/02, 94/C 385/03 and 94/C 385/04 (OJ C 385, 31.12.1994).

(87) OJ L 116 of 6 May 1994.

(88) COM(94) 436 final of 18 November 1994: EU funds transfers.

205. Finally, taking into account the suggestions made by the banking industry, business and consumers, the Commission has adopted a work programme of measures on which work is under way or to be undertaken in 1995. The Commission will seek advice from its two consultative groups on payment systems on the way in which these systems can best be prepared for the introduction of the ecu. Work on payments netting and settlement finality is continuing in the Commission's "legal framework" group of Member State experts, and every effort will be made to reach operational conclusions, including the possibility of a proposal for a directive, on the question of settlement finality during 1995.

A Commission study on the transparency of card payments is under way to assess whether improvements are needed, possibly in the form of an update of Commission Recommendation 88/590/EEC\*. The regulatory implications of the new generation of payment instruments and techniques (pre-paid cards, home and phone banking etc.) are also being analysed.

### § 3 - Intellectual and industrial property

#### A. Intellectual property

- *Legislative developments*

206. The Commission pressed ahead with its work in the intellectual property sphere, taking as a basis the Treaty rules on the free movement of goods and services and on the right of establishment.

Respect for the principles enshrined in Articles 30\*, 52\* et 59\* of the EC Treaty is ensured by initiating preliminary infringement or infringement proceedings. However, where the obstacles stemming from national legislation do not constitute restrictions prohibited by the above articles or where such restrictions are justified (Articles 36\*, 55\*, 56\* and 66\*), harmonization alone can enable the single market to function properly.

The Commission accordingly continued the harmonization drive already embarked upon, while maintaining the emphasis on the search for a high level of protection of copyright and related rights. It thus transmitted to the Council its amended proposal for a Directive on the legal protection of databases (89); discussions are continuing in that body with a view to the adoption of a common position. It is also considering the need for a measure harmonizing certain rules of copyright and related rights applicable to private copying, and the appropriateness of such action in the areas of reprography and *droit de suite*.

- *Implementation and enforcement of the legislation*

207. Directive 91/250/EEC\* on the legal protection of computer programs was to have been transposed by Member States by 1 January 1993. Only Denmark, Italy and the United Kingdom did so in time. In 1993 four other Member States adopted such measures. In 1994 Belgium, France, the Netherlands and Portugal followed suit. Luxembourg is the only country that has not yet adopted any provisions on the subject.

Directive 92/100/EEC\* on rental right and lending right and on certain rights related to copyright in the field of intellectual property requires Member States to bring into force the provisions necessary to comply with the obligations it lays down before 1 July 1994. Belgium has adopted national implementing measures and the French authorities have informed the Commission that their domestic law, and the regulations for its implementation, are in keeping with the Community rules. The Commission will not fail to take appropriate steps against Member States which do not satisfy the obligations stemming from the Directive.

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(89) COM (93) 464 final of 4 October 1994 (OJ C 308, 15.11.1993).

The Commission pressed ahead with its infringement proceedings against the Greek Government for its incorrect transposal of Directive 87/54/EEC\* on the legal protection of topographies of semiconductor products.

208. As regards the technological aspects of the protection of intellectual property in the context of the "information society", the Commission drew up a specific action plan for inclusion in the Specific Programme for Information Technologies under the Fourth Framework Programme. The expected response from European industry to the corresponding call for proposals published in late 1994 should enable R&TD projects to be launched before the end of 1995.

## B. Industrial property

209. In the industrial property sphere the Commission is continuing its efforts, firstly, to create new industrial property rights at Community level and, secondly, to harmonize national rights which impede the free movement of goods.

### ♦ *Legislative developments*

210. Regulation (EC) No 40/94\* on the Community trade mark entered into force on 15 March. Community trade marks, registered for a period of ten years, renewable for a further ten, will be granted by the Office for Harmonization in the Internal Market (trade marks and designs), which is set up by the Regulation and whose seat is in Alicante, Spain. Work on the adoption of measures implementing the Regulation will be pursued actively in 1995 in order that the Office may become fully operational. It is envisaged that it will be open to receive the first applications for Community trade marks on 1 January 1996.

The system introduced by the Regulation will have enormous advantages over the two systems currently available to trade mark proprietors. Under the first of these systems, a proprietor who wishes to have protection in all Member States must register his trade mark with the intellectual property offices of the Benelux, for those three Member States, and of the other Member States. Each registration is subject to the rules of the State concerned governing procedure and any oppositions or appeals. The proprietor must use the language of each office, pay registration fees to all the national offices and, often, enlist the services of several trade mark agents. Under the second system, after having registered his trade mark in his own country, the proprietor may have recourse to the services of WIPO (World Intellectual Property Organization) under the Madrid Agreement concerning international registration of trade marks. Not all Member States are party to the Madrid Agreement, however, and each valid registration in a given country is governed by the domestic rules of that country, exactly as in the case of the first system.

By contrast, the Community system will make it possible to acquire, by a single procedure, protection which is valid throughout the Community. This protection will be strengthened by the existence of a quasi-judicial body, the Office's Boards of Appeal, from whose decisions appeal may lie to the Court of Justice.

The measures to combat counterfeiting will be made more effective by Member States' designating a limited number of lower and higher courts with exclusive jurisdiction to hear cases involving the counterfeiting of Community trade marks.

211. The proposal for a Regulation on Community design (90) is currently before Parliament. Meanwhile, the Commission will do all it can to induce Member States to ratify the Agreement on Community patents (91). On 8 December the representatives of the Member States meeting

(90) COM(93) 342 final of 3 December 1993 (OJ C 29, 31.1.1994).

(91) Agreement relating to Community patents, done at Luxembourg on 15 December 1989 (Directive 89/695/EEC\*).

within the Council adopted a joint declaration calling upon Member States to ratify the Agreement as soon as possible.

212. The proposal for a Directive on the legal protection of biotechnological inventions (92) formed the subject-matter of a conciliation procedure with Parliament at the end of 1994. Parliament rejected the proposal in February 1995.

213. Parliament is examining, in parallel with the Regulation on Community design, the proposal for a Directive on the legal protection of design at national level (93). The proposal is justified by the fact that, as with trade marks, national designs will coexist with Community ones. This presupposes that the essential elements of currently divergent domestic laws will be harmonized in order that, first, a genuine single market may be established in this area and, second, domestic laws may be compatible with the proposed system of Community protection. Design is of increasing importance to a wide range of goods. Good design is, for Community firms, a major asset when it comes to competing with low-cost third-country industries.

214. On 9 December the Commission adopted a proposal for a Regulation on the creation of a supplementary protection certificate for plant protection products (94). The aim is to contribute, by creating a new sectoral industrial property right, to the completion of the single market in plant protection products and to ensure that inventions in the sector benefit from protection of sufficient duration.

215. The Commission intends to round off its industrial property policy by presenting in the near future a Green Paper on utility models. Utility models are an alternative form of protection for technical inventions to patents. Unlike patents, they are granted without any examination, and they are registered for a shorter period. As a result, they are cheaper and can be obtained more quickly than patents. They thus serve as a useful complement to the patent system. This type of protection currently exists in most Member States in widely varying forms. This state of affairs can create obstacles to the completion of the single market and lessen the scope for innovative activities, and hence firms' competitiveness. The Commission is therefore currently preparing a Green Paper for the benefit of interested parties with a view to assessing the need for Community action in this area.

♦ *Implementation and enforcement of the legislation*

216. Generally speaking, Member States are transposing Directives in this sector relatively long after the deadline and often not until infringement proceedings have been initiated. In the case of Directive 89/104/EEC\* on trade marks, the slippage from the timetable set for transposal was due to the adoption of the Regulation on the Community trade mark. Six Member States (Belgium, Germany, Ireland, Luxembourg, the Netherlands and Portugal) have yet to notify national implementing measures. Serious problems remain in the case of the Benelux countries. The uniform legislation in the Benelux countries does not contain the principle of "confusion", which is the *sine qua non* for bringing an infringement action if a similar mark is used on the market.

♦ *External aspect*

217. With regard to the external aspect of the single market, the Community, represented by the Commission, participated as a special delegation in the diplomatic conference for the conclusion of the Trademark Law Treaty under the auspices of WIPO. The Treaty simplifies considerably the procedures for registering, renewing and assigning trade marks, thereby limiting the cost of protecting them. It should lead to increased recourse by firms to trade marks. Similarly, in May the Commission took part on behalf of the Community in the working group

(92) COM(88) 496 final of 28 September 1988 (OJ C 10, 13.1.1989), as amended by COM(92) 589 final of 16 December 1992 (OJ C 44, 16.2.1993) and by COM(94) 245 final of 9 June 1994.

(93) COM(94) 344 final of 30 September 1994 (OJ C 290, 18.10.1994).

(94) COM(94) 579 final of 9 December 1994 (OJ C 390, 31.12.1994).

drawing up rules implementing the Madrid Agreement and the Madrid Protocol (WIPO conventions on the international registration of trade marks).

### C. Measures against counterfeiting

218. The Commission is also taking measures to combat piracy, of which there has been a resurgence in the Community. On 22 December the Council adopted Regulation (EC) No 3295/94\* laying down measures to prohibit the release for free circulation, export, re-export or entry for a suspensive procedure of counterfeit and pirated goods.

### D. Case-law of the Court of Justice

219. With respect to copyright, attention must be drawn to the judgment delivered by the Court on 20 October 1993 in the *Phil Collins and Patricia* cases<sup>(95)</sup>.

The questions put in these cases were raised in connection with two disputes. One was between the British singer/songwriter Phil Collins and a record distributor and concerned the marketing in Germany of a compact disc containing a recording, made without Mr Collins's consent, of a concert he had given in the United States. The other was between EMI Electrola, the holder in Germany of exclusive rights to exploit recordings of shows given in the UK in 1958 and 1959 by the British singer Cliff Richard, and a company called Patricia, and concerned the marketing by the latter in Germany of phonograms containing recordings of the shows.

Under the German Copyright Act, authors or performers from other Member States and those claiming under them are denied the right, accorded to German nationals, to prohibit the marketing in Germany of a phonogram manufactured without their consent where the performance was given outside Germany.

In its judgment, the Court held that copyright and related rights, which fall within the scope of the EC Treaty, are necessarily subject to the general principle of non-discrimination laid down in Article 6 (formerly Article 7) of that Treaty, without there even being any need to connect them with the specific provisions of Articles 30\*, 36\*, 59\* and 66 thereof. The Court went on to define the content of that provision, stating that, in prohibiting "any discrimination on grounds of nationality", it requires that persons in a situation governed by Community law be placed on a completely equal footing with nationals of the Member State concerned. In so far as that principle is applicable, it therefore precludes a Member State from making the grant of an exclusive right subject to the requirement that the person concerned be a national of that State. The principle may, in the Court's view, be directly relied upon before a national court by an author or performer from another Member State, or by those claiming under them, in order to claim the benefit of protection reserved to national authors and performers.

It follows from this judgment that Member States are required to grant nationals of other Member States the same rights and protection as they grant holders of national rights.

## § 4 - Company law and financial information

220. Company law is in a state of flux and needs to be adapted to take account of the needs of companies in the single market. The Directives which have been adopted so far on the basis

(95) Judgements of the Court of 29 October 1993 in joined Cases C-92/92 and C-326/92 [1993] ECR I-5145.

of Article 54\* of the EC Treaty have contributed to the approximation of national laws on the protection of shareholders, creditors and third parties.

The Single Act and the Treaty on European Union seek to facilitate cooperation and mobility among companies in order that they might enjoy the benefits of a unified market. Nevertheless, the need to respect the principle of subsidiarity enshrined in Article 3b\* of the Treaty means that due regard must be had to the cross-border aspects of company law.

221. In this context the European company is high on the list of priorities. At present, companies from different Member States still cannot merge without resorting to complex and costly arrangements. The creation of the European company would afford those companies which so wish the opportunity to restructure more easily by means of cross-border mergers. It would also enable those companies which so wish to transfer their registered office within the Community without having to be dissolved and re-formed. The proposal for a Directive concerning cross-border mergers of public limited companies (Tenth Directive) might also play a major part here. The speedy adoption of these two instruments is considered a priority by the business community, as is pointed out by UNICE in the memorandum it has sent to the new Commission.

222. Other measures proposed by the Commission are still awaiting approval by the Council. These include the proposal for a Directive on takeover and other general bids (Thirteenth Directive). At the Edinburgh and Essen European Councils the Commission undertook to present a revised version of the proposal with a view to dealing with the existing legal obstacles.

223. Then there is the proposal concerning the structure of public limited companies (Fifth Directive). It is more than 20 years since the original proposal was presented, and in view of trends in some Member States' company law since then there is a need for a study on simplification of the rules governing the functioning of public limited companies in the European Union. The aim is to determine whether the law on public limited companies should be simplified in keeping with the need for effective company management. The results of the study should be known in the course of 1995.

224. On 21 March the Council adopted Directive 94/8/EC\* amending Directive 78/660/EC\* in order to incorporate the results of the five-yearly revision of the amounts in ecus used to define the SMEs to which Member States grant derogations regarding annual accounts.

The Commission will explore possible ways of improving the level of financial reporting within the Union and of strengthening its position in international accounting harmonization. There is some pressure, especially from business, for a Community initiative along such lines, given the internationalization of capital markets and the growing predominance of US standards.

In order to obtain an overview of existing barriers to the establishment of a single market for audit services, the Commission has launched a study of the main differences in Member States' laws and regulations concerning the role, responsibilities and position of the statutory auditor.

225. In 1994 the Accounting Advisory Forum held two meetings, at which it discussed cash flow statements, environmental issues in financial reporting and the application of the prudence and matching principles. Documents are being prepared on these subjects. The Forum is an advisory body of experts from main parties interested in accounting in the European Union, including national standard-setting bodies, preparers, users and auditors of accounts and accounting academics. Its main function is to advise the Commission on accounting matters and possible ways of facilitating further harmonization in the accounting field. Since it was created in 1990, the Forum has finalized position papers on accounting for government grants, foreign currency translation and accounting for lease contracts. These documents will be published by the Commission in 1995.

The Accounting Directives Contact Committee also held two meetings in 1994. It is a body composed of representatives from the Member States which was set up by the Fourth Directive (78/660/EEC\*). Discussions addressed the negotiations taking place in the IOSCO Technical Committee's working party on accounting standards, the relationship between environmental



audit and statutory audit, application of certain provisions of the Seventh Directive (83/349/EEC\*) and the future of accounting harmonization in the European Union.

Finally, in 1994 the Commission brought an infringement action before the Court of Justice against Germany for non-disclosure of annual accounts by a large number of companies in that Member State.

## § 5 - Taxation

### A. Indirect taxation

226. The picture after the new VAT and excise duty arrangements have been in operation for two years is largely positive and encouraging, even if some difficulties remain.

Various evaluations have been made of the transitional VAT arrangements, on the initiative of both private firms and organizations (studies by Deloitte Touche Tohmatsu, KPMG Peat Marwick, the BDI (Federal Association of German Industry), the FEB (Fédération des entreprises de Belgique) and some Member States (studies initiated by H.M. Customs and Excise in the United Kingdom and conducted by the Economic Institute for small and medium-sized enterprises in the Netherlands). The Euro Info Centres have also made an assessment of how the new VAT arrangements are working.

If the results of these studies are compared a number of constants emerge which confirm the main conclusions of the Commission report on the operation of the transitional VAT arrangements (96).

227. Thanks to the Enterprise Consultation Committee, the Advisory Committee on Customs and Indirect Taxation, Commission Working Party No 1 (on which the tax administrations are represented), the VAT Committee and the Excise Committee, solutions have in many cases been found for these difficulties and simplifications have been introduced (treatment of triangular transactions, contract work). Other simplifications, in both the VAT and the excise duty fields, have been formally proposed by the Commission and are under discussion in the Council. As regards VAT, the proposal for a second simplification Directive (treatment of certain chain transactions, work on movable property) is still under discussion within the Council. In the case of excise duty, the proposal for a Directive containing simplification measures (clarification of the text of Directive 92/12/EEC\*, relaxation of certain rules) was adopted in December 1994.

228. The Commission has launched a comparative survey of national legislation on VAT and excise duty into which Community legislation has been incorporated: the survey will pay special attention to how these rules actually work in practice. (97).

The first report evaluating the new tools for administrative cooperation introduced on 1 January 1993 under the transitional VAT arrangements confirms that the means chosen (the VAT information exchange system (VIES), the Standing Committee on Administrative Cooperation and the CLO (Central Liaison Office) are consistent with the objectives set by Regulation (EEC) 218/92 (Report (94) 262 final).

In addition, in order to achieve closer cooperation between national administrations, a Community programme (Matthaeus-Tax), which is modelled on the programme in the customs field, has been introduced for the training and exchange of tax administration officials. Under this programme, two-month exchanges of one hundred officials took place in 1994.

(96) COM (94) 515 final of 23 November 1994.

(97) OJ C 189 of 12 July 1994.

229. Nevertheless the difficulties encountered by business are a reminder that firms and consumers do not yet enjoy all the advantages expected from a single market: the need to prove the intra-Community nature of their operations, the burden of the identification and declaration requirements and the deterrent effect of certain provisions are all obstacles to the expansion of trade between Member States. These difficulties, combined with the large number of rules applicable, translate into complex mechanisms for applying the common system of VAT, despite the simplicity of its operating principles.

The difficulties encountered will not be solved satisfactorily under the transitional arrangements, because these difficulties are the direct and inevitable result of rules adopted by the Sixth Directive (relating to the place where transactions are taxed and the place where tax is deducted) and of choices made by the Council.

230. Examination of experience under the transitional arrangements will serve as a basis for drawing up the definitive system. In order to prepare for the forthcoming debate on the nature of the definitive system, the Commission organized a conference on 27 and 28 June 1994 which provided an opportunity for wide-ranging consultation of all interested parties.

The definitive VAT system will have to take account of the following points:

- simplicity for taxable persons and national tax administrations;
- equal treatment and neutrality of taxation for domestic and intra-Community transactions;
- implications for the approximation of VAT rates;
- implications for the harmonization of the right to deduct, exemptions, special schemes (in particular for small firms);
- detection and combating of fraud;
- assuring Member States' and Community revenue from tax.

The importance of this dossier calls for an ambitious approach from the Commission, involving exhaustive preparation and wide-ranging consultation of the interested parties.

The Commission intends to present guidelines for the definitive VAT system to the ECOFIN Council as soon as possible.

## B. Direct taxation

231. Tax regimes in force in the Member States continue to inhibit the proper functioning of the internal market. Differences in national tax regimes both hinder the expansion of enterprises into other national markets and create barriers to the free movement of people. The Commission has focused its action on five areas. These are:

- the elimination of double taxation on cross-border income and gains;
- the introduction of a more neutral system of taxation of savings;
- the realisation of a neutral system of taxation of insurance services;
- the taxation of individuals who are resident in one Member State but earn their living in another; and
- the improvement of the fiscal environment of SMEs, which face particular problems in developing their activities beyond national boundaries.

However these efforts have not resulted in any substantial progress, which is particularly difficult to achieve as decisions of the Council with regard to taxation matters still require unanimity.

232. SMEs, in particular, are unable, as yet, to take full advantage of the single market, and encounter difficulties in the legal and fiscal environment in which they operate. They are often taxed more heavily, and have to bear proportionally higher costs when they operate across borders than in the case of a purely national activity. As SMEs are generally believed to be

significant contributors to the creation of employment and to economic growth, the Commission launched the following initiatives to improve their situation:

- it adopted, on 25 May 1994, a Communication on the improvement of the fiscal environment of SMEs (98), indicating four fields of action. These are: achieving tax parity between incorporated and unincorporated enterprises; reducing the administrative burdens on SMEs beginning to engage in cross-border activities by taxing their permanent establishments in their country of residence; providing appropriate fiscal treatment for venture capital investment; and the taxation of the transmission of enterprises;
- in parallel, it issued a Recommendation inviting the Member States to correct the deterrent effects of progressive rates of income tax payable by sole proprietorships and partnerships in respect of reinvested profits (94/390/EC\*), and to eliminate tax obstacles to changes in the legal form of enterprises, in particular the incorporation of sole proprietorships or partnerships;
- on 7 December 1994, following its Communication of 23 July 1994, it issued a Recommendation inviting the Member States to take action to improve the fiscal environment relating to the transfer of ownership of SMEs, with the objective of safeguarding the fabric of such businesses and saving jobs (99).

Improving the taxation environment is an ongoing concern. The Commission will take account of reactions to the four main orientations set out in the Communication of 25 May 1994 in deciding how to take forward its consideration of the taxation of permanent establishments and of venture capital investment.

**233. Double taxation** remains a limiting factor for the smooth functioning of the Internal Market for companies, and progress in view of adopting Commission proposals to reduce double taxation remains slow. On 30 November 1994 the Commission withdrew the proposal for a directive abolishing withholding taxes on interest and royalty payments, as there was no unanimous agreement in the Council on the desirability of such a directive. As the problem of the double taxation of cross-border interest and royalty payments has not gone away, the Commission will continue to work towards a solution, which might lead to new legislative proposals. Nor has the Council yet discussed the proposals to extend the scope of the parent-subsidiary and merger directives or the proposal for a directive on the taking into account by companies of losses incurred by their permanent establishments or subsidiaries in other Member States.

Overall, the situation in relation to taxation of companies in a single market remains unsatisfactory.

**234.** However the Council met several times to discuss the question of the taxation of savings. The Council sought a consensus solution based on the co-existence of withholding tax systems and declaration-based systems to ensure a minimum level of taxation.

Member States considered that the co-existence of the different systems of taxation required a balance in the exchange of information between those States with a withholding tax, which generally have banking secrecy, and the other States. They also underlined the need for any Union-wide solution to this question to preserve the competitiveness of financial centres in the Union. No agreement has yet been reached on this complex issue. However, all Member States have agreed to sign and ratify the Council of Europe Convention on Mutual Assistance in criminal matters (of 1959) (not yet signed by Ireland) and its Additional Protocol regarding tax offences (of 1978) (not yet ratified by Belgium and Luxembourg).

**235.** The Commission has set up a working group to simplify the withholding tax procedures on interests, dividends and royalties. An agreement in principle has been reached on the use of the direct application of reduced rates of withholding tax, rather than later reimbursement one, and on the use of a common form. The working group is now focusing on the necessary practi-

(98) OJ C 187 of 9 July 1994, pp. 5-11

(99) COM(94) 3312 final of 7 December 1994

cal arrangements. A common approach for the certification of residence is still under discussion.

236. On 1 July 1994, the third generation life insurance directive (92/96/EEC\*) entered into force, thereby opening up the possibility for life insurance companies to sell their products cross-border without having to be established in the Member States where they trade. Some Member States' tax systems, however, still make a distinction between the tax treatment of policies sold by an established insurer and the treatment of policies with a non-resident insurer. Typically, the discrimination involves the tax deductibility of premium payments made by the policy holder, although it can also occur with the taxation of the proceeds of foreign policies. These differences remain a barrier to the cross-border sale of policies in certain Member States and hinder the development of the internal market in insurance. The Commission has taken up with the Member States concerned the matter of the compatibility of these national tax provisions with the fundamental freedoms in the EC Treaty. The working group which it set up with Member States to try to solve the wider issues of how to prevent the loss of tax from cross-border policies if certain of these national provisions are dismantled, also continued to meet. In 1994, this group considered two possible solutions, both based on the exchange of information between Member States about life insurance policies and policy holders. Member States have not, however, yet been able to agree upon a common approach.

237. Furthermore, within the framework of Directive 77/799/EEC\* of 19 December 1977 concerning mutual assistance between the competent authorities of the Member States in the field of direct taxation, two meetings took place between the Member States and the Commission, to streamline the information exchange process. These meetings led to the introduction of some internal guidelines on the conduct of exchange of information on request, as well as a code of practice on the time it should take for requests to be answered which should ultimately benefit companies as well.

238. Following Commission Recommendation 94/79/EC of December 1993 concerning the taxation of non-resident individuals who earn income in a Member State other than that of their residence, the Commission continued to receive a large number of complaints and questions relating to such cases. The Commission maintained that it was unacceptable for individuals who lived in one Member State but received the vast majority of their income from another to be taxed more heavily than individuals who lived and worked in the same Member State. Such an outcome was contrary to the basic freedom of movement for workers provided for by Article 48 of the EC Treaty. Following a hearing in October 1994, the Court of Justice delivered its ruling in February 1995 on an important case in this regard (Finanzamt Köln - Altstadt vs Schumacker C-279/93). In that case a Belgian national, who was also resident in Belgium, derived all or virtually all his income from employment in Germany. He claimed certain tax advantages and reliefs which were, under German tax law, accorded only to residents of Germany, notably a reduction in his tax liability arising from the way of taxing married couples. The Court's decision, given on 14 February 1995, was in his favour, thus validating at the same time the Commission's position, as set out in its recommendation.

## § 6 - Small and medium-sized enterprises

239. Recognizing the important role that SMEs should play in stimulating growth and creating employment, the Community's enterprise policy concentrates on creating an environment to improve the competitiveness of enterprises, particularly small and medium-sized ones, and to provide the support services necessary to take advantage of the opportunities provided by the single market. This multi-annual programme concentrates on providing better access to Community information for enterprises; improving the business partner search networks offering cooperation opportunities; developing measures to provide for direct contact between entrepreneurs; and promoting subcontracting opportunities and greater involvement in public procurement.

## A. Information

240. The provision of basic information is increasingly a requirement for SMEs who want to take advantage of the opportunities provided by the single market. The Euro Info Centre (EIC) network is now providing a more sophisticated range of services to assist SMEs, including market information on standards and certification, on public procurement opportunities (through the use of special software), and the identification of appropriate contacts in other Member States. The EICs in turn have proved to be a valuable source of detailed information on SMEs' experience about operating in the single market. EICs have also acted on behalf of SMEs that are facing problems but do not wish to raise any formal complaint.

## B. Cooperation

241. The Commission has expanded its major networks for promoting cooperation between businesses, i.e. the Business Cooperation Network (BC-Net) and the Business Cooperation Centre (BRE). BC-Net has 530 members on five continents, 495 in the Member States and 35 in 26 non-member countries. In 1994 BC-Net forwarded 8 300 cooperation profiles of a commercial, technical or financial nature. The BRE network, which has nearly 500 correspondents in 59 countries, underwent technical and operational improvements during 1994.

Europartenariat is an initiative started by the Commission to encourage partnership and cooperation between SMEs in less developed regions and/or regions in industrial decline with other companies in the Union. Europartenariat events were held in Gdansk, involving 400 Polish companies, and in Bilbao, involving 480 Spanish companies.

## C. Support measures

242. Measures in support of businesses have included pilot projects on vocational training, standardization and certification, finance, research and technological development, and marketing.

The Euromanagement network of training and consultancy bodies has initiated pilot projects to prepare SME managers to take part actively in the single market and avail themselves of the opportunities provided. Under one Euromanagement project 843 SMEs were evaluated and then advised by consultants on standardization, certification, quality assurance and safety at work. The aim of this project was to obtain a better idea of the problems of adapting to European requirements in these fields.

The Second European Conference for craft and small enterprises "Craft and Small Enterprises, the Key to Growth, Employment and Innovation" was held in Berlin on 26 and 27 September 1994. More than 1 200 representatives of the craft and small business sector and the national and regional governments of the European Union and the EEA States participated in the six workshops and the plenary meeting aimed at improving the competitiveness of small and craft enterprises and facilitating their integration into the single market.

## D. Commerce

243. Several studies on topics of interest to commercial SMEs within the Union were commissioned. Subjects covered include: an analysis of the impact of the block exemption for distributors of motor vehicles; the role of independent organized networks in the modernization of commerce; and structural changes in retailing within the European Union.

Under the Commerce 2 000 project, the Commission launched a call for tenders to promote cooperation in the fields of training and technology which resulted in 55 contracts being signed for the co-financing of feasibility studies.

### **E. Access to finance**

**244.** Many small and medium-sized enterprises remain unable to take advantage of the single market because of continuing problems with access to finance. The Round Table of leading representatives from the banking sector set up by Commissioner Vanni d'Archirafi in 1993 looked at best practices within the European Union, including ways of improving relations between banks and SMEs, and considered how the financial instruments at the European Union's disposal could best be used to benefit SMEs. The Round Table submitted its final report to the Commission on 19 May 1994. Apart from bank lending, other recommendations concern the establishment of a European Capital Market for SMEs and the role to be played by the EIF in improving the overall fiscal environment of SMEs.

### **F. Transfer of businesses**

**245.** While SMEs play an important role in creating growth and employment, unfortunately thousands of SMEs disappear every year because they have not overcome the difficulties involved in transferring them. The Commission issued a Consultation Paper in July 1994 (100) which was widely commented on and held a Public Hearing on 17 October 1994 with interested parties. In the light of the ideas that emerged from the consultation process, a Recommendation on the Transfer of Small and Medium-sized Enterprises was addressed to the Member States on 7 December 1994 (101). Its aim is to eliminate the main obstacles to successful transfers by extending throughout the Community initiatives which have hitherto remained limited to Member States. In particular the Member States are asked to introduce measures aimed at increasing owners' awareness of the problems involved in transfer and encourage them to prepare for this operation during their lifetime by:

- creating a financial environment suited to a successful transfer;
- enabling businessmen to prepare for transfer by offering suitable instruments;
- ensuring the continuity of partnerships and sole proprietorship in the event of the death of a partner or the owner;
- providing for successful transfers within the family by ensuring that inheritance and gift taxes do not jeopardize the survival of an enterprise;
- providing tax incentives for businessmen to transfer enterprises by selling them, primarily when there is no one within the family to continue the business.

Implementation of the measures which have been recommended to the Member States will help to ensure the continued existence of SMEs, and of the jobs they provide (see also para. 232 above, on direct taxation).

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(100) OJ C 204 of 23 July 1994, p. 1

(101) COM(94) 3312 final of 7 December 1994.

## § 7 - Commercial communications

246. Commercial communication covers all forms of marketing communication (advertising, sponsorship, direct marketing and public relations). Since all industrial and service sectors in the European economy are concerned, commercial communication is subject to a host of differing types of regulations. The Commission therefore believes that coherent policy in this area requires strengthening of internal co-ordination. In preparation for the publication in 1995 of a Green Paper on this subject, the Commission completed an extensive round of consultations with all interested parties on the role of commercial communication in the single market and potential barriers to the circulation of such services within the Union. The results of three seminars held in 1993 were complemented by a market research survey across the Union and an open postal questionnaire.

247. The Green Paper will describe how greater coordination might be achieved based on (i) an in-depth review of the role of commercial communication within the Union and (ii) an analysis of the regulatory framework which covers these forms of communication. It will include:

- operational guidelines explaining the Commission's policy approach, given the objectives for which it has competence;
- an explanation of how the principles of subsidiarity and proportionality would be applied;
- an assessment and a proposal for a commercial communication central contact and market monitoring point within the Commission;
- a list of potential policy problems in specific areas that will require further consideration.

## § 8 - Media

### A. Media ownership

248. The Green Paper *Pluralism and media concentration in the internal market. An assessment of the need for Community action* (102) identified a number of obstacles to the smooth functioning of the internal market caused by disparities between national measures on media ownership (television, radio, press). The aim of these measures is to protect pluralism by limiting ownership by a single person of several media companies at once. The Green Paper concluded by presenting different possible options. During the consultation process conducted on the basis of the Green Paper numerous contributions were obtained from the interests concerned and opinions were received from the Economic and Social Committee (103) and Parliament (104), which on 20 January 1994 adopted a Resolution on this matter.

On 5 October the Commission adopted a Communication to Parliament and the Council on the follow-up to the consultation process (105). This is an intermediate report which presents an analysis of the consultation on the question of the need for Community action. It concludes that an initiative at Community level relating to media ownership could prove necessary and that it is therefore appropriate to continue the consultation. A second round of consultation has the objective of establishing whether an initiative is required and providing the main factors of

(102) COM(92) 480 final of 23 December 1992.

(103) OJ C 304 of 10 November 1993, p. 17.

(104) OJ C 44 of 14 December 1994, p. 177.

(105) COM(94) 353 of 5 October 1994 (OJ C 323, 21.11 1994).

assessment essential for establishing the content of a possible initiative. A questionnaire was circulated accompanied by two studies with a view to having contributions in the spring of 1995.

## B. Legal protection for coded radio signals

249. As announced in the Strategic Programme, a Green Paper is in preparation on the protection of coded signals for televisual and audio broadcasting. The present legal uncertainty with regard to the protection of coded television services and the various solutions adopted by existing national laws are not only a barrier to the movement of these services, but also to trade in signal decoders. The Green Paper will examine whether new Community measures could play a role in removing barriers to the movement of coded television services and signal decoders.

250. Two studies have already been carried out on the protection of coded broadcasting services. The first concentrated on the economic and technical aspects, and in particular the coding systems currently used, their advantages and defects, and their vulnerability. The second dealt with the legal aspects, analysing the factors determining the development of coded broadcasting services, the causes of piracy, and the legal solutions which have sometimes been adopted.

A third study has now been launched on the national rules existing in the Union in order to evaluate their compatibility with the principles of the single market. In addition in 1994 contacts took place with the professionals concerned (broadcasters, cable distribution companies, copyright owners) on the problems caused by the present legal situation. These contacts illustrated the interest of the parties concerned in the Commission initiative. Professionals, whether programme makers or distributors, feel the need for greater protection of coded broadcasting services, since this would permit the development of satellite services intended for a European audience. Further meetings with the professionals will take place in order to discuss any Community measures. The draft Green Paper should be completed in the first half of 1995.

## C. Audiovisual policy

251. On 6 April 1994 the Commission adopted a Green Paper entitled "Strategy options to strengthen the European programme industry in the context of the audiovisual policy of the European Union" (106). This Green Paper focuses on a specific aspect of the audiovisual industry, the development of the European film and television programme industry. It has launched a debate on options for the future around three lines of action, namely:

- the rules of the game;
- financial incentives at Union level;
- the convergence of national support systems.

The Green Paper was submitted to professional circles for wide-ranging consultation, in particular at the European Audiovisual Conference held in July 1994.

On the basis of the outcome of the Conference proceedings and of various contributions from professional organizations, firms and national authorities, work has been initiated with a view to preparing proposals on the MEDIA 2 programme and revising the "Television without Frontiers" Directive (89/552/EEC).

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(106) COM(94) 96 of 4 June 1994.



## § 9 - Protection of personal data

252. The Internal Market Council reached political agreement in December 1994 on the amended proposal for a Directive on the protection of individuals with regard to the processing of personal data and on the free movement of such data. The common position was adopted by the Council on 20 February 1995.

The Directive aims to narrow divergences between national data protection laws to the extent necessary to remove obstacles to the free movement of personal data within the EU. As a result, any person whose data are processed in the Community will be afforded an equivalent level of protection of his rights, in particular his right to privacy, irrespective of the Member State where the processing is carried out.

253. Until now, differences between national data protection laws have resulted in obstacles to transfers of personal data between Member States, even when these States have ratified the 1981 Council of Europe Convention on personal data protection. This has been a particular problem, for example, for companies wishing to transfer data concerning their employees between their operations in different Member States.

Such obstacles to data transfers could seriously impede the future growth of information society services, particularly those dependent on personal data such as financial services and distance selling. As the Bangemann Group report to the Corfu European Council remarked: "Without the legal security of a Union-wide approach, lack of consumer confidence will certainly undermine the rapid development of the information society". As a result the Corfu European Council called for the rapid adoption of the data protection Directive.

254. To prevent abuses of personal data and ensure that data subjects are informed of the existence of processing operations, the Directive will lay down common rules, to be observed by those who collect, hold or transmit personal data as part of their economic or administrative activities or in the course of the activities of their association.

In particular, there will be an obligation to collect data only for specified, explicit and legitimate purposes, and for data to be held only if relevant, accurate and up to date. The Directive will also establish the principle of fairness, so that collection of data should be as transparent as possible. The Directive will require all data processing to have a proper legal basis. The six legal grounds defined in the Directive will be: consent, contract, legal obligation, vital interest of the data subject or the balance between the legitimate interests of those controlling data and those on whom data is held (i.e. data subjects).

255. Data subjects will be granted a number of important rights including the right of access to data, the right to know where the data originated (if such information is available), the right to have inaccurate data rectified, a right of recourse in the event of unlawful processing and the right to withhold permission to use their data in certain circumstances (for example, individuals will have the right to opt out free-of-charge from being sent direct marketing material without providing any specific reason).

In the case of sensitive data, concerning an individual's ethnic or racial origin, political, religious or philosophical beliefs, trade union membership or health or sexual life, the Directive will establish that data can only be processed with the explicit consent of the individual, except in specific cases such as where there is an important public interest (e.g. for medical or scientific research), where alternative safeguards will have to be established.

The common position has been sent by the Council to Parliament for a second reading and adoption under the co-decision procedure.

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## Section 6 - Public procurement

256. During the year the Community legislative framework in the public procurement field was supplemented with entry into force of the last consolidated directives. Several important decisions by the Court of Justice also clarified aspects of the public procurement rules. The Commission strove to take greater account of the special problems encountered by SMEs in bidding for contracts by holding a seminar devoted specifically to the question and by looking into various concrete measures that could be taken to help SMEs. In the external relations field, the new government procurement agreement was signed in Marrakesh on 15 April in the context of the Uruguay Round (see Section 9).

### § 1 - Development and application of the new legislative framework

#### A. Application of the Community rules

257. Following the entry into force this year of the last consolidated directives (Directives 93/36/EEC\*, 93/37/EEC\* and 93/38/EEC\*), the Commission stepped up checks on transposal of the legislation, taking action against those Member States that failed to fulfil their general obligation to communicate their national implementing measures and examining the measures communicated by Member States that had transposed these and earlier directives.

258. Taking account of the extra time that Spain, Greece and Portugal have been allowed for transposing Directive 93/38/EEC\* (and Directive 90/531/EEC\*), most Member States have failed to meet the deadlines of 14 June 1994 and 1 July 1994 for transposing Directives 93/36/EEC\* and 93/38/EEC\*, while there are still major delays in transposing some of the earlier directives, in particular Directive 92/50/EEC\* on services and Directive 92/13/EEC\* on review procedures in the utilities sectors.

Of the 23 infringement proceedings in hand for failure to communicate national measures implementing the public procurement directives, nine were initiated in 1994 and concern Directive 93/36/EEC\*.

Following its examination of measures communicated, the Commission discovered five new infringements over and above the 16 for which it had already initiated proceedings in previous years. These sometimes involve questions of principle that could jeopardize the opening-up of public procurement in the Member States concerned.

The situation with regard to Directive 92/50/EEC\* is alarming, since most Member States have so far failed to communicate their national implementing measures, which they are not expected to adopt in the near future, and the others have adopted measures that are sometimes far from satisfactory.

The Commission of course continued to follow up proceedings initiated in connection with its scrutiny of the transposal of earlier directives (the amended Works Directive 71/305/EEC\* and the amended Supplies Directive 88/295/EEC\*) and brought one case for faulty transposal against Germany to the Court of Justice.

259. The Commission stepped up its checks on application of the rules by contracting authorities and contracting entities in each of the Member States. These checks focused in particular on the conditions in which Member States award contracts for the supply of pharmaceutical products. It also dealt with all infringements, discovered as a result of complaints or through its own investigations, involving the application of rules of Community law that can be relied on in

the public procurement field (directives and Treaty articles); the number of such infringements doubled as compared with 1993, most probably as a result of the progressively wider implementation of the directives following entry into force of the most recent texts.

**a) Action by the Commission**

260. Of the 206 cases dealt with in 1994 (including 121 new cases opened), the Commission settled matters with the Member State concerned in 66 cases before the infringement proceedings had run their full course. To that end, it set up procedures for dialogue and consultation (in particular through bilateral meetings with individual Member States to discuss a range of issues) in order to offer Member States the legal and technical assistance they need and to endeavour to find mutually acceptable solutions to disputes in accordance with Community law. A few examples are worth mentioning.

Greece

261. For the construction of an aqueduct at Reressi, a public works contract was awarded in breach of the rules on publication of a tender notice. The Greek authorities claimed that the work had to be done as a matter of urgency and that the contract went hand-in-hand with construction of another aqueduct at Evinos. The Commission refuted these arguments: the drought had already existed for a very long time, and the two aqueducts were two entirely separate structures. Following the Commission's intervention, the Greek Government agreed to annul its decision awarding the contract.

Portugal

262. In awarding a contract for the supply of computer equipment, the Portuguese public body concerned assessed the tenders submitted but then eliminated the two top-ranking tenders on the basis of criteria that had not been mentioned in the tender notice or the tender specifications. The Commission also noted breaches of Articles 30\* and 59\* of the EC Treaty. In the end, the Portuguese authorities cancelled the contract and started a new award procedure.

Belgium

263. For the construction of a building intended for the Flemish Executive, a works contract was awarded without prior publication. The Commission's intervention prompted the Belgian authorities to draw up tender specifications and publish tender notices.

Italy

264. The Mezzogiorno had a system of regional preferences whereby 30% of public supply and public service contracts awarded by administrations were reserved for local firms.

In its judgment of 20 March 1990 in the *Du Pont de Nemours* case (107), the Court of Justice had already declared this system incompatible with Article 30\* of the Treaty. Following further intervention by the Commission, the Italian authorities embarked on a reform of their legislation, eliminating the provisions establishing the system of preferences for firms located in the Mezzogiorno and thereby putting an end to these infringements of Community law.

Germany

265. The city of Hamburg published a tender notice for the supply of concrete sleepers which referred exclusively to Deutsche Bundesbahn house standards and accepted only technical

(107) Judgement of the Court of 20 March 1990 in Case C-21/88 [1990] ECR I-889.

experience relevant to the supply of similar products certified by Deutsche Bundesbahn. In the wake of discussions between the Commission and the German authorities, the contracting authority suspended the procedure and agreed to restart it having due regard to the observations made by the Commission.

266. Although public contract award procedures have been harmonized at Community level, obstacles that may be caught by Articles 30 *et seq.*\* remain. One example of such obstacles is national rules establishing systems of preferences that reserve a given share of public contracts awarded by administrations for firms located in certain areas of the national territory. The Commission has also noted that some tender notices, irrespective of the value of the contract (above or below the thresholds laid down by the public procurement directives), fail properly to apply the mutual recognition principle.

**b) Decisions by the Court of Justice**

267. Four important decisions are worthy of mention; other cases are still pending before the Court and should shortly be decided:

Judgment of 3 March 1994 in Case C-328/92 Commission v Spain ("Pharmaceutical products") (108)

268. The Court of Justice of the European Communities held that Spain's basic social-security legislation, which enabled the administration to award by direct agreement public contracts for the supply of pharmaceutical products to establishments covered by the social security scheme, was incompatible with Directive 77/62/EEC\*. The Court stated that the only exceptions allowed to Directive 77/62/EEC\* were those exhaustively and specifically listed therein and that the derogations to the rules aimed at effectively guaranteeing the rights recognized by the Treaty in the public procurement field must be construed strictly (109); that it is for the person placing reliance on it to prove that the exceptional circumstances justifying the derogation do in fact exist; and that the conditions laid down must all be satisfied (110).

Order of the President of the Court of 22 April 1994 in Case C-87/94 R Commission v Belgium ("Walloon buses") (111)

269. While rejecting the Commission's request that the Court suspend a contract for the supply of buses, the President of the Court recognized the right to apply for interim measures to put an end to serious, irreparable harm that can be caused by performance of a disputed contract. In the case in point, the President nevertheless upheld, on the balance of the interests at stake, the argument put forward by the Belgian authorities concerning the dilapidated condition of the buses.

The decision also implies that the Commission should not accept any *fait accompli* and that it retains the possibility of requesting the Court to act under Article 186\* of the Treaty to suspend performance of contracts concluded in breach of Community rules. This case-law could serve as an effective warning to contracting authorities that infringe the Community rules on public procurement.

(108) Judgement of the Court of 3 May 1994 in Case C-328/92 [1994] ECR I-1569.

(109) Judgement of the Court of 18 March 1990 in Case C-24/91 [1992] ECR I-1989, paragraph 36.

(110) *Op. cit.*, paragraph 13, for the corresponding provision applicable to public works contracts.

(111) Order of the President of the Court of 22 April 1994 in Case C-97/94 [1994] ECR I-1395.

Judgment of 14 April 1994 in Case C-389/92 *Ballast Nedam Groep v Belgium* (112)

270. This reference for a preliminary ruling concerned a Member State's refusal to include on a list of registered contractors companies that did not possess equipment and staff themselves but were linked to companies that did.

In line with the arguments developed by the Commission and the conclusions of the Advocate General, the Court held that the Works Directive allowed a holding company to take part in a tendering procedure even if it was not itself a contractor or a supplier of the goods covered by the contract. If, however, the firm submitting the tender did not itself have the resources to perform the contract, the contracting authority was entitled to check whether, by virtue of special links, it could effectively rely on the resources available to the other companies (paragraph 18 and operative part of the judgment).

Judgment of 26 April 1994 in Case C-272/91 *Commission v Italy ("Lottomatica")* (113)

271. This case concerned the award by the Italian Ministry of Finance of a public contract for a lottery computerization system. The contract was not publicized in the Official Journal and was reserved for companies and groupings that were mainly publicly owned. It was awarded to the Lottomatica consortium.

By Order of 31 January 1992, confirmed on 12 June 1992, the President of the Court of Justice called on Italy to suspend the legal effects of the award decision and of the contract signed with the firm Lottomatica. The Italian Government did not comply with these Orders until 27 May 1993.

The Court subsequently found in favour of the Commission, basing its judgment on Articles 52\* and 59\* of the Treaty and Directive 93/36/EEC\* on public supply contracts.

With regard to Articles 52\* and 59\*, the Court held that the design and operation of a computer system were technical activities that fell within the scope of Articles 52\* and 59\* and rejected the arguments put forward by the Italian Government, which maintained that they were activities connected with the exercise of official authority within the meaning of Article 55\* of the Treaty.

As far as the Directive on public supply contracts is concerned, the Court stated that, since the contract related to the supply of an integrated computerized system, including in particular the supply of certain goods to the administration, it was subject to the advertising and award rules laid down in the Directive, even if the administration was to become the system owner only after nine years.

## § 2 - Community financing

272. The Commission attaches the utmost importance to observance of the principle established in Regulation (EEC) No 2052/88\* (114) on the tasks of the Structural Funds, whereby operations financed by the Structural Funds, the EIB or the other existing financial instruments must comply with the provisions of the Treaties and secondary legislation and must be in line with Community policies, including that on public procurement.

As well as ensuring that policies are consistent, this principle has to do with the effectiveness of structural operations: in the interests of economic and social cohesion, Community rules must be complied with so that all Member States can benefit:

(112) Judgement of the Court of 14 April 1994 in Case C-398/92 [1994] ECR I-1289.

(113) Judgement of the Court of 26 April 1994 in Case C-272/91 [1994] ECR I-1409.

(114) As amended by Council Regulation (EEC) No 2081/93\* of 20 July 1993.

- the Member State that receives the funding will obtain the best value for money for operations financed by the Funds;
- the other Member States will see that Community funding is used to best effect, and their own firms will be entitled to bid for contracts under the projects concerned.

273. With this in mind, the Commission decided in 1988 to introduce a system for monitoring compliance with the public procurement rules in the context of projects or programmes financed by the Structural Funds and Community financial instruments.

For all operations exceeding ECU 25 million, the Commission decisions granting Community finance require the recipients to send it automatically information on the essential features of the contracts concerned; smaller operations are monitored by means of random checks. The new Regulations (EEC) No 2082/93\* and (EC) No 1164/94\* coordinating the Structural Funds and the Cohesion Fund thus require the existence of Community finance to be mentioned in all contract notices published in the Official Journal by the entities in receipt of the funding.

The Commission is also looking into further ways of preventing infringements in connection with contracts financed by the Community.

The fact remains, however, that, given the scale of the task and the limited resources available to the Commission, the effectiveness of the monitoring effort depends largely on the attitude of the Member States and economic operators.

In connection with the Cohesion Fund, a systematic check on compliance with the public procurement rules was carried out during the successive stages of approval and execution of all projects financed. From April 1993 to October 1994, some 590 applications for financing of individual projects or groups of projects under the Cohesion Fund (including 385 applications relating to the environment and 205 in the transport sector) were thus checked. Checks focused chiefly on compliance with requirements concerning the advertising of contracts, on conformity with the directives of requirements laid down in contract notices and on reports on contract awards (where required by the directives).

274. During the year, the Commission sent each Member State the findings of an overall random check on compliance with the Community rules on public procurement carried out on projects financed by the ERDF over the period 1985-88. The exercise was also aimed at gaining a general picture of the behaviour of contracting authorities and drawing practical conclusions with a view to adjusting the system of control.

The Commission also received from Greece and Spain amendments which they had made to their national legislation on public procurement in view of the risk of losing large amounts of funding as a result of contracts being awarded on the basis of rules that were incompatible with Community law.

### § 3 - Advisory Committees

275. To assist the Commission in its task of establishing a Community legislative framework for public procurement, two committees are in operation:

- the Advisory Committee for Public Procurement, composed of representatives of the Member States, which was set up in 1971 by Council Decision 71/306/EEC\* of 26 July 1971, as amended by Decision 77/63/EEC\* of 21 December 1976, and which the Commission has to consult;
- the Advisory Committee on the Opening-up of Public Procurement, composed of representatives of the business community, which was set up in 1987 by Commission Decision 87/305/EEC\* of 26 May 1987, as amended by Decision 87/560/EEC\* of 17 July 1987, and which is a committee of the consultative type that does not come within the scope of the Regulation on committee procedures.

Consultation of these two Committees will continue to provide the Commission with essential advice in tackling the problems posed by application of the legislation, for example by considering the simplification and consolidation of existing texts and finding pragmatic, reasonable ways of overcoming the obstacles to the opening-up of public procurement. Adjustments will have to be made to the existing rules, in that emphasis will have to be placed on economic rather than legal aspects.

276. To ensure that information flows satisfactorily between itself and those involved in public procurement, the Commission decided to set up an in-house information service for which the contact point is to be the secretariat of the Advisory Committees. This information exchange system is now in the process of being launched (115).

#### § 4 - Information systems for public procurement (SIMAP)

277. More than two years ago the Commission conducted a study on the use of information technology in public procurement which led to a project known by the acronym SIMAP - information system for public procurement.

The study recommended in particular that:

- electronic data interchange (EDI) should be introduced;
- computerized information systems for public procurement should use European and International standards,

There are two main information flows: one between the national purchasing entities and the Publications Office, the other between purchasing entities. There are about 400 000 purchasing entities in the EU covered by the Directives, of which some 100 000 publish contract notices regularly or occasionally. The Publications Office received at least 100 000 notices this year and is expected to receive 150 000 within two years. These notices are published daily in the Official Journal and in Tenders Electronic Daily (TED) and are thereby made known to all potential suppliers.

Even if only ten percent of purchasing entities and one percent of potential suppliers were prepared to participate in electronic procurement they would represent 170 000 new EDI users within the context of electronic tendering. The recommendations in the report on 'Europe and the global information society', presented to the European Council in June 1994, identified public procurement as one of the top ten priority applications for information technology. In the report it was suggested that at least 10% of all purchasing authorities should have electronic tendering procedures implemented within the next two to three years to gain a critical mass for the general conversion.

278. Four main SIMAP pilot projects have been defined to check the technical feasibility of such an information exchange system and to estimate the likely operating costs:

- 1 - Notification (procurement notices);
- 2 - Information dissemination;
- 3 - Market monitoring and analysis;
- 4 - Information exchange between purchasers and suppliers.

279. In order to monitor present activities and to guide the future development of the overall information system for public procurement, especially with regard to the introduction of electronic data interchange, the Commission last year suggested to the Western European Edifact

(115) The address of the contact point is as follows:  
 DG XV/B/4 - C100 - Mr Paul Fraix - Rue de la Loi, 200 - B-1049 Brussels  
 Tel. No: (+32-2) 295 89 46 - Fax: (+32-2) 295 01 27  
 E-mail: (i) X 400: G=Paul; S=Fraix; O=dg15; P=CEC; A=RTT; C=BE  
 (ii) INTERNET: Paul.Fraix@dg15.cec.be

Board (WEEB) that a new Edifact message development group be set up in that area. As a result Message Development Group 12 - Public Procurement was established.

280. SIMAP can be seen as the focus of the Commission's effort to encourage the use of modern technology in public procurement procedures. In its initial pilot phase SIMAP will test the practicality of using electronic mail, electronic data interchange and on-line databases by setting up a working system to increase the efficiency of notification of public procurement contracts and improve the dissemination of such information.

For purchasers and suppliers even greater benefits will come from using electronic mail, electronic data interchange and on-line databases for the large volume of transactions which fall below the thresholds of the Directives. These are generally also the transactions most interesting to SMEs.

281. Other areas where the use of modern technology could be of immediate benefit include the provision of user-friendly access to information about national legal regimes and the dissemination of information about subcontracting opportunities. Electronic payment systems are also important.

Such systems will contribute directly to the achievement of improvements in industrial competitiveness and efficiency, budgetary savings, improvements in quality and value for money of public sector purchases, increased market integration and greater trading opportunities.

The main tasks of the Commission in this area are to promote standardization and to raise the level of awareness and use of modern technologies. The volume of data being exchanged has increased steadily and will continue to grow further, so that a change in administrative procedures becomes necessary. The use of standardized electronic messages is essential to this change. Early standardization will also help to avoid any hidden form of discrimination or protectionism and provide open access for everybody.

## § 5 - Other activities

282. On 14 and 15 January the Commission held a seminar on opening up public procurement in the single market and affording SMEs greater access to contracts. The seminar was attended by those involved in procurement: lawyers, public purchasers, company managers and representatives of trade associations.

One of the major concerns evoked by participants was the difficulty experienced by small and medium-sized enterprises in securing access to public contracts. If SMEs are to gain maximum benefit from the opening-up of public procurement, they need to have local partners, a full range of business advisory services, rapid, precise and reliable information, and properly qualified staff.

These topics were discussed in detail in working groups focusing on the application of Community law on public procurement, training, standardization and service networks.



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## Section 7 - Building the internal market in the regulated sectors

### § 1 - Energy

283. As well as applying the Treaty's rules to the energy field - especially those on the free movement of goods and on competition - the Community is pressing ahead with its legislative work on opening up the electricity and gas markets.

The positions in the Council on opening up electricity generation to competition have drawn closer to each other, and common rules have been adopted for the production of gas and oil (Directive 94/22/EC\*). Efforts to increase standardization in the energy field have continued.

At the energy Council on 29 November 1994, the Commission announced that a Green Paper (adopted on 11 January 1995) would be put forward on energy policy to stimulate debate in the Union, though specific solutions or decisions would not be proposed at this stage.

#### A. Legislative developments

##### a) *Exploration and production of hydrocarbons*

284. Directive 94/22/EC\* on the conditions for granting and using authorizations for the prospection, exploration and production of hydrocarbons was adopted by the Council on 30 May 1994. The Hydrocarbons Directive covers the activity of producing gas and oil. As a consequence, it completes the internal market for gas at the upstream level. The liberalization of downstream activities (transport, storage and distribution) is covered by the proposed Directive mentioned at point 290.

The Directive is based on four general principles: firstly, Member States retain sovereignty over gas and oil resources, in particular in deciding which areas to open up for exploration, what level or rates of tax royalties to levy, and whom to choose as licensee; secondly, Member States decide the rules for operating conditions and long-term policy as regards depletion of resources; thirdly, participation by the State is allowed, under certain provisions and within certain limits to ensure the State does not prejudice the equal treatment of other companies; fourthly, a framework is established to reflect the principles of transparency, objectivity and non-discrimination.

The Directive sets provisions for applying for and giving authorizations, for abolishing exclusive rights, for ensuring reciprocity as regards third countries, for the management of the State participation, and for public procurement. It needs to be fully applied by all Member States by 1 July 1995.

##### b) *Gas and electricity markets*

285. In December 1993, the Commission adopted amended proposals for Directives on the internal market in natural gas (116) and in electricity (117) following the amendments voted by Parliament at first reading. In May and November, the Council held a thorough discussion of five important points in the electricity proposal:

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(116) COM(93) 643 final of 7 December 1993 (OJ C 123, 4.4.1994, p. 26).

(117) Op. cit. p. 1

- public service obligations;
- opening up production to competition;
- separating the activities of integrated undertakings for accounting purposes;
- the functions of the network operator;
- direct commercial links between producers and consumers (TPA).

In its conclusions of 29 November 1994 the Council recorded its agreement on the first four points. As regards the last point, agreement has been reached on the principle of market liberalization in areas extending beyond production, the procedures for which have yet to be determined. To this end, the Commission was invited to examine the compatibility, under comparable access and market liberalization conditions, of two systems, namely TPA and the single purchaser system, analysing in particular the consequences in terms of competition and the possibilities open to consumers and producers (118). Coreper has been invited to finalize its discussions on this basis, with a view to the adoption of a formal common position in 1995.

286. The Council's examination of the amended proposal on the internal market in natural gas (119) has been held over until the work on the Electricity Directive is complete.

## B. Implementation and enforcement of the legislation

### a) State aid

287. The Commission adopted Decision No 341/94/ECSC (120) implementing Decision No 3632/93/ECSC establishing Community rules for State aid to the coal industry for the period up to the expiry of the ECSC Treaty in 2002. Aid will be authorized only if it promotes economic viability, worker redeployment, regional conversion and harmony with the environment and if it is regressive and transparent.

### b) Free movement of goods

288. Under Articles 30, 34 and 37\* of the EC Treaty, the Commission referred to the Court of Justice the cases of five Member states (Belgium, Spain, France, Italy and the Netherlands) where there is still a monopoly on the import or export of gas or electricity. In Denmark, the monopoly on the import of gas has been abolished.

### c) Competition rules

289. In its *Almelo* ruling, the Court of Justice held that commercial contracts between regional and local electricity supply undertakings containing exclusive supply clauses being in breach with competition rules may be justified under Article 90(2)\* of the Treaty. It was confirmed that the supply of electricity is to be considered as a service of general economic interest. However, it was left to the appreciation of the national judge whether the restriction of competition was necessary and justified to fulfil this service of general economic interest.

The Commission is at present analysing whether an exclusive concession contract between the town of Kieve and the electricity utility RWE is compatible with the Treaty, especially its competition rules. In this contract RWE has been granted exclusive land use rights in the

(118) See the working paper of the Commission SEC(95) 464 final of 22 March 1995.

(119) COM(93) 643 final of 7 December 1993 (OJ C 123, 4.4.1994, p. 26).

(120) OJ L 49 of 19 February 1994.

conceded territory against concession fees together with an exclusive electricity supply right, possibly to restrict cross-border trade.

*d) Standardization*

290. The global approach to standardization in the energy field, proposed by the Commission with a view to completing the internal market (121), was continued.

The idea of giving mandates to CEN-Cenelec is based on the objectives of promoting energy efficiency and renewable sources of energy (SAVE programme - four mandates) and of developing alternative energy sources (ALTENER programme - two mandates).

The Commission also issued, under Directive 92/42/EEC\*, a standardization mandate with regard to the efficiency requirements for new hot-water boilers.

In 1994, several European standards were drawn up in the field of energy, of which three on fuels should be mentioned: EN 228 (lead content of petroleum products), EN 589 (LPG fuels), EN 690 (diesel).

*e) Specific energy legislation*

291. As regards gas transit, the Commission updated the list of entities eligible to move gas in transit (Directive 94/49/EC\*) and set up the Committee of Experts provided for by Directive 91/296/EEC\*

The Council noted the report on the implementation of Directive 90/377/EEC\* on the transparency of gas and electricity prices charged to industrial end-users. The report, which highlights the major variations in price between Member States and between regions, was also transmitted to Parliament and the Economic and Social Committee.

Five Member states (Belgium, Spain, Italy, Luxembourg and Portugal) have not yet transposed Directive 92/42/EEC\* on the efficiency of new hot-water boilers, and infringement proceedings have been initiated against them.

As regards the notification of inspection bodies, the Community instrument concerned is Directive 90/396/EEC\* on appliances burning gaseous fuels. An extension is being prepared to include appliances burning liquid fuels.

On 21 January 1994 the Commission adopted Directive 94/2/EC\* implementing Directive 92/75/EEC\* with regard to energy labelling of household electric refrigerators, freezers and their combinations.

*f) Transport of and traffic in nuclear products*

292. The countries of the Union must face up to a growing traffic in nuclear materials, which is threatening their security. On 7 September 1994 the Commission accordingly adopted a communication in which it summarizes the situation and sets out certain ways of combating this illicit trade (122), in particular intensified checks at the external frontiers, increased judicial and police cooperation between the Member States and the strengthening of cooperation with the countries where the traffic originates.

(121) SEC(92) 724 final of 9 June 1992.

(122) COM(94) 383 of 7 September 1994.

## § 2 - Telecommunications

### ♦ *Legislative developments*

293. The Commission presented a Green Paper on the liberalization of telecommunications infrastructure. The first part of the Paper, adopted on 25 October (123), establishes the general principle that there should be a free choice of infrastructure for the provision of liberalized services and sets out a timetable for the liberalization of the infrastructure, on which timetable political agreement was reached in the Council on 17 November. The second part, published in January 1995, determines the procedures for liberalizing the infrastructure. On 21 December the Commission adopted a proposal for a Directive amending Directive 90/388/EEC\* with a view to abolishing restrictions on the use of cable television networks for the supply of telecommunications services.

294. The Commission also adopted, on 27 April 1994, in the field of radiocommunications, a Green Paper on mobile and personal communications, which contained proposals relating to a Community policy for the development of this sector. The results of the consultation on the Green Paper were set out in a communication of 23 November (124).

295. As regards satellite communications, the Commission, on 22 March, adopted an amended proposal for a Directive on the mutual recognition of licences for telecommunications services and, on 4 January, a proposal for a Directive relating to satellite communications services. On 10 June, it also adopted a communication on the provision of and access to space segment capacity (125). Lastly, on 14 October, it adopted Directive 94/46/EC\*, which liberalizes the market for satellite telecommunications equipment and services.

296. The need to align rates on costs while maintaining a universal service constitutes a key element in the preparation of the liberalization. In this connection, on 7 February and 6 May respectively, the Council and Parliament adopted resolutions (126) on universal service principles in the telecommunications sector. All the Member States have already started to restore equilibrium to current rate structures.

On 19 July, under the codecision procedure, Parliament rejected the Council common position on the proposal for a Directive on the application of open network provision (ONP) to voice telephony. In response to Parliament's request of 30 September (127), the Commission announced, in a communication of 29 November (128), its intention to put forward a new proposal.

### ♦ *Implementation and enforcement of the legislation*

297. Wanting to avoid any risk of the market becoming fragmented, the Council, in its resolution of 22 July 1993 (129), stressed the need for rapid and effective implementation of current Community instruments. The correct application of current Community law in the telecommunications sector is particularly important at the moment in the context of the emergence of the information society, heralded in the Bangemann Report, whose implementing procedures are laid down in the action plan adopted in 1994.

In this respect, the Commission, during 1994, continued to examine the national transposal measures communicated by the Member States for the directives and decisions in force.

(123) COM(94) 440 of 24 October 1994.

(124) COM(94) 492 of 23 November 1994.

(125) COM(94) 210 of 10 June 1994; Bull. EC 6-1994, point 1.2.120.

(126) OJ C 48 of 16 February 1994 and OJ C 205 of 25 July 1994.

(127) OJ C 305 of 31 October 1994.

(128) COM(93) 513 of 26 October 1993.

(129) Resolution 93/C 213/01 of 22 July 1993.

298. Telecommunications terminal equipment is the subject of a basic Directive, 91/263/EEC\*, which provides for the adoption by the Commission of instruments of compulsory application - the common technical regulations (CTR); thus, the Commission has so far adopted eight common technical regulations, namely Decisions 94/11/EC\* and 94/12/EC\* on the GSM, 94/470/EC\* on 2Mbit leased lines, 94/471/EC\* and 94/472/EC\* on Digital European Cordless Telecommunications (DECT), 94/796/EC\* and 94/797/EC\* on the ISDN and 94/821/EC\* on 64kbit/s leased lines. Other types of terminal will be covered in further decisions.

To date, eight Member States have notified to the Commission national measures transposing Directive 91/263/EEC\*. Examination of the texts communicated shows that Denmark, France, Italy, Portugal and the United Kingdom have adopted measures incorporating the totality of the Directive. The German, Spanish and Dutch notifications are regarded as being partial or unsatisfactory transposals. The Commission has initiated infringement procedures against these three Member States for non-compliance. Belgium, Greece, Ireland and Luxembourg have still not notified their national implementing measures. The Commission has decided to go ahead with the infringement procedures for failure to notify, initiated in 1993; it has therefore referred the matter to the Court of Justice, bringing four actions against these countries for failure to fulfil their obligations (Article 169\* of the EC Treaty).

In order to unify the symbols and rules employed concerning the Community marking of products, the Council, through Directive 93/68/EEC\*, adopted measures amending the New Approach Directives, including Directive 91/263/EEC\*. Only France, the Netherlands and Portugal have notified to the Commission national measures transposing the Directive.

Through the adoption of Directive 93/97/EEC\* concerning satellite earth station equipment, the scope of Directive 91/263/EEC\* was extended and supplemented. The Member States have to communicate their transposal measures by 1 May 1995 at the latest.

299. The three Frequency Directives, i.e. Directives 87/372/EEC\* (GSM), 90/544/EEC\* (Erms) and 91/287/EEC\* (DECT), have been transposed by all the Member States.

The implementation of the numbering Decision, 91/396/EEC\*, concerning the introduction of a single European emergency call number (112) is proving difficult in some Member States. The latter have to alter their national numbering plans to ensure that 112 is introduced as a single European emergency call number; these technical changes are costly and complicated. Thus, France, Ireland, Italy and the Netherlands have requested a derogation from the Commission pursuant to Article 3(2) of the Decision. The Commission has still not received any information concerning the implementation of the Decision in Spain, Greece and Portugal.

Seven Member States (Belgium, Germany, Greece, Luxembourg, Ireland, Italy and Portugal) have currently implemented Decision 92/264/EEC\* on the adoption of 00 as the standard international access telephone code in the Community. A further period for the implementation of the Decision has been granted by the Commission to France, Denmark and the United Kingdom pursuant to Article 3(2) of the Decision. These countries pleaded technical and financial difficulties to justify delaying the complete introduction of the 00 code in their national numbering plans.

300. With regard to ONP, since the basic Directive, i.e. the framework Directive 90/387/EEC\*, which sets out the principles governing the provision of an open telecommunications network, has already been transposed in all the Member States, the Commission continued to examine national transposals of the first specific Directive in the ONP context, namely Directive 92/44/EEC\*. The correct application of this instrument is particularly important at this juncture, in view of the emergence of the information society.

The majority of the Member States (i.e. Belgium, France, Germany, Denmark, the United Kingdom, Portugal, Spain, Italy, Ireland and the Netherlands) have communicated to the Commission their national measures transposing the Directive. The notified texts are still being examined, but an initial qualitative assessment shows that the transposals are partial or unsatisfactory. This situation could be the result of the effort to change the general regulatory framework which some Member States (Germany, the Netherlands and Denmark) have made in preparation for the second stage of the liberalization of telecommunications services set for 1988 (see point 296 above). The Commission has also continued with infringement proceed-

ings against those Member States which have not yet notified measures transposing the Directive.

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## Section 8 - Trans-European Networks

### § 1 - Introduction

301. To enable citizens of the Union, economic operators and regional and local authorities to benefit fully from the single market, the European Union in 1994 continued its efforts to establish and develop trans-European networks in the transport, energy and telecommunications infrastructure sectors. Community action is intended principally to promote the interlinking and interoperability of national networks and access to them.

When it met in Brussels in December 1993, the European Council gave a significant political boost to the creation of trans-European networks, in accordance with the new Title XII to the EC Treaty and with the White Paper on growth, competitiveness and employment. It gave the Commission the job of ensuring the progress and coordination of work in this field, and called for two high-level groups to assist the Commission and the European Council in their task.

### § 2 - Telecommunications and the information society

302. In its report submitted to the European Council in Corfu, entitled "Europe and the global information society", the Bangemann Group invited the Union to trust market mechanisms. This presupposes *inter alia* measures to abolish the rigidities which are prejudicial to Europe's competitive capacity and the devising of a common regulatory approach to promote the appearance, on a Community scale, of a competitive market in information services. To this end, the report contains specific recommendations and an action plan covering specific initiatives based on partnership between the public and private sectors. The Corfu European Council approved the principal points of the report and requested the institutions to take various measures to implement the recommendations.

303. On 19 July 1994 the Commission published an action plan for its work, which sought to draw up a timetable for the implementation of the Community measures in progress, the recommendations of the Bangemann Report and the conclusions of the Corfu European Council. The communication was favourably received by the Council on 28 September and by Parliament on 30 November. At one and the same time it covers the regulatory and legal framework, the networks, the social, societal and cultural aspects and promotion activities. It provides in particular for the completion of the process of opening up markets to competition and the preparation of a set of guidelines for trans-European telecommunications networks.

304. A report on the information society, providing a preliminary survey of progress achieved since the Corfu European Council, was examined by the European Council in Essen. The Heads of State or Government expressed the wish that the work in progress should be continued.

305. Significant progress was made at the end of the year as regards data communication networks. On 21 December, the Council reached a common position on the proposal on guidelines for the development of the integrated services digital network (ISDN) as a trans-European network. In November and December, the Council also reached agreement on a Commission proposal on trans-European networks for the interchange of data between administrations (IDA) (with Article 235 of the EC Treaty as the legal basis), opening the way for the adoption of the proposal in 1995, once Parliament has given its opinion.

306. In its conclusions of 30 May on the fourth annual progress report on ISDN, the Council recognized the importance of Euro-ISDN for Community enterprises and for advanced information networks in the Union. On 20 June it adopted a resolution on information exchange between administrations, in which it stressed the importance of coordinating and introducing operational systems that meet identified needs. It also adopted, on 11 July, Decision 94/445/EC\* on inter-administration telematic networks for statistics relating to the trading of goods between Member States (Edicom).

### § 3 - Transport and energy

307. Meeting at Essen in December, the European Council adopted the principal recommendations in the Christophersen Group's report. In particular, it invited the authorities responsible to overcome the legal and administrative obstacles to the execution of the projects.

308. On 19 January the Commission adopted a proposal for a Parliament and Council Decision laying down a series of guidelines on trans-European energy networks and a proposal for a Council Decision laying down a series of measures aimed at creating a more favourable context for the development of those networks. The guidelines are designed to strengthen the security of the Union's energy supplies, ensure effective operation of the internal energy market and promote economic and social cohesion. On 29 November the Council confirmed the list of projects of common interest and made progress as regards the creation of a more favourable context for the development of energy networks.

309. On 7 April the Commission adopted a proposal for a Parliament and Council Decision on guidelines for the development of the trans-European transport network. The guidelines are aimed at the integration of all transport infrastructure networks into a multimodal network in order to ensure by 2010 optimum and environmentally sound exploitation of all modes of transport.

310. The interoperability of the European high-speed train network was the subject of a Commission proposal on 15 April, based on Article 129d of the EC Treaty. The proposal provides for the establishment of a regulatory framework so that the infrastructure, rolling stock and equipment are sufficiently compatible for any transport undertaking which so wishes to operate, at least economic cost, a commercial service on any route of its choice over the European high-speed train network. The proposal was endorsed on 21 September by the Committee of the Regions and on 23 November by the Economic and Social Committee.

311. A second report by the high-level group responsible for studying the development of high-speed trains was drawn up in 1994 for publication in February 1995 (130). The report quantifies the impact of the high-speed network on the socio-economic development of the European Union, the integrated transport market, safety and the life of the citizen. It also includes a new master plan for the trans-European high-speed train network in 2010, which takes account of the conclusions of the Essen European Council and the recommendations for the gradual development of the network.

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(130) Not yet published.

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## § 4 - Financing

312. On 2 March the Commission adopted, pursuant to Article 129c of the EC Treaty, a proposal for a Council Regulation laying down general rules for the granting of Community financial aid in the field of trans-European networks. The proposal, which was endorsed by the Economic and Social Committee, the Committee of the Regions and Parliament, was still being discussed in the Council at the end of the year.

In the same context, on 15 June, the Commission adopted a communication on financing trans-European networks, which describes the various financing possibilities and concludes that at the current stage in the process none of them should be excluded, especially recourse to complementary fund-raising on capital-markets.

313. The Essen European Council welcomed the setting up, within the EIB, of a special group for the financing of the networks and approved the approach of the Christophersen Group, which proposes, as regards financing, that projects be examined on a case-by-case basis. The Member States, the Commission and the EIB were invited to continue with the coordination of the work on financing, and the Heads of State or Government invited the Council to release the necessary funds.

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## Section 9 - The Internal Market and other Community policies

### § 1 - Social Dimension of the internal market

314. The development of the internal market, which aims to construct a large economic entity within which progress and prosperity are assured, must be accompanied by the progressive introduction of an effective social dimension. That is the aim of the Community's social policy, which is centred on the "Community Charter of the Fundamental Social Rights of Workers", on the Social Action Programme (131) and on the White Paper on European Social Policy (132).

In 1992, 1993 and 1994 the Council did adopt a number of Directives, such as those on the protection of pregnant workers and workers who have recently given birth or are breastfeeding, on collective redundancies (92/85/EEC\* and 91/56/EEC\*), the one on certain aspects of the organization of working time and on the protection of young people at work (93/104/EEC\* and 94/33/EC\*). In addition, a Directive on the labelling of tobacco products was adopted to reinforce measures to combat smoking (92/41/EC\*).

In September 1994 an important directive about informing and consulting employees in Community-scale undertakings was adopted, marking the first use by the Council of the provisions of the Agreement on Social Policy annexed to the Treaty on European Union (94/45/EC\*).

315. In the field of the health and safety of workers, a series of directives was adopted, covering temporary or mobile work sites, safety and/or health signs at work, medical treatment on board vessels, the extractive industries and biological agents. In July 1994 Regulation (EC) No 2062/94\* setting up the European Agency for Safety and Health at work was adopted. Proposals for Council directives guaranteeing minimum health and safety requirements for

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(131) Community Charter of the Fundamental Rights of Workers, Luxembourg, OJEC, 1990.

(132) White Paper on Social Policy, COM(94) 333 final of 27 July 1994.



transport activities, physical and chemical agents and work equipment are still under discussion. The General Framework for Action in the field of Safety, Hygiene and Health Protection at Work, presented by the Commission in November 1993, contributed to the launch during 1994 of preliminary consultations of the institutions of the Union with a view to establishing the Fourth Programme of Action in Health and Safety at Work, centred on completing and rationalizing the core of European legislation introduced as part of the social dimension of the single market.

316. The Commission's White Paper on European Social Policy (133), presented in July 1994, set out a framework for the future development of social policy in which its different elements can become better integrated, and more mutually reinforcing. The starting point of the White Paper was the need for a new mix between economic and social policies in order successfully to meet the challenges that the European Union is currently facing. Europe cannot have a competitive economy unless our societies as a whole are productive. Social policy must therefore serve the interests of all people - both those in employment and those who are not.

Within this framework, top priority is given to employment and the fight against unemployment. The White Paper also made proposals to develop and consolidate the legislative base, notably as concerns labour law, health and safety and equality of treatment between women and men; emphasised the need to make an increased effort to ensure that the legislation already adopted by the Council is properly implemented and enforced across the Union; highlighted the need to strengthen cooperation and action across society as a whole, with a particular focus on the problems of poverty and social exclusion, disabled people and older people, and action in the field of public health; and proposed a major information effort to ensure that European citizens are aware of the value added of Union activity in the social field.

In accordance with the White Paper, the Commission presented a specific action plan at the level of the Union and the Member States directed at reversing the trend of unemployment to the European Council at its meeting in Essen in December 1994, on the basis of which it endorsed a series of specific proposals for action by the Member States to improve the skills of the Community workforce, to turn growth into more jobs, to ensure that labour costs are competitive, to strengthen labour market policies and to provide additional support for young people and the unemployed, urging the Member States to transpose these recommendations in their individual policies into a multiannual programme having regard to the specific features of their economic and social situation.

317. The reform of the European Social Fund, adopted in July 1993, increased the capacity of the Community to support the process of labour market development and adjustment in the Member States, in line with the emphasis on active intervention to support the process of change within the internal market.

318. With a view to making the free movement of workers effective and to promoting the establishment of a genuine European employment market, the EURES (European Employment Service) network was set up (134) to act both as an employment agency on a European scale, with the job of informing, advising and placing job-seekers throughout the territory of the Union, and as a forum for examining, at operational level, all questions associated with employment in Europe.

## § 2 - Consumer policy

319. The single market was not created for the benefit of business alone, and it will not function properly without the active and genuine participation of consumers. The citizen as consumer has a right to the benefits generated by increased competition and a wider choice of

(133) Op.cit.

(134) See Regulation (EEC) No 2434/92.

goods and services, while enjoying adequate protection of his safety and his other essential interests. In addition, the buying choices of well-informed consumers can speed up the positive economic effects of an integrated market. Consumers therefore have a crucial role to play in the pursuit of the single market objectives.

319. By 1 September 1994, the Member States were to have transposed forty-five directives concerning consumer policy. The average rate of transposal is 97%, which is relatively satisfactory. However, it should be noted that this average rate masks substantial differences and that it reflects progress on communicating national implementing measures without reference to progress on effective application of such measures.

The particular importance for consumers of the recently adopted Directives 92/59/EEC and 93/13/EEC\* (general product safety and unfair contract terms), which entered into force this year, highlights the fact that it is essential to develop close cooperation with national authorities to ensure that the Directives are effectively transposed on schedule.

321. Since 1 November 1993, a new dimension has been added to the Community's consumer policy.

These changes are substantial since they concern both the substance and the methods of Community action. Intended by the Single Act as a back-up policy to the single market, consumer policy becomes a policy in its own right in the Treaty on European Union. From now on, consumer protection is recognized as such in Article 129a of the Treaty, with two separate but complementary bases:

- measures taken in the context of the completion of the single market;
- specific action concerning health, safety and economic interests of consumers and the provision of adequate information to them.

322. New measures could arise from the identification of shortcomings in the functioning of the single market, and from specific policy measures designed to apply the law more effectively.

Moreover, the Commission will always remain free to propose to the institutions and the Member States subjects for discussion in the form of communications or Green Papers. This was done for access to justice and after-sales guarantees, which, after broad-ranging and fruitful consultation, were discussed by the Consumer Forum on 4 October 1994. All these discussions will enable the Commission to identify the shortcomings and problems in the functioning of the internal market and take the measures needed to remedy them.

In addition, during 1994 the Commission departments worked on the preparation of a Green Paper on transparency of prices for services, which is due to be published in 1995.

### § 3 - Education and training

323. The Commission has proposed that the Council adopt the programme Youth for Europe III. This programme would cover a range of activities for young people between 15 and 25 - projects outside school and training - and for youth leaders and youth organizations. Specific support would be reserved for projects making it easier for disadvantaged young people to gain access to the Programme. The aim of the new programme is to strengthen and develop young people's activities, in particular those calling for initiative and enterprise, and short and long-term voluntary service activities (eighteen months).

## § 4 - Research

324. The White Paper on growth, competitiveness and employment highlights the role of research and technological development (RTD) as a motor for recovery.

The Community's multiannual framework programmes constitute the essential instrument for implementing the Union's RTD policy. The fourth framework programme in the field of research, technological development and demonstration (1994-98), based on the EC Treaty, was adopted on 26 April 1994 (European Parliament and Council Decision 94/1110/EC\*) and, at the same time, the Council adopted the framework programme (1994-98) based on the EAEC Treaty (Decision 94/268/Euratom\*).

The specific implementation programmes were all adopted between July and December 1994. Measures under the specific programme on "Standardization, measurement and testing" are based largely on support for implementation of the single market. In addition, most of the other specific programmes now provide for standardized procedures to make it easier to take part and to encourage cooperation with RTD projects. The programmes on information technologies, advanced communications and computer applications cover areas of RTD which are important to the completion of the Information Society.

The White Paper stresses the impact of better coordination of the research effort on a more competitive economy. In October 1994, the Commission adopted the communication "Research and Technological Development: Achieving Coordination Through Cooperation" (135), which creates the prospect of a consistent approach by national and Community policy in the field of RTD. In 1995, priority will be given to promoting initiatives to this end.

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## Section 10 - External aspects

325. In order to promote a healthy climate for international trade and to prevent distortions to the internal market due to unlawful or anti-competitive practices, the Union has to maintain both a dynamic commercial policy and a coherent, effective approach to managing the Union's external frontier. There were a number of important developments in these areas in 1994.

### § 1 - Implementation of the European Economic Area

326. The agreement on the European Economic Area (EEA) entered into force on 1 January 1994, creating the world's largest integrated trading area. The four freedoms of the internal market were extended to Austria, Finland, Iceland, Norway and Sweden, although Austria, Finland and Sweden have since become Member States. The effective implementation and operation of the Agreement is the responsibility of the EEA Joint Committee, on which the Community is represented by the Commission.

327. In March 1994, the EEA Joint Committee

- revised the EEA rules of origin to maintain the possibility for producers in the EEA States of combining materials originating in Switzerland (without such an amendment,

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(135) COM(94) 438 final of 19 October 1994.

this possibility would have been jeopardized as a result of Switzerland's non-participation in the EEA);

- added to the EEA more than four hundred new pieces of Union legislation adopted since the Agreement was finalized in 1991.

The Community's internal market *acquis* having developed in 1994, the EEA Joint Committee has taken further decisions to integrate this more recent legislation into the EEA, thus applying it to the EFTA States concerned.

## § 2 - Common Commercial Policy

### A. Import regime

328. On 7 March 1994, the Council adopted Regulation (EC) 519/94\* (amended by Regulation (EC) 1921/94\*) and, on 23 December 1994, Regulation (EC) 3285/94\*, abolishing all national quantitative restrictions in force in the Member States. This was accompanied by the introduction of a limited number of Community quotas to be applied to seven categories of product originating in the People's Republic of China only.

The quotas will be managed at Community level by the Commission under a third regulation, Regulation (EC) No 520/94\*. Henceforth, Community importers may use a standard import licence which will be valid throughout the Community. In addition, the integrated system for management of import and export quotas was further developed in 1994.

### B. Commercial defence instruments

329. The Council adopted Regulations (EC) Nos 3283/94\* (anti-dumping), 3284/94\* (anti-subsidies), 3285/94 (safeguards) and 3286/94\* (trade barriers), which amended and streamlined the decision-making procedures for the Community's commercial defence instruments. Time-limits have been introduced for the imposition of duties on dumped or subsidized imports from third countries and for the introduction of safeguard measures. In addition, provision was made to make investigations more transparent. In a decision to be adopted no later than 1 April 1995, the Council will specify when these new time limits will apply, depending on the necessary budgetary resources being made available.

### C. Mutual Recognition Agreements

330. 1994 saw the opening of negotiations with third countries on the mutual recognition of conformity assessment. Parties to Mutual Recognition Agreements will have the right to test and certify their products to the technical requirements of the other party prior to the product being exported. Each party will recognize the tests, certificates and marking carried out in the territory of the other party. Such agreements reduce trade costs by avoiding duplication of testing and certification of regulated products. Mutual recognition is both a trade-liberalizing initiative aimed at improving access of Community products to third country markets and a means of enabling the Union's trading partners to participate in the conformity assessment procedures designed to meet the objectives of the single market.

Negotiations are currently under way with the United States, Canada, Australia, New Zealand and Switzerland, while discussions with additional trading partners could begin towards the end of 1995 or the beginning of 1996.

## **D. Export Regime**

331. In December 1994 the Council established an integrated system of export controls on dual-use goods by adopting Council Regulation (EC) No 3381/94\* and Council Decision 94/942/CFSP\* (the latter was based on Article J.3 of the Treaty on European Union). The system will apply from 1 July 1995. During the transitional period, the Member States will subject exports of dual-use goods to effective controls and work towards common standards. The system is also intended to ensure compliance with the international commitments of the Member States, and hence of the Union, especially on non-proliferation. It will represent a first step towards the establishment of a complete and consistent Community regime for controlling the export of dual-use goods.

## **E. Export credit insurance**

332. In July 1994 the Commission presented a proposal for a Directive on state-supported medium and long-term export credit insurance (136), which aims to prevent the distortion of competition between exporters that results from Member States offering different export credit facilities. The proposed Directive establishes common principles for guarantees and premiums and provides for a degree of transparency in cover policies.

Public export credit insurance institutions provide short-term export credit insurance related to commercial risk in countries which are considered to have a reliable economy and legal system. Such activity, usually referred to as "marketable risk", is also of interest to private insurance companies. The Commission is considering whether to propose to Member States, pursuant to Article 93(1)\* of the EC Treaty, that they remove the particular advantages enjoyed by public export credit insurers which distort the market for private insurance companies.

## **F. Transport**

333. The declaration adopted by the Second Pan-European Transport Conference held in Crete in March 1994 stresses the definition of concepts needed to prepare a coordinated pan-European transport policy. This declaration points out, in particular, that such a policy must be organized on the principles of the market economy and of free competition, and that gradual liberalization of market access must be achieved in line with progress made on harmonizing competitive conditions.

With regard to the development of pan-European transport infrastructures, the Conference adopted an indicative approach consisting in the identification of priority corridors in Central and Eastern Europe and of selection criteria for projects of common interest.

## **G. Development of the Community legal framework for public procurement following the conclusion of the GATT agreement**

334. In April 1994, in parallel with the conclusion of the Uruguay Round, the European Union signed, with 10 other countries, a new agreement with the objective of opening public procurement to international competition. This agreement, which will also cover works and services, and will include contracts made by public authorities at regional and local level, will widen by about ten times the coverage of the agreement signed in 1979 and will permit the opening of

(136) COM(94) 297 final of 13 July 1994 (OJ C 272, 30.9.1994).

contracts estimated at 350 billion ecus each year. This agreement is to enter into force on 1 January 1996.

The new agreement requires limited amendments to Community directives on public procurement in order to prevent discrimination that would penalize European firms and operators and to make the directives easier to apply following the agreement.

These amendments are currently the subject of two proposals for European Parliament and Council Directives, one amending Directives 92/50/EEC\*, 93/36/EEC\* and 93/37/EEC\*, the other amending Directive 93/38/EEC\*. These proposals have been presented to the Advisory Committee for Public Procurement for an opinion.

#### **H. Development of the Community legal framework for financial services following the conclusion of the GATT agreement**

335. As a result of the successful conclusion of the Uruguay Round negotiations on 15 December 1993, financial services became an integral part of the General Agreement on Trade in Services (GATS). The Uruguay Round package was signed by all participants at their meeting in Marrakesh on 15 April 1994.

In December 1994 the Council adopted a package of legislation containing all the amendments to Community legislation needed to incorporate the results of the Uruguay Round into Community law (137). With regard to financial services, no amendments to current Community legislation seemed necessary. Even if the Community decides in the end to maintain its reciprocity clauses, specific provisions such as Article 9(6) of the Second Banking Directive are designed to ensure that any Community measures are compatible with the obligations resulting from the GATS.

The Commission is aware of the need to involve the European financial services industry to the greatest possible extent in the GATS negotiations on financial services. As well as more general meetings on the results of Uruguay Round negotiations, the Commission organized a round-table discussion with representatives from European banks and insurance companies with a view to obtaining direct feed-back from the industries immediately concerned by the GATS negotiations; they were consulted with regard to their major interests in order to focus the Community's negotiating objectives.

#### **I. External aspects of intellectual property**

336. The globalization of the world economy means that the objectives and strategies which the Commission intends to promote in the field of intellectual property also form part of international relations, whether from the multilateral or bilateral point of view. The external aspect of the single market is particularly important in this field.

At multilateral level, the Commission is continuing to take part in discussions held in the two intergovernmental committees of experts in the World Intellectual Property Organization with a view to adopting a protocol to the Berne Convention and a new instrument on the rights of performing artists and phonogram producers.

It has also examined what measures should be taken in order to ensure the application of the Agreement on trade-related aspects of intellectual property rights (TRIPS), which is one of the results of the multilateral negotiations of the Uruguay Round. This examination led to the adoption by the Council of a decision concerning the extension of legal protection of topographies

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(137) OJ L 363 of 23 December 1994.

for semi-conductor products to nationals of the member countries of the World Trade Organization.<sup>138</sup>

**337.** The Commission also took part in the negotiations which led to the adoption on 11 May 1994 by the Council of Europe of the European Convention relating to questions of copyright law and neighbouring rights in the framework of transfrontier broadcasting by satellite, the contents of which were based on the principles of Directive 93/83/EEC\* of 27 September 1993 on the same subject.

**338.** Lastly, from a more specific point of view, it should be stressed that the Commission is negotiating with representatives of third countries to grant reciprocal legal protection to the semi-conductors sector, in accordance with the principles laid down in Directive 87/54/EEC\* of 16 December 1986. Thus, protection granted to persons from the United States has been extended until 1 July 1995 on the basis of reciprocity (139). The Council has also adopted decisions granting protection to persons from Canada (140) and to persons from certain territories having special links with the United Kingdom and the Netherlands (141).

### § 3 - Customs Union

#### A. Administrative cooperation between customs authorities in general

**339.** Since 1 January 1993 action by customs authorities in the Member States has taken place almost exclusively at the external frontier writ large, i.e. as a concept rather than as a simple physical line separating third countries, and including, in particular, airports and internal customs clearance offices. Consequently, in a single market without internal borders, it becomes essential for the smooth operation of the market that the nature of checks carried out is similar, regardless of the Member State concerned.

That is why the customs authorities of the Member States are involved, in partnership with the Commission, in setting up a number of measures as the forerunner of what customs will be in the year 2000. All these measures are intended to allow customs authorities to monitor and check the Community's external border in the interest of its businesses and citizens by consolidating existing legislation through homogeneous practices. The objective of these customs authorities is therefore to fit into a context of making trade easier and guaranteeing the effectiveness and the equivalence of checks.

**340.** A number of measures were taken in 1994 and will be continued in 1995:

- Adoption of new working methods

The Commission departments have undertaken to disseminate the techniques of risk analysis, which enable physical or document checks to be effectively targeted, by preparing, with the support of the Member States, guidelines allowing the Member States to become aware of all the existing methods in the Union, with a view to applying those which are best suited to local conditions.

In 1995 identical work will deal with audit techniques, the aim of which is to carry out detailed checks on the accounting and management of firms (including firms with establishments in a number of countries).

(138) Council Decision of 27 June 1994 (OJ L 170, 5.7.1994, p. 34).

(139) Op. cit.

(140) Council Decision of 24 October 1994 (OJ L 284, 1.11.1994, p. 61).

(141) Council Decision of 19 December 1994 (OJ L 351, 31.12.1994, p. 12).

By using these methods, the Member States' customs authorities will be able to achieve equivalent results regardless of where a consignment has to be processed, without affecting the necessary flow of commercial traffic.

- Assessment of the results

With a view to improving knowledge of the working methods used by other customs administrations when carrying out checks and procedures at the external border, and in order to ensure equivalence of checks and equal treatment of economic operators, pilot schemes called "monitoring exercises" took place on an experimental basis in 1994. These are visits to Member States carried out by joint teams made up of national officials from other Member States and of Commission officials. Monitoring exercises took place in ports, airports and free zones. One exercise is currently being carried out for all customs aspects affecting imports in the textile sector and further measures will be launched in 1995.

- Identification of objectives and allocation of resources (financing)

In view of the large number of tasks facing customs authorities, they must be able to identify their objectives and allocate their resources in line with priorities. Appropriate coordination is being sought at this stage.

- Training

As early as 1991, a special training programme for officials from the Member States (Matthaeus programme) was set up by Council Decision 91/341/EEC\*. This programme consists in the exchange of officials of Member State customs authorities and the organization of seminars on specific aspects of customs legislation.

In 1994, there were four hundred exchanges of officials from all Member States. In addition, fifteen training seminars were organized, in which more than five hundred officials from all the Member States took part. The topics covered included training methods for customs officials, working methods requiring development (audit, risk analysis), examination and investigation of specific fields (customs control of the CAP, free zones, tariff controls, classification of goods, etc.), and the joint development of management techniques. Lastly, four specific programmes have been established with the agreement of the Member States and will be included in the training programmes of national customs colleges.

However, the customs authorities will increasingly need staff who can adapt continually to the changing nature of tasks and technologies, and to the acquisition of a 'Community approach'. That is why measures are currently being examined with a view to strengthening the role of this training programme, in order to take account, in particular, of the Commission's communication to the Council and the European Parliament of 15 December 1993 (142). In the same way, steps should be taken to ensure that customs staff have the necessary expertise in accounting and computer science.

- Information technology

The Commission and the Member States support the idea of an overall strategy to guide the future development of the computerization of customs procedures.

This strategy is based on the exploitation of existing systems and the development of links between these systems. The aim is also to use firms' computer systems.

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(142) COM(93) 661 of 15 December 1993.



## **B. Mutual assistance on customs and agriculture**

**341.** A proposal for a regulation to recast Community rules on mutual assistance on customs and agricultural matters is currently being discussed in the Council (143). The change advocated concerns, in particular, the establishment of a database on combating fraud (the customs information system - CIS), strengthening the role of Community coordination (information on the follow-up to notified cases of fraud, participation in investigations in the Member States, extension of assistance on demand), and the introduction of rules governing relations between administrative assistance and judicial procedures.

The amended proposal for a Council and European Parliament Regulation (EC) on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs or agricultural matters (144) was amended by the Commission under Article 189a(2)\* of the EC Treaty by taking account of the amendments made by the European Parliament on first reading (145) which it had accepted or in respect of which it had promised to amend the text of its proposal. The amended proposal was sent to the Council and to Parliament on 17 February 1994 (146), and is currently before the Council.

## **C. Customs penalties**

**342.** The Commission, in partnership with the Member States, is continuing work on the impact of customs penalties. The objective is to prevent distortions of competition that could affect economic operators and to protect the Community's financial interests. At present, the range, classification and degree of seriousness of customs infringements are being examined by the Commission departments on the basis of the provisions of the Community Customs Code (Regulation (EEC) No 2913/92\*).

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(143) COM(92) 544 final of 21 December 1992 (OJ C 56, 26.2.1993).

(144) COM(93) 350 final of 1 September 1993 (OJ C 262, 28.9.1993).

(145) Document PE 177.122 (PV 48) of 15 December 1993, pp. 18 and 63 (OJ C 20, 24.1.1994, p. 90).

(146) COM(94) 34 final of 17 February 1994 (OJ C 80, 17.3.1994).

## PART THREE

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### Future priorities

343. The analysis in this report shows that much still remains to be done to make the single market a reality for citizens and for business within the Union. The effectiveness of the single market in promoting European integration, the competitiveness of European industry and the prosperity of European citizens depends on the commitment of Member States both to enforcing existing rules and to adopting the relatively limited number of legislative measures which are still required.

The Commission, for its part, will continue to examine the problems concerning the operation of the single market with a view to ensuring that an adequate political and technical response is achieved.

344. Among the key issues where progress will have to be made over the next few years are the following:

- completing the single market for the citizen

Individuals need to see the advantages of European integration in their daily lives, if they are to be interested in or supportive of the European endeavour. Achieving full freedom of movement of persons is therefore clearly a priority. The adoption of the directive on the right to vote in municipal elections is an important development in this context. But progress is needed too on ensuring speedy and effective redress, and on the social aspects of the single market. Another important aspect is further developing the rights of the citizen as a consumer in the single market.

- promoting a more effective single market for business

Businesses must be provided with the right conditions to enable them to exploit the opportunities of the single market. Many companies, in particular small and medium-sized businesses, are discouraged from trying to expand into new markets beyond their own national frontiers because of the scale of administrative difficulties and extra costs. The advantages of the single market are also limited by the various types of tax barrier. For VAT, the introduction of a definitive regime which would allow businesses to operate with greater simplicity and reduced burdens is a priority. At the same time, the possibilities of simplifying the Intrastat requirements will be examined. The lack of progress in the field of company taxation has already been referred to above. The Union will have to find a way forward on these issues as the disadvantages of remaining tax barriers become increasingly obvious as firms seek to take full advantage of the single market.

- liberalizing energy and telecommunications

These are the areas where the Union is furthest from achieving the objective of a single market. While some progress is being made, a clear political commitment is needed to ensure that the benefits of competition are fully realized in these sectors. With regard to telecommunications, the recent Council decision on the liberalization of infrastructure on 1 January 1998 means that there is now agreement on the princi-

ple of liberalization of the whole sector. This provides a clear signal to industry, as well as to the Commission, which must now address the regulatory issues in order to achieve effective competition. Much more remains to be done, however, in the energy sector.

- preparing for the information society

Appropriate Community-level solutions must be found to the problems of ensuring a coherent regulatory framework for the provision of new cross-border services. It is important to avoid a proliferation of different rules at national level which will later have to be harmonized in order to permit these services to operate more economically; any necessary regulation should be developed at Community level.

- Trans-European Networks

The task of creating the environment within which these networks can be developed and of ensuring that there is a coherent approach to their development both within and across the sectors concerned will be a major priority for the growth of the internal market in the coming years. The success of this undertaking also depends to a significant degree on the liberalization of the relevant sectors.

- assisting Central and Eastern Europe to adapt to single market requirements

A major pre-accession strategy designed to assist the countries of Central and Eastern Europe in adapting to the requirements of the single market will be an important step towards the goal of their subsequent integration into the Union.

- ensuring equivalent enforcement

The Commission intends to pursue its activity with regard to the assessment of the comparability and equivalence of national sanctions in cases of infringement of Community law.

345. In the course of 1995, the Commission will review the 1993 Strategic Programme in the light of this report and may come forward with a new definition of policy goals and a revised work programme for completion of the single market.

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## **Annexes**

- 1 - Abbreviations and acronyms**
- 2 - Community provisions cited**
  - EC Treaty
  - Official Journal - references
- 3 - Judgements of the Court of Justice cited**
- 4 - Recent reports, studies and surveys on the single market**
- 5 - Organizations which provided contributions**

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## Annex 1 - Abbreviations and acronyms

### A

ACA	accession compensatory amount
ACP	African, Caribbean and Pacific countries party to the Lomé Convention
Altener	Alternative Energy (programme for the development of alternative energies)

### B

BAC	Banking Advisory Committee
BCCI	Bank of Credit and Commerce International
Bc-Net	Business Cooperation Network
BRE	Business Cooperation Centre
BSE	Bovine Spongiform Encephalopathy

### C

CAP	Common Agricultural Policy
CCBE	Conseil des barreaux de la Communauté Européenne (Council of the Bars and Law Societies of the European Community)
CEN	Comité européen de normalisation (European Committee for Standardization)
Cenelec	Comité européen de normalisation électrotechnique (European Committee for Electrotechnical Standardization)
CIS	customs information system
CLO	Central Liaison Office
CMT	CMT substances: carcinogenic, mutagenic and toxic for reproduction
COM	common organization of the market
Coreper	Comité des Représentants permanents des États membres de la Communauté (Permanent Representatives Committee)
CPA	classification of products by activity (for statistical purposes)
CSF	Community Support Framework

### D

DIN	Deutsches Institut für Normung (German Standards Institute)
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### E

EAEC	European Atomic Energy Community (Euratom)
ECU	European Currency Unit
EDI	Electronic data interchange
EDICOM	Electronic data interchange on commerce
EEA	European Economic Area
EEC	European Economic Community
EFTA	European Free Trade Association
EIB	European Investment Bank
EIC	European Information Centre
EIF	European Investment Fund
EIS	European information system
EMS	European Monetary System
EOTC	European Organization for Testing and Certification

ERDF	European Regional Development Fund
ESC	Economic and Social Committee
ETSI	European Telecommunications Standards Institute
Euratom	see EAEC
EURES	European Employment Service
Eurostat	Statistical Office of the European Communities
<b>F</b>	
FEB	Fédérations des entreprises de Belgique (Belgian Business Federations)
<b>G</b>	
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GPA	GATT agreement on public procurement
GSM	Standards laid down by the ETSI for pan-European personal mobile communications
GTIAD	Groupe de travail pour l'interprétation des directives bancaires (Working Group on the Interpretation of the Banking Directives)
<b>I</b>	
Icomia	International Council of Marine Industry Associations
IDA	Interchange of Data between Administrations
Interreg	Community initiative concerning border areas
Intrastat	System for collecting statistics on intra-Community trade
ISDN	integrated services digital network
ISO	International Standards Organization
<b>M</b>	
Matthaeus	Programme for the exchange of customs officials
Matthaeus Tax	Programme for the exchange of indirect taxation officials
MCA	Monetary compensatory amount
MFN	Most-favoured nation
<b>N</b>	
NATO	North Atlantic Treaty Organization
<b>O</b>	
OJEC	Official Journal of the European Communities
ONP	Open network provision
OOPEC	Office for Official Publications of the European Communities
<b>P</b>	
Parcom	Paris Commission
<b>S</b>	
SAD	Single administrative document
SAVE	Special action programme for vigorous energy efficiency
SCENT	System Customs Enforcement Network
SE	Societas Europæa (European company)
SIMAP	Information system on public procurement
SMEs	Small and medium-sized enterprises

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**T**

- TED** Tenders Electronic Daily
- TEU** Treaty on European Union
- TIR** International carriage of goods by road

**U**

- UCITS** Undertakings for Collective Investment in Transferable Securities
- UNICE** Union des Confédérations de l'Industrie et des Employeurs d'Europe (Union of Industrial and Employers' Confederations of Europe)

**V**

- VAT** value added tax
- VIES** VAT information exchange system

**W**

- WIPO** World Intellectual Property Organization

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## Annex 2 - Community provisions cited

### A. EC Treaty <sup>(147)</sup>

#### PRINCIPLES

##### Article 3

For the purposes set out in Article 2, the activities of the Community shall include, as provided in this Treaty and in accordance with the timetable set out therein:

- (a) the elimination, as between Member States, of customs duties and quantitative restrictions on the import and export of goods, and of all other measures having equivalent effect;
- (b) a common commercial policy;
- (c) an internal market characterized by the abolition, as between Member States, of obstacles to the free movement of goods, persons, services and capital;
- (d) measures concerning the entry and movement of persons in the internal market as provided for in Article 100c;
- (e) a common policy in the sphere of agriculture and fisheries;
- (f) a common policy in the sphere of transport;
- (g) a system ensuring that competition in the internal market is not distorted;
- (h) the approximation of the laws of Member States to the extent required for the functioning of the common market;
- (i) a policy in the social sphere comprising a European Social Fund;
- (j) the strengthening of economic and social cohesion;
- (k) a policy in the sphere of the environment;
- (l) the strengthening of competitiveness of Community industry;
- (m) the promotion of research and technological development;
- (n) encouragement for the establishment and development of trans-European networks;
- (o) a contribution to the attainment of a high level of health protection;
- (p) a contribution to education and training of quality and to the flowering of the cultures of the Member States;
- (q) a policy in the sphere of development cooperation;
- (r) the association of the overseas countries and territories in order to increase trade and promote jointly economic and social development;
- (s) a contribution to the strengthening of consumer protection;
- (t) measures in the spheres of energy, civil protection and tourism.

##### Article 3b

The Community shall act within the limits of the powers conferred upon it by this Treaty and of the objectives assigned to it therein.

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(147) As amended by the Treaty on European Union.



In areas which do not fall within its exclusive competence, the Community shall take action, in accordance with the principle of subsidiarity, only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community.

Any action by the Community shall not go beyond what is necessary to achieve the objectives of this Treaty.

#### Article 6

Within the scope of application of this Treaty, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited.

The Council, acting in accordance with the procedure referred to in Article 189c, may adopt rules designed to prohibit such discrimination.

#### Article 7a

The Community shall adopt measures with the aim of progressively establishing the internal market over a period expiring on 31 December 1992, in accordance with the provisions of this Article and of Articles 7b, 7c, 28, 57(2), 59, 70(1), 84, 99, 100a and 100b and without prejudice to the other provisions of this Treaty.

The internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of this Treaty.

#### Article 7b

The Commission shall report to the Council before 31 December 1988 and again before 31 December 1990 on the progress made towards achieving the internal market within the time limit fixed in Article 7a.

The Council, acting by a qualified majority on a proposal from the Commission, shall determine the guidelines and conditions necessary to ensure balanced progress in all sectors concerned.

### CITIZENSHIP OF THE UNION

#### Article 8b

1. Every citizen of the Union residing in a Member State of which he is not a national shall have the right to vote and to stand as a candidate at municipal elections in the Member States in which he resides, under the same conditions as nationals of that State. This right shall be exercised subject to detailed arrangements to be adopted before 31 December 1994 by the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament; these arrangements may provide for derogations where warranted by problems specific to a Member State.

2. Without prejudice to Article 138(3) and to the provisions adopted for its implementation, every citizen of the Union residing in a Member State of which he is not a national shall have the right to vote and to stand as a candidate elections to the European Parliament in the Member States in which he resides, under the same conditions as nationals of that State. This right shall be exercised subject to detailed arrangements to be adopted before 31 December 1993 by the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament; these arrangements may provide for derogations where warranted by problems specific to a Member State.

### COMMUNITY POLICIES - FREE MOVEMENT OF GOODS - ELIMINATION OF QUANTITATIVE RESTRICTIONS BETWEEN MEMBER STATES

#### Article 30

Quantitative restrictions on imports and all measures having equivalent effect shall, without prejudice to the following provisions, be prohibited between Member States.

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Article 34

1. Quantitative restrictions on exports, and all measures having equivalent effect, shall be prohibited between Member States.
2. Member States shall, by the end of the first stage at the latest, abolish all quantitative restrictions on exports and any measures having equivalent effect which are in existence when this Treaty enters into force.

Article 36

The provisions of Articles 30 to 34 shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of national treasures possessing artistic, historic or archaeological value; or the protection of industrial and commercial property. Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States.

**COMMUNITY POLICIES - FREE MOVEMENT OF PERSONS,  
SERVICES AND CAPITAL- RIGHT OF ESTABLISHMENT**

Article 52

Within the framework of the provisions set out below, restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State shall be abolished by progressive stages in the course of the transitional period. Such progressive abolition shall also apply to restrictions on the setting-up of agencies, branches or subsidiaries by nationals of any Member State established in the territory of any Member State.

Freedom of establishment shall include the right to take up and pursue activities as self-employed persons and to set up and manage undertakings, in particular companies or firms within the meaning of the second paragraph of Article 58, under the conditions laid down for its own nationals by the law of the country where such establishment is effected, subject to the provisions of the Chapter relating to capital.

Article 55

The provisions of this Chapter shall not apply, so far as any given Member State is concerned, to activities which in that State are connected, even occasionally, with the exercise of official authority.

The Council may, acting by a qualified majority on a proposal from the Commission, rule the provisions of this Chapter shall not apply to certain activities.

Article 56

1. The provisions of this Chapter and measures taken in pursuance thereof shall not prejudice the applicability of provisions laid down by law, regulation or administrative action providing for special treatment for foreign nationals on grounds of public policy, public security or public health.
2. Before the end of the transitional period, the Council shall, acting unanimously on a proposal from the Commission and after consulting the European Parliament, issue directives for the coordination of the above-mentioned provisions laid down by law, regulation or administrative action. After the end of the second stage, however, the Council shall, acting in accordance with the procedure referred to in Article 189b, issue directives for the coordination of such provisions as, in each Member State, are a matter for regulation or administrative action.

**COMMUNITY POLICIES - FREE MOVEMENT OF  
PERSONS, SERVICES AND CAPITAL- SERVICES**

Article 59

Within the framework of the provisions set out below, restrictions on freedom to provide services within the Community shall be progressively abolished during the transitional period in respect of nationals of

Member States who are established in a State of the Community other than that of the person for whom the services are intended.

The Council may, acting by a qualified majority on a proposal from the Commission, extend the provisions of the Chapter to nationals of a third country who provide services and who are established within the Community.

**COMMUNITY POLICIES - FREE MOVEMENT OF PERSONS,  
SERVICES AND CAPITAL- CAPITAL AND PAYMENTS**

Article 73

1. If movements of capital lead to disturbances in the functioning of the capital market in any Member State, the Commission shall, after consulting the Monetary Committee, authorize that State to take protective measures in the field of capital movements, the conditions and details of which the Commission shall determine.

The Council may, acting by a qualified majority, revoke this authorization or amend the conditions or details thereof.

2. A Member State which is in difficulties may, however, on grounds of secrecy or urgency, take the measures mentioned above, where this proves necessary, on its own initiative. The Commission and the other Member States shall be informed of such measures by the date of their entry into force at the latest. In this event the Commission may, after consulting the Monetary Committee, decide that the State concerned shall amend or abolish the measures.

**COMMUNITY POLICIES - COMMON RULES ON COMPETITION, TAXATION AND  
APPROXIMATION OF LAWS - RULES ON COMPETITION - RULES APPLYING TO UNDERTAKINGS**

Article 85

1. The following shall be prohibited as incompatible with the common market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market, and in particular those which:

- (a) directly or indirectly fix purchase or selling prices or any other trading conditions;
- (b) limit or control production, markets, technical development, or investment;
- (c) share markets or sources of supply;
- (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

2. Any agreements or decisions prohibited pursuant to this Article shall be automatically void.

3. The provisions of paragraph 1 may, however, be declared inapplicable in the case of:

- any agreement or category of agreements between undertakings;
- any decision or category of decisions by associations of undertakings;
- any concerted practice or category of concerted practices;

which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:

- (a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;
- (b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

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Article 86

Any abuse by one or more undertakings of a dominant position within the common market or in a substantial part of it shall be prohibited as incompatible with the common market in so far as it may affect trade between Member States.

Such abuse may, in particular, consist in:

- (a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
- (b) limiting production, markets or technical development to the prejudice of consumers;
- (c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- (d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

**COMMUNITY POLICIES - COMMON RULES ON COMPETITION, TAXATION AND  
APPROXIMATION OF LAWS - RULES ON COMPETITION - AIDS GRANTED BY STATES**

Article 93(1)

The Commission shall, in cooperation with Member States, keep under constant review all systems of aid existing in those States. It shall propose to the latter any appropriate measures required by the progressive development or by the functioning of the common market.

**COMMUNITY POLICIES - COMMON RULES ON COMPETITION, TAXATION  
AND APPROXIMATION OF LAWS - APPROXIMATION OF LAWS**

Article 100

The Council shall, acting unanimously on a proposal from the Commission and after consulting the European Parliament and the Economic and Social Committee, issue directives for the approximation of such laws, regulations or administrative provisions of the Member States as directly affect the establishment or functioning of the common market.

Article 100a

1. By way of derogation from Article 100 and save where otherwise provided in this Treaty, the following provisions shall apply for the achievement of the objectives set out in Article 7a. The Council shall, acting in accordance with the procedure referred to in Article 189b and after consulting the Economic and Social Committee, adopt the measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market.

2. Paragraph 1 shall not apply to fiscal provisions, to those relating to the free movement of persons nor to those relating to the rights and interests of employed persons.

3. The Commission, in its proposals envisaged in paragraph 1 concerning health, safety, environmental protection and consumer protection, will take as a base a high level of protection.

4. If, after the adoption of a harmonization measure by the Council acting by a qualified majority, a Member State deems it necessary to apply national provisions on grounds of major needs referred to in Article 36, or relating to protection of the environment or the working environment, it shall notify the Commission of these provisions.

The Commission shall confirm the provisions involved after having verified that they are not a means of arbitrary discrimination or a disguised restriction on trade between Member States.

By way of derogation from the procedure laid down in Articles 169 and 170, the Commission or any Member State may bring the matter directly before the Court of Justice if it considers that another Member State is making improper use of the powers provided for in this Article.

5. The harmonization measures referred to above shall, in appropriate cases, include a safeguard clause authorizing the Member States to take, for one or more of the non-economic reasons referred to in Article 36, provisional measures subject to a Community control procedure.

Article 100b

1. During 1992, the Commission shall, together with each Member State, draw up an inventory of national laws, regulations and administrative provisions which fall under Article 100a and which have not been harmonized pursuant to that Article.

The Council, acting in accordance with the provisions of Article 100a, may decide that the provisions in force in a Member State must be recognized as being equivalent to those applied by another Member State.

2. The provisions of Article 100a(4) shall apply by analogy.

3. The Commission shall draw up the inventory referred to in the first subparagraph of paragraph 1 and shall submit appropriate proposals in good time to allow the Council to act before the end of 1992.

Article 100c

1. The Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, shall determine the third countries whose nationals must be in possession of a visa when crossing the external borders of the Member States.

2. However, in the event of an emergency situation in a third country posing a threat of a sudden inflow of nationals from that country into the Community, the Council, acting by a qualified majority on a recommendation from the Commission, may introduce, for a period not exceeding six months, a visa requirement for nationals from the country in question. The visa requirements established under this paragraph may be extended in accordance with the procedure referred to in paragraph 1.

3. From 1 January 1996, the Council shall adopt the decisions referred to in paragraph 1 by a qualified majority. The Council shall, before that date, acting by a qualified majority on a proposal from the Commission and after consulting the European Parliament, adopt measures relating to a uniform format for visas.

4. In the areas referred to in this Article, the Commission shall examine any request made by a Member State that it submit a proposal to the Council.

5. This Article shall be without prejudice to the exercise of the responsibilities incumbent upon the Member States with regard to the maintenance of law and order and the safeguarding of internal security.

6. This Article shall apply to other areas if so decided pursuant to Article K.9 of the provisions of the Treaty on European Union which relate to cooperation in the fields of justice and home affairs, subject to the voting conditions determined at the same time.

7. The provisions of the conventions in force between the Member States governing areas covered by this Article shall remain in force until their content has been replaced by directives or measures adopted pursuant to this Article.

**COMMUNITY POLICIES - COMMON COMMERCIAL POLICY**

Article 115

In order to ensure that the execution of measures of commercial policy taken in accordance with this Treaty by any Member State is not obstructed by deflection of trade, or where differences between such measures lead to economic difficulties in one or more Member States, the Commission shall recommend the methods for the requisite cooperation between Member States. Failing this, the Commission may authorize Member States to take the necessary protective measures, the conditions and details of which it shall determine.

In case of urgency, Member States shall request authorization to take the necessary measures themselves from the Commission, which shall take a decision as soon as possible; the Member States concerned shall then notify the measures to the other Member States. The Commission may decide at any time that the Member States concerned shall amend or abolish the measures in question.

In the selection of such measures, priority shall be given to those which cause the least disturbance of the functioning of the common market.

**COMMUNITY POLICIES - CONSUMER PROTECTION**

Article 129a

1. The Community shall contribute to the attainment of a high level of consumer protection through:
  - (a) measures adopted pursuant to Article 100a in the context of the completion of the internal market;
  - (b) specific action which supports and supplements the policy pursued by the Member States to protect the health, safety and economic interests of consumers and to provide adequate information to consumers.
2. The Council, acting in accordance with the procedure referred to in Article 189b and after consulting the Economic and Social Committee, shall adopt the specific action referred to in paragraph 1(b).
3. Action adopted pursuant to paragraph 2 shall not prevent any Member State from maintaining or introducing more stringent protective measures. Such measures must be compatible with the Treaty. The Commission shall be notified of them.

**COMMUNITY POLICIES - TRANS-EUROPEAN NETWORKS**

Article 129b

1. To help achieve the objectives referred in Articles 7a and 130a and to enable citizens of the Union, economic operators and regional and local communities to derive full benefit from the setting-up of an area without internal frontiers, the Community shall contribute to the establishment and development of trans-European networks in the areas of transport, telecommunications and energy infrastructures.
2. Within the framework of a system of open and competitive markets, action by the Community shall aim at promoting the interconnection and interoperability of national networks as well as access to such networks. It shall take account in particular of the need to link island, landlocked and peripheral regions with the central regions of the Community.

Article 129c

1. In order to achieve the objectives referred to in Article 129b, the Community:
  - shall establish a series of guidelines covering the objectives, priorities and broad lines of measures envisaged in the sphere of trans-European networks; these guidelines shall identify projects of common interest;
  - shall implement any measures that may prove necessary to ensure the interoperability of the networks, in particular in the field of technical standardization;
  - may support the financial efforts made by the Member States for projects of common interest financed by Member States, which are identified in the framework of the guidelines referred to in the first indent, particularly through feasibility studies, loan guarantees or interest-rate subsidies; the Community may also contribute, through the Cohesion Fund to be set up no later than 31 December 1993 pursuant to Article 130d, to the financing of specific projects in Member States in the area of transport infrastructure.

The Community's activities shall take into account the potential economic viability of the projects.

2. Member States shall, in liaison with the Commission, coordinate among themselves the policies pursued at national level which may have a significant impact on the achievement of the objectives referred to in Article 129b. The Commission may, in close cooperation with the Member State, take any useful initiative to promote such coordination.
3. The Community may decide to cooperate with third countries to promote projects of mutual interest and to ensure the interoperability of networks.

Article 129d

The guidelines referred to in Article 129c(1) shall be adopted by the Council, acting in accordance with the procedure referred to in Article 189b and after consulting the Economic and Social Committee and the Committee of the Regions.

Guidelines and projects of common interest which relate to the territory of a Member State shall require the approval of the Member State concerned.

The Council acting in accordance with the procedure referred to in Article 189c and after consulting the Economic and Social Committee and the Committee of the Regions, shall adopt the other measures provided for in Article 129c(1).

**INSTITUTIONS OF THE COMMUNITY - PROVISING GOVERNING THE INSTITUTIONS -  
THE INSTITUTIONS - THE COURT OF JUSTICE**

Article 169

If the Commission considers that a Member State has failed to fulfil an obligation under this Treaty, it shall deliver a reasoned opinion on the matter after giving the State concerned the opportunity to submit its observations.

If the State concerned does not comply with the opinion within the period laid down by the Commission, the latter may bring the matter before the Court of Justice.

Article 173

The Court of Justice shall review the legality of acts adopted jointly by the European Parliament and the Council, of acts of the Council, of the Commission and of the ECB, other than recommendations and opinions, and of acts of the European Parliament intended to produce legal effects vis-à-vis third parties.

It shall for this purpose have jurisdiction in actions brought by a Member State, the Council or the Commission on grounds of lack of competence, infringement of an essential procedural requirement, infringement of this Treaty or of any rule of law relating to its application, or misuse of powers.

The Court shall have jurisdiction under the same conditions in actions brought by European Parliament and by the ECB for the purpose of protecting their prerogatives.

Any natural or legal person may, under the same conditions, institute proceedings against a decision addressed to that person or against a decision which, although in the form of a regulation or a decision addressed to another person, is of direct and individual concern to the former.

The proceedings provided for in this Article shall be instituted within two months of the publication of the measure, or of its notification to the plaintiff, or, in the absence thereof, of the day on which it came to the knowledge of the latter, as the case may be.

Article 175

Should the European Parliament, the Council or the Commission, in infringement of this Treaty, fail to act, the Member States and the other institutions of the Community may bring an action before the Court of Justice to have the infringement established.

The action shall be admissible only if the institution concerned has first been called upon to act. If, within two months of being so called upon, the institution concerned has not defined its position, the action may be brought within a further period of two months.

Any natural or legal person may, under the conditions laid down in the preceding paragraphs, complain to the Court of Justice that an institution of the Community has failed to address to that person any act other than a recommendation or an opinion.

The Court of Justice shall have jurisdiction, under the same conditions, in actions or proceedings brought by the ECB in the areas falling within the latter's field of competence and in actions or proceedings brought against the latter.

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Article 186

The Court of Justice may in any cases before it prescribe any necessary interim measures.

**INSTITUTIONS OF THE COMMUNITY - PROVISING GOVERNING THE INSTITUTIONS -  
PROVISIONS COMMON TO SEVERAL INSTITUTIONS**

Article 189a

1. Where, in pursuance of this Treaty, the Council acts on a proposal from the Commission, unanimity shall be required for an act constituting an amendment to that proposal, subject to Article 189b(4) and (5).
2. As long as the Council has not acted, the Commission may alter its proposal at any time during the procedures leading to the adoption of a Community act.

**B. Official Journal - references** (148)

**1964**

Council Directive 64/432/EEC of 26 June 1964 on animal health problems affecting intra-Community trade in bovine animals and swine (OJ L 121, 29/07/64)

**1970**

Council Directive 70/524/EEC of 23 November 1970 concerning additives in feedingstuffs (OJ L 270, 14/12/70)

**1971**

Council Directive 71/305/EEC of 26 July 1971 concerning the co-ordination of procedures for the award of public works contracts (OJ L 185, 16/08/71)

Council Decision 71/306/EEC of 26 July 1971 setting up an Advisory Committee for Public Works Contracts (OJ L 185, 16/08/71)

**1972**

Council Directive 72/166/EEC of 24 April 1972 on the approximation of the laws of Member States relating to insurance against civil liability in respect of the use of motor vehicles, and to the enforcement of the obligation to insure against such liability (OJ L 103, 02/05/72)

**1975**

Council Directive 75/324/EEC of 20 May 1975 on the approximation of the laws of the Member States relating to aerosol dispensers (OJ L 147, 09/06/75)

Council Decision 75/365/EEC of 16 June 1975 setting up a Committee of Senior Officials on Public Health (OJ L 167, 30/06/75)

**1976**

Council Directive 76/768/EEC of 27 July 1976 on the approximation of the laws of the Member States relating to cosmetic products (OJ L 262, 27/09/76)

Council Directive 76/769/EEC of 27 July 1976 on the approximation of the laws, regulations and administrative provisions of the Member States relating to restrictions on the marketing and use of certain dangerous substances and preparations (OJ L 262, 27/09/76)

(148) To provide clarity, the references are cited in numerical order; regulations follow upon other types of measures.



**Commission Regulation (EEC) No 1624/76** of 2 July 1976 concerning special arrangements for the payment of aid for skimmed-milk powder denatured or processed into compound feedingstuffs in the territory of another Member State (OJ L 180, 06/07/76)

**1977**

**Council Directive 77/62/EEC** of 21 December 1976 coordinating procedures for the award of public supply contracts (OJ L 13, 15/01/77)

**Council Decision 77/63/EEC** of 21 December 1976 amending Decision 71/306/EEC setting up an Advisory Committee for Public Contracts (OJ L 13, 15/01/77)

**Council Directive 77/93/EEC** of 21 December 1976 on protective measures against the introduction into the Member States of harmful organisms of plants or plant products (OJ L 26, 31/01/77)

**Council Directive 77/504/EEC** of 25 July 1977 on pure-bred breeding animals of the bovine species (OJ L 206, 12/08/77)

**Council Directive 77/799/EEC** of 19 December 1977 concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation (OJ L 336, 27/12/77)

**1978**

**Fourth Council Directive 78/660/EEC** of 25 July 1978 based on Article 54 (3) (g) of the Treaty on the annual accounts of certain types of companies (OJ L 222, 14/08/78)

**Council Directive 78/686/EEC** of 25 July 1978 concerning the mutual recognition of diplomas, certificates and other evidence of the formal qualifications of practitioners of dentistry, including measures to facilitate the effective exercise of the right of establishment and freedom to provide services (OJ L 233, 24/08/78)

**Council Directive 78/687/EEC** of 25 July 1978 concerning the coordination of provisions laid down by law, regulation or administrative action in respect of the activities of dental practitioners (OJ L 233, 24/08/78)

**1979**

**Council Directive 79/112/EEC** of 18 December 1978 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs for sale to the ultimate consumer (OJ L 33, 08/02/79)

**Council Directive 79/196/EEC** of 6 February 1979 on the approximation of the laws of the Member States concerning electrical equipment for use in potentially explosive atmospheres employing certain types of protection (OJ L 43, 20/02/79)

**Council Directive 79/279/EEC** of 5 March 1979 coordinating the conditions for the admission of securities to official stock exchange listing (OJ L 66, 16/03/79)

**Commission Regulation (EEC) No 1725/79** of 26 July 1979 on the rules for granting aid to skimmed milk processed into compound feedingstuffs and skimmed-milk powder intended for feed for calves (OJ L 199, 07/08/79)

**Commission Regulation (EEC) No 1726/79** of 26 July 1979 amending Regulations (EEC) No 1624/76, (EEC) No 368/77, (EEC) No 443/77 and (EEC) No 1844/77 on aid measures and special sales operations for skimmed-milk powder for use in feed (OJ L 199, 07/08/79)

**1980**

**Council Directive 80/390/EEC** of 17 March 1980 coordinating the requirements for the drawing up, scrutiny and distribution of the listing particulars to be published for the admission of securities to official stock exchange listing (OJ L 100, 17/04/80)

**Council Directive 80/777/EEC** of 15 July 1980 on the approximation of the laws of the Member States relating to the exploitation and marketing of natural mineral waters (OJ L 229, 30/08/80)

**1983**

**Council Directive of 83/189/EEC** 28 March 1983 laying down a procedure for the provision of information in the field of technical standards and regulations (OJ L 109, 26/04/83)

**Seventh Council Directive 83/349/EEC** of 13 June 1983 based on the Article 54 (3) (g) of the Treaty on consolidated accounts (OJ L 193, 18/07/83)

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**1984**

**Second Council Directive 84/5/EEC** of 30 December 1983 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles (OJ L 8, 11/01/84)

**Commission Regulation (EEC) No 2349/84** of 23 July 1984 on the application of Article 85 (3) of the Treaty to certain categories of patent licensing agreements (OJ L 219, 16/08/84)

**1985**

**Council Directive 85/611/EEC** of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 375, 31/12/85)

**Commission Regulation (EEC) No 123/85** of 12 December 1984 on the application of Article 85 (3) of the Treaty to certain categories of motor vehicle distribution and servicing agreements (OJ L 15, 18/01/85)

**1986**

**Council Regulation (EEC) No 3842/86** of 1 December 1986 laying down measures to prohibit the release for free circulation of counterfeit goods (OJ L 357, 18/12/86)

**1987**

**Council Directive 87/54/EEC** of 16 December 1986 on the legal protection of topographies of semiconductor products (OJ L 24, 27/01/87)

**Commission Decision 87/305/EEC** of 26 May 1987 setting up an advisory committee on the opening-up of public procurement (OJ L 152, 12/06/87)

**Council Directive 87/328/EEC** of 18 June 1987 on the acceptance for breeding purposes of pure-bred breeding animals of the bovine species (OJ L 167, 26/06/87)

**Council Directive 87/357/EEC** of 25 June 1987 on the approximation of the laws of the Member States concerning products which, appearing to be other than they are, endanger the health or safety of consumers (OJ L 192, 11/07/87)

**Council Directive 87/372/EEC** of 25 June 1987 on the frequency bands to be reserved for the coordinated introduction of public pan-European cellular digital land-based mobile communications in the Community (OJ L 196, 17/07/87)

**Commission Decision 87/560/EEC** of 17 July 1987 amending Decision 87/305/EEC of 26 May 1987 setting up an advisory committee on the opening-up of public procurement (OJ L 338, 28/11/87)

**1988**

**Council Directive 88/295/EEC** of 22 March 1988 amending Directive 77/62/EEC relating to the coordination of procedures on the award of public supply contracts and repealing certain provisions of Directive 80/767/EEC (OJ L 127, 20/05/88)

**Council Directive 88/344/EEC** of 13 June 1988 on the approximation of the laws of the Member States on extraction solvents used in the production of foodstuffs and food ingredients (OJ L 157, 24/06/88)

**Second Council Directive 88/357/EEC** of 22 June 1988 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and laying down provisions to facilitate the effective exercise of freedom to provide services and amending Directive 73/239/EEC (OJ L 172, 04/07/88)

**Council Directive 88/378/EEC** of 3 May 1988 on the approximation of the laws of the Member States concerning the safety of toys (OJ L 187, 16/07/88)

**Commission Recommendation 88/590/EEC** of 17 November 1988 concerning payment systems, and in particular the relationship between cardholder and card issuer (OJ L 317, 24/11/88)

**Council Directive 88/661/EEC** of 19 December 1988 on the zootechnical standards applicable to breeding animals of the porcine species (OJ L 382, 31/12/88)

**Council Regulation (EEC) No 2052/88** of 24 June 1988 on the tasks of the Structural Funds and their effectiveness and on coordination of their activities between themselves and with the operations of the European Investment Bank and the other existing financial instruments (OJ L 185, 15/07/88)

**1989**

**Council Directive 89/48/EEC** of 21 December 1988 on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration (OJ L 19, 24/01/89)

**First Council Directive 89/104/EEC** of 21 December 1988 to approximate the laws of the Member States relating to trade marks (OJ L 40, 11/02/89)

**Council Directive 89/106/EEC** of 21 December 1988 on the approximation of laws, regulations and administrative provisions of the Member States relating to construction products (OJ L 40, 11/02/89)

**Council Directive 89/107/EEC** of 21 December 1988 on the approximation of the laws of the Member States concerning food additives authorized for use in foodstuffs intended for human consumption (OJ L 40, 11/02/89)

**Council Directive 89/299/EEC** of 17 April 1989 on the own funds of credit institutions (OJ L 124, 05/05/89)

**Council Directive 89/361/EEC** of 30 May 1989 concerning pure-bred breeding sheep and goats (OJ L 153, 06/06/89)

**Council Directive 89/397/EEC** of 14 June 1989 on the official control of foodstuffs (OJ L 186, 30/06/89)

**Council Directive 89/398/EEC** of 3 May 1989 on the approximation of the laws of the Member States relating to foodstuffs intended for particular nutritional uses (OJ L 186, 30/06/89)

**Council Directive 89/552/EEC** of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities (OJ L 298, 17/10/89)

**Second Council Directive 89/646/EEC** of 15 December 1989 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions and amending Directive 77/780/EEC (OJ L 386, 30/12/89)

**Council Directive 89/647/EEC** of 18 December 1989 on a solvency ratio for credit institutions (OJ L 386, 30/12/89)

**Commission Regulation (EEC) No 556/89** of 30 November 1988 on the application of Article 85 (3) of the Treaty to certain categories of know-how licensing agreements (OJ L 61, 04/03/89)

**Council Regulation (EEC) No 4064/89** of 21 December 1989 on the control of concentrations between undertakings (OJ L 395, 30/12/89)

**1990**

**Council Directive 90/118/EEC** of 5 March 1990 on the acceptance of pure-bred breeding pigs for breeding (OJ L 71, 17/03/90)

**Council Directive 90/119/EEC** of 5 March 1990 on the acceptance of hybrid breeding pigs for breeding (OJ L 71, 17/03/90)

**Council Decision 90/218/EEC** of 25 April 1990 concerning the administration of Bovine Somatotrophin (BST) (OJ L 116, 08/05/90)

**Council Directive 90/364/EEC** of 28 June 1990 on the right of residence (OJ L 180, 13/07/90)

**Council Directive 90/365/EEC** of 28 June 1990 on the right of residence for employees and self-employed persons who have ceased their occupational activity (OJ L 180, 13/07/90)

**Council Directive 90/377/EEC** of 29 June 1990 concerning a Community procedure to improve the transparency of gas and electricity prices charged to industrial end-users (OJ L 185, 17/07/90)

**Council Directive 90/387/EEC** of 28 June 1990 on the establishment of the internal market for telecommunications services through the implementation of open network provision (OJ L 192, 24/07/90)

**Commission Directive 90/388/EEC** of 28 June 1990 on competition in the markets for telecommunications services (OJ L 192, 24/07/90)

**Council Directive 90/396/EEC** of 29 June 1990 on the approximation of the laws of the Member States relating to appliances burning gaseous fuels (OJ L 196, 26/07/90)

**Council Decision 90/424/EEC** of 26 June 1990 on expenditure in the veterinary fields (OJ L 224, 18/08/90)

**Council Directive 90/531/EEC** of 17 September 1990 on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors (OJ L 297, 29/10/90)

**Council Directive 90/544/EEC** of 9 October 1990 on the frequency bands designated for the coordinated introduction of Pan-European land-based public radio paging in the Community (OJ L 310, 09/11/90)

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**Council Directive 90/619/EEC** of 8 November 1990 on the coordination of laws, regulations and administrative provisions relating to direct life assurance, laying down provisions to facilitate the effective exercise of freedom to provide services and amending Directive 79/267/EEC (OJ L 330, 29/11/90)

**1991**

**Council Directive 91/173/EEC** of 21 March 1991 amending for the ninth time Directive 76/769/EEC on the approximation of the laws, regulations and administrative provisions of the Member States relating to restrictions on the marketing and use of certain dangerous substances and preparations (L 85, 05/04/91)

**Council Directive 91/250/EEC** of 14 May 1991 on the legal protection of computer programs (OJ L 122, 17/05/91)

**Council Directive 91/263/EEC** of 29 April 1991 on the approximation of the laws of the Member States concerning telecommunications terminal equipment, including the mutual recognition of their conformity (OJ L 128, 23/05/91)

**Council Directive 91/287/EEC** of 3 June 1991 on the frequency band to be designated for the coordinated introduction of digital European cordless telecommunications (DECT) into the Community (OJ L 144, 08/06/91)

**Council Directive 91/296/EEC** of 31 May 1991 on the transit of natural gas through grids (OJ L 147, 12/06/91)

**Council Directive 91/308/EEC** of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering (OJ L 166, 28/06/91)

**Council Decision 91/341/EEC** of 20 June 1991 on the adoption of a programme of Community action on the subject of the vocational training of customs officials (Matthaeus programme) ((OJ L 187, 13/07/91)

**Council Decision 91/396/EEC** of 29 July 1991 on the introduction of a single European emergency call number (OJ L 117, 06/08/91)

**Council Decision 91/414/EEC** of 15 July 1991 concerning the placing of plant protection products on the market (OJ L 230, 19/08/91)

**Council Directive 91/440/EEC** of 29 July 1991 on the development of the Community's railways (OJ L 237, 24/08/91)

**Council Regulation (EEC) No 2092/91** of 24 June 1991 on organic production of agricultural products and indications referring thereto on agricultural products and foodstuffs (OJ L 198, 22/07/91)

**1992**

**Council Directive 92/12/EEC** of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products (OJ L 76, 23/03/92)

**Council Directive 92/13/EEC** of 25 February 1992 coordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors (OJ L 76, 23/03/92)

**Council Directive 92/30/EEC** of 6 April 1992 on the supervision of credit institutions on a consolidated basis (OJ L 110, 28/04/92)

**Council Directive 92/41/EEC** of 15 May 1992 amending Directive 89/622/EEC on the approximation of the laws, regulations and administrative provisions of the Member States concerning the labelling of tobacco products (OJ L 158, 11/06/92)

**Council Directive 92/42/EEC** of 21 May 1992 on efficiency requirements for new hot-water boilers fired with liquid or gaseous fuels (OJ L 167, 22/06/92)

**Council Directive 92/44/EEC** of 5 June 1992 on the application of open network provision to leased lines (OJ L 165, 19/06/92)

**Council Directive 92/49/EEC** of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357/EEC (third non-life insurance Directive) (OJ L 228, 11/08/92)

**Council Directive 92/50/EEC** of 18 June 1992 relating to the coordination of procedures for the award of public service contracts (OJ L 209, 24/07/92)

**Council Directive 92/51/EEC** of 18 June 1992 on a second general system for the recognition of professional education and training to supplement Directive 89/48/EEC (OJ L 209, 24/07/92)

**Council Directive 92/53/EEC** of 18 June 1992 amending Directive 70/156/EEC on the approximation of the laws of the Member States relating to the type-approval of motor vehicles and their trailers (OJ L 225, 10/08/92)

**Council Directive 92/59/EEC** of 29 June 1992 on general product safety (OJ L 228, 11/08/92)

**Council Directive 92/75/EEC** of 22 September 1992 on the indication by labelling and standard product information of the consumption of energy and other resources by household appliances (OJ L 297, 13/10/92)

**Council Directive 92/85/EEC** of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC) (OJ L 348, 28/11/92)

**Council Directive 92/96/EEC** of 10 November 1992 on the coordination of laws, regulations and administrative provisions relating to direct life assurance and amending Directives 79/267/EEC and 90/619/EEC (third life assurance Directive) (OJ L 360, 09/12/92)

**Council Directive 92/100/EEC** of 19 November 1992 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)

**Council Directive 92/109/EEC** of 14 December 1992 on the manufacture and the placing on the market of certain substances used in the illicit manufacture of narcotic drugs and psychotropic substances (OJ L 370, 19/12/92)

**Council Directive 92/110/EEC** of 14 December 1992 amending Directive 88/657/EEC laying down the requirements for the production of, and trade in, minced meat, meat in pieces of less than 100 grams and meat preparations (OJ L 394, 31/12/92)

**Council Directive 92/120/EEC** of 17 December 1992 on the conditions for granting temporary and limited derogations from specific Community health rules on the production and marketing of certain products of animal origin (OJ L 62, 15/03/93)

**Council Directive 92/121/EEC** of 21 December 1992 on the monitoring and control of large exposures of credit institutions (OJ L 29, 05/02/93)

**Council Resolution 92/1218/EEC** of 7 December 1992 on making the single market work (OJ C 334, 18/12/92)

**Council Decision 92/264/EEC** of 11 May 1992 on the introduction of a standard international telephone access code in the Community (OJ L 137, 20/05/92)

**Council Regulation (EEC) No 218/92** of 27 January 1992 on administrative cooperation in the field of indirect taxation (VAT) (OJ L 24, 01/02/92)

**Council Regulation (EEC) No 2081/92** of 14 July 1992 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (OJ L 208, 24/07/92)

**Council Regulation (EEC) No 2082/92** of 14 July 1992 on certificates of specific character for agricultural products and foodstuffs (OJ L 208, 24/07/92)

**Council Regulation (EEC) No 2434/92** of 27 July 1992 amending Part II of Regulation (EEC) No 1612/68 on freedom of movement for workers within the Community (OJ L 245, 26/08/92)

**Council Regulation (EEC) No 2913/92** of 12 October 1992 establishing the Community Customs Code (OJ L 302, 19/10/92)

### 1993

**Council Directive 93/6/EEC** of 15 March 1993 on the capital adequacy of investment firms and credit institutions (OJ L 141, 11/06/93)

**Council Directive 93/13/EEC** of 5 April 1993 on unfair terms in consumer contracts (OJ L 95, 21/04/93)

**Council Directive 93/15/EEC** of 5 April 1993 on the harmonization of the provisions relating to the placing on the market and supervision of explosives for civil uses (OJ L 121, 15/05/93)

**Council Directive 93/16/EEC** of 5 April 1993 to facilitate the free movement of doctors and the mutual recognition of their diplomas, certificates and other evidence of formal qualifications (OJ L 165, 07/07/93)

**Council Directive 93/22/EEC** of 10 May 1993 on investment services in the securities field (OJ L 141, 11/06/93)

**Council Directive 93/35/EEC** of 14 June 1993 amending for the sixth time Directive 76/768/EEC on the approximation of the laws of the Member States relating to cosmetic products (OJ L 151, 23/06/93)

**Council Directive 93/36/EEC** of 14 June 1993 coordinating procedures for the award of public supply contracts (OJ L 199, 09/08/93)

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**Council Directive 93/37/EEC** of 14 June 1993 concerning the coordination of procedures for the award of public works contracts (OJ L 199, 09/08/93)

**Council Directive 93/38/EEC** of 14 June 1993 coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors (OJ L 199, 09/08/93)

**Council Directive 93/43/EEC** of 14 June 1993 on the hygiene of foodstuffs (OJ L 175, 19/07/93)

**Commission Directive 93/46/EEC** of 22 June 1993 replacing and modifying the Annexes to Council Directive 92/109/EEC on the manufacture and placing on the market of certain substances used in the illicit manufacture of narcotic drugs and psychotropic substances (OJ L 159, 01/07/93)

**Sixteenth Commission Directive 93/47/EEC** of 22 June 1993 adapting to technical progress Annexes II, III, V, VI and VII of Council Directive 76/768/EEC on the approximation of the laws of the Member States relating to cosmetic products (OJ L 203, 13/08/93)

**Council Directive 93/68/EEC** of 22 July 1993 amending Directives 87/404/EEC (simple pressure vessels), 88/378/EEC (safety of toys), 89/106/EEC (construction products), 89/336/EEC (electromagnetic compatibility), 89/392/EEC (machinery), 89/686/EEC (personal protective equipment), 90/384/EEC (non-automatic weighing instruments), 90/385/EEC (active implantable medicinal devices), 90/396/EEC (appliances burning gaseous fuels), 91/263/EEC (telecommunications terminal equipment), 92/42/EEC (new hot-water boilers fired with liquid or gaseous fuels) and 73/23/EEC (electrical equipment designed for use within certain voltage limits) (OJ L 220, 31/08/93)

**Council Directive 93/83/EEC** of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission (OJ L 248, 06/10/93)

**Council Directive 93/96/EEC** of 29 October 1993 on the right of residence for students (OJ L 317, 18/12/93)

**Council Directive 93/97/EEC** of 29 October 1993 supplementing Directive 91/263/EEC in respect of satellite earth station equipment (OJ L 290, 24/11/93)

**Council Directive 93/104/EC** of 23 November 1993 concerning certain aspects of the organization of working time (OJ L 307, 13/12/93)

**Council Directive 93/109/EC** of 6 December 1994 laying down detailed arrangements for the exercise of the right to vote and stand as a candidate in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals (OJ L 329, 30/12/93)

**Council Regulation (EEC) No 315/93** of 8 February 1993 laying down Community procedures for contaminants in food (OJ L 37, 13/02/93)

**Council Regulation (EEC) No 2081/93** of 20 July 1993 amending Regulation (EEC) No 2052/88 on the tasks of the Structural Funds and their effectiveness and on coordination of their activities between themselves and with the operations of the European Investment Bank and the other existing financial instruments (OJ L 193, 31/07/93)

**Council Regulation (EEC) No 2082/93** of 20 July 1993 amending Regulation (EEC) No 4253/88 laying down provisions for implementing Regulation (EEC) No 2052/88 as regards coordination of the activities of the different Structural Funds between themselves and with the operations of the European Investment Bank and the other existing financial instruments (OJ L 193, 31/07/93)

#### 1994

**Commission Directive 94/1/EC** of 6 January 1994 adapting some technicalities of Council Directive 75/324/EEC on the approximation of the laws of the relating Member States to aerosol dispensers (OJ L 23, 28/01/94)

**Commission Directive 94/2/EC** of 21 January 1994 implementing Council Directive 92/75/EEC with regard to energy labelling of household electric refrigerators, freezers and their combinations (OJ L 45, 17/02/94)

**Commission Directive 94/3/EC** of 21 January 1994 establishing a procedure for the notification of interception of a consignment or a harmful organism from third countries and presenting an imminent phyto sanitary danger (OJ L 32, 05/02/94)

**Council Directive 94/5/EC** of 14 February 1994 supplementing the common system of value added tax and amending Directive 77/388/EEC -Special arrangements applicable to second-hand goods, works of art, collectors' items and antiques (OJ L 60, 03/03/94)

**Council Directive 94/8/EC** of 21 March 1994 amending Directive 78/660/EEC as regards the revision of amounts expressed in ecus (OJ L 82, 25/03/94)

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**Directive 94/9/EC of the European Parliament and of the Council of 23 March 1994 on the approximation of the laws of the Member States concerning equipment and protective systems intended for use in potentially explosive atmospheres (OJ L 100, 19/04/94)**

**Directive 94/10/EC of the European Parliament and of the Council of 23 March 1994 materially amending for the second time Directive 83/189/EEC laying down a procedure for the provision of information in the field of technical standards and regulations (OJ L 100, 19/04/94)**

**Directive 94/11/EC of the European Parliament and of the Council of 23 March 1994 on the approximation of the laws, regulations and administrative provisions of the Member States relating to labelling of the materials used in the main components of footwear for sale to the consumer (OJ L 100, 19/04/94)**

**Commission Decision 94/11/EC of 21 December 1993 on a common technical regulation for the general attachment requirements for public pan-European cellular digital land-based mobile communications (OJ L 8, 12/01/94)**

**Commission Decision 94/12/EC of 21 December 1993 on a common technical regulation for the telephony application requirements for public pan-European cellular digital land-based mobile communications (OJ L 8, 12/01/94)**

**Council Directive 94/13/EC of 29 March 1994 amending Directive 77/93/EEC on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community (OJ L 92, 09/04/94)**

**Directive 94/18/EC of the European Parliament and of the Council of 30 May 1994 amending Directive 80/390/EEC coordinating the requirements for the drawing up, scrutiny and distribution of the listing particulars to be published for the admission of securities to official stock-exchange listing, with regard to the obligation to publish listing particulars (OJ L 135, 31/05/94)**

**Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994 on deposit-guarantee schemes (OJ L 135, 31/05/94)**

**European Parliament and Council Directive 94/22/EC of 30 May 1994 on the conditions for granting and using authorizations for the prospecting, exploration and production of hydrocarbons (OJ L 164, 30/06/94)**

**Directive 94/25/EC of the European Parliament and of the Council of 16 June 1994 on the approximation of the laws, regulations and administrative provisions of the Member States relating to recreational craft (OJ L 164, 30/06/94)**

**Commission Directive 94/26/EC of 15 June 1994 adapting to technical progress Council Directive 79/196/EEC on the approximation of the laws of the Member States concerning electrical equipment for use in potentially explosive atmospheres employing certain types of protection (OJ L 157, 24/06/94)**

**Council Directive 94/28/EC of 23 June 1994 laying down the principles relating to the zootechnical and genealogical conditions applicable to imports from third countries of animals, their semen, ova and embryos, and amending Directive 77/504/EEC on pure-bred breeding animals of the bovine species (OJ L 178, 12/07/94)**

**Council Directive 94/29/EC of 23 June 1994 amending the Annexes to Directives 86/362/EEC and 86/363/EEC on the fixing of maximum levels for pesticide residues in and on cereals and foodstuffs of animal origin respectively (OJ L 189, 23/07/94)**

**Council Directive 94/30/EC of 23 June 1994 amending Annex II to Directive 90/642/EEC relating to the fixing of maximum levels for pesticide residues in and on certain products of plant origin, including fruit and vegetables and providing for the establishment of a list of maximum levels (OJ L 189, 23/07/94)**

**Seventeenth Commission Directive 94/32/EC of 29 June 1994 adapting to technical progress Annexes II, III, V, VI and VII of Council Directive 76/768/EEC on the approximation of the laws of the Member States relating to cosmetic products (OJ L 181, 15/07/94)**

**Council Directive 94/33/EC of 22 June 1994 on the protection of young people at work (OJ L 216, 20/08/94)**

**European Parliament and Council Directive 94/34/EC of 30 June 1994 amending Directive 89/107/EEC on the approximation of the laws of Member States concerning food additives authorized for use in foodstuffs intended for human consumption (OJ L 237, 10/09/94)**

**Directive 94/35/EC of the European Parliament and of the Council of 30 June 1994 on sweeteners for use in foodstuffs (OJ L 237, 10/09/94)**

**Directive 94/36/EC of the European Parliament and of the Council of 30 June 1994 on colours for use in foodstuffs (OJ L 237, 10/09/94)**

**Commission Directive 94/38/EC of 26 July 1994 amending Annexes C and D to Council Directive 92/51/EEC on a second general system for the recognition of professional education and training to supplement Directive 89/48/EEC (OJ L 217, 23/08/94)**

**Commission Directive 94/39/EC** of 25 July 1994 establishing a list of intended uses of animal feeding stuffs for particular nutritional purposes (OJ L 207, 10/08/94)

**Commission Directive 94/40/EC** of 22 July 1994 amending Council Directive 87/153/EEC fixing guide lines for the assessment of additives in animal nutrition (OJ L 208, 11/08/94)

**Council Directive 94/43/EC** of 27 July 1994 establishing Annex VI to Directive 91/414/EEC concerning the placing of plant protection products on the market (OJ L 227, 01/09/94)

**Council Directive 94/45/EC** of 22 September 1994 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees (OJ L 254, 30/09/94)

**Commission Directive 94/46/EC** of 13 October 1994 amending Directive 88/301/EEC and Directive 90/388/EEC in particular with regard to satellite communications (OJ L 268, 19/10/94)

**Commission Directive 94/49/EC** of 11 November 1994 updating the list of entities covered by Council Directive 91/296/EEC on the transit of natural gas through grids (OJ L 295, 16/11/94)

**European Parliament and Council Directive 94/52/EC** of 7 December 1994 amending for the second time Directive 88/344/EEC on the approximation of the laws of the Member States on extraction solvents used in the production of foodstuffs and food ingredients (OJ L 331, 21/12/94)

**Commission Directive 94/59/EC** of 2 December 1994 amending for the third time the Annexes to Council Directive 77/96/EEC on the examination of *Trichinae* (*Trichinella spiralis*) upon importation from third countries of fresh meat derived from domestic swine (OJ L 315, 08/12/94)

**Council Directive 94/65/EC** of 14 December 1994 laying down the requirements for the production and placing on the market of minced meat and meat preparations (OJ L 368, 31/12/94)

**Council Directive 94/71/EC** of 13 December 1994 amending Directive 92/46/EEC laying down the health rules for the production and placing on the market of raw milk, heat-treated milk and milk-based products (OJ L 368, 31/12/94)

**Council Directive 94/80** of 19 December 1994 laying down detailed arrangements for the exercise of the right to vote and to stand as a candidate in municipal elections by citizens of the Union residing in a Member State of which they are not nationals (OJ L 368, 31/12/94)

**Council Decision 94/117/EC** of 21 February 1994 laying down the minimum requirements as regards structure and equipment to be met by certain small establishments ensuring the distribution of fishery products in Greece (OJ L 54, 25/02/94)

**Council Decision 94/268/Euratom** of 26 April 1994 concerning a framework programme of Community activities in the field of research and training for the European Atomic Energy Community (1994 to 1998) (OJ L 115, 06/05/94)

**Commission Decision 94/341/EC** of 3 June 1994 amending Commission Decision 93/437/EEC laying down specific conditions for importing fishery products from Argentina (OJ L 151, 17/06/94)

**Council Decision 94/370/EC** of 21 June 1994 amending Decision 90/424/EEC on expenditure in the veterinary field (OJ L 168, 02/07/94)

**Council Decision 94/445/EC** of 11 July 1994 on inter-administration telematic networks for statistics relating to the trading of goods between Member States (Edicom) (OJ L 183, 19/07/94)

**Commission Decision 94/470/EC** of 18 July 1994 on a common technical regulation for attachment requirements for terminal equipment interface for ONP 2 048 kbit/s digital unstructured leased line (OJ L 194, 29/07/94)

**Commission Decision 94/471/EC** of 18 July 1994 on a common technical regulation for general terminal attachment requirements for Digital European Cordless Telecommunications (DECT) (OJ L 194, 29/07/94)

**Commission Decision 94/783/EC** of 14 September 1994 concerning the prohibition of PCP notified by the Federal Republic of Germany (Only the German text is authentic) (OJ L 316, 09/12/94)

**Commission Decision 94/796/EC** of 18 November 1994 on a common technical regulation for the pan-European integrated services digital network (ISDN) primary rate access (OJ L 329, 20/12/94)

**Commission Decision 94/797/EC** of 18 November 1994 on a common technical regulation for the pan-European integrated services digital network (ISDN) basic access (OJ L 329, 20/12/94)

**Commission Decision 94/821/EC** of 9 December 1994 on a common technical regulation for attachment requirements for terminal equipment interface for ONP 64 kbit/s digital unstructured leased line (OJ L 339, 29/12/94)

**Council Decision 94/936/EC** of 20 December 1994 amending Decision 90/218/EEC concerning the placing on the market and administration of bovine somatotrophin (BST) (OJ L 366, 31/12/94)



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**Council Decision 94/942/CFSP** on the joint action adopted by the Council on the article J3 of the Treaty on European Union concerning the control of exports of dual-use goods (OJ L 367, 31/12/94)

**Decision 94/1110/EC of the European Parliament and of the Council** of 26 April 1994 concerning the fourth framework programme of the European Community activities in the field of research and technological development and demonstration (1994 to 1998) (OJ L 126, 18/05/94)

**Council Regulation (EC) No 40/94** of 20 December 1993 on the Community trade mark (OJ L 11, 14/01/94)

**Council Regulation (EC) No 519/94** of 7 March 1994 on common rules for imports from certain third countries and repealing Regulations (EEC) Nos 1765/82, 1766/82 and 3420/83 (OJ L 67, 10/03/94)

**Council Regulation (EC) No 520/94** of 7 March 1994 establishing a Community procedure for administering quantitative quotas (OJ L 66, 10/03/94)

**Council Regulation (EC) No 1468/94** of 20 June 1994 amending Regulation (EEC) No 2092/91 on organic production of agricultural products and indications referring thereto on agricultural products and foodstuffs (OJ L 159, 28/06/94)

**Council Regulation (EC) No 1164/94** of 16 May 1994 establishing a Cohesion Fund (OJ L 130, 25/05/94)

**Council Regulation (EC) No 1921/94** of 25 July 1994 amending Regulation (EC) No 519/94 on common rules for imports from certain third countries (OJ L 198, 30/07/94)

**Council Regulation (EC) No 2062/94** of 18 July 1994 establishing a European Agency for Safety and Health at Work (OJ L 216, 20/08/94)

**Council Regulation (EC) No 2100/94** of 27 July 1994 on Community plant variety rights (OJ L 227, 01/09/94)

**Commission Regulation (EC) No 2515/94** of 9 September 1994 amending Regulation (EEC) No 1848/93 laying down detailed rules for the application of Council Regulation (EEC) No 2082/92 on certificates of specific character for agricultural products and foodstuffs (OJ L 275, 26/10/94)

**Council Regulation (EC) No 3283/94** of 22 December 1994 on protection against dumped imports from countries not members of the European Community (OJ L 349, 31/12/94)

**Council Regulation (EC) No 3284/94** of 22 December 1994 on protection against subsidized imports from countries not members of the European Community (OJ L 349, 31/12/94)

**Council Regulation (EC) No 3285/94** of 22 December 1994 on the common rules for imports and repealing Regulation (EC) No 518/94 (OJ L 349, 31/12/94)

**Council Regulation (EC) No 3286/94** of 22 December 1994 laying down Community procedures in the field of the common commercial policy in order to ensure the exercise of the Community's rights under international trade rules, in particular those established under the auspices of the World Trade Organization (OJ L 349, 31/12/94)

**Council Regulation (EC) No 3295/94** of 22 December 1994 laying down measures to prohibit the release for free circulation, export, re-export or entry for a suspensive procedure of counterfeit and pirated goods (OJ L 341, 30/12/94)

**Council Regulation (EC) No 3381/94** of 19 December 1994 on the control of exports of certain dual-use goods and technologies and of certain nuclear products and technologies (not yet published)

**Council Regulation (EC) No 3384/94** of 21 December 1994 on the notifications, time limits and hearings provided for in Council Regulation (EEC) No 4064/89 on the control of concentrations between undertakings.

**Annex 3 - Judgements of the Court of Justice cited**

**Judgement of the Court of 18 May 1982** ..... § 61

**Joined Cases 115 and 116/81**

Reports of cases 1982 pages 1665 - 1713

Rezguia Adoui v Belgian State and City of Liège

Dominique Cornuaille v Belgian State

Reference for a preliminary ruling: Tribunal de Première Instance - Liège

Public policy - Right of residence or establishment

**Judgement of the Court of 9 February 1994** ..... § 66

**Case C-319/92**

Reports of cases 1994 pages I-0425

Salomone Haim v Kassenzahnärztliche Vereinigung NordRhein

Reference for a preliminary ruling: Bundessozialgericht - Germany

Establishment and provision of services - Dental practitioners - Recognition of evidence of formal qualifications.

**Judgement of the Court of 9 February 1994** ..... § 66

**Case C-154/93**

Reports of cases 1994 pages I-0451

Abdullah Tawil-Albertini v Ministre des Affaires sociales

Reference for a preliminary ruling: Conseil d'Etat - France

Establishment and provision of services - Dental practitioners - Recognition of evidence of formal qualifications.

**Judgement of the Court of 20 February 1979** ..... § 72

**Case 120-78**

Reports of cases 1979 pages 649 - 665

Rewe-Zentral AG v Bundesmonopolverwaltung für Branntwein

Reference for a preliminary ruling: Hessisches Finanzgericht

Measures having an effect equivalent to quantitative restrictions

**Judgement of the Court of 2 February 1994** ..... § 83

**Case C-315/92**

Reports of cases 1994 pages I-0317

Verband sozialer Wettbewerb v Clinique Laboratoires SNC and Estée Lauder Cosmetics GmbH.

Reference for a preliminary ruling: Landgericht Berlin - Germany

Free movement of goods - Name of a cosmetic product liable to mislead consumers.

**Judgement of the Court of 24 March 1994** ..... § 84

**Case C-80/92**

Reports of cases 1994 pages I-1019

Commission of the European Communities v Kingdom of Belgium

Failure of a Member State to fulfil its obligations - Legislation applicable to radiocommunications transmitters and receivers.

**Judgement of the Court of 2 June 1994** ..... § 85

**Joined Cases C-69/93 and C-258/93**

Reports of cases 1994 pages I-2355

Punto Casa Spa v Sindaco del comune di Capena and Comune di Capena and promozioni polivalenti Venete soc. coop. ARL (PPV) v Sindaco del comune di Torri di Quartesolo and comune di Torri di Quartesolo

Reference for a preliminary ruling: Preturia circondariale di Roma - Italy

Interpretation of Articles 30 and 36 of the Treaty - Prohibition on certain kinds of Sunday tradings.

**Judgement of the Court of 24 November 1993** ..... § 85  
**Joined Cases C-267/91 and C-268/91**  
 Reports of cases 1993 pages I-6097  
 Criminal proceedings against Bernard Keck and Daniel Mithouard  
 Reference for a preliminary ruling: Tribunal de Grande Instance de Strasbourg - France  
 Free movement of goods - Prohibition of resale at a loss.

**Judgement of the Court of 22 June 1994** ..... § 86  
**Case C-426/92**  
 Reports of cases 1994 pages I-2757  
 Federal Republic of Germany v deutsches Milk Kontor GmbH.  
 Reference for a preliminary ruling: Bundesverwaltungsgericht - Germany  
 Aid for skimmed-milk powder - Systematic frontier inspections - Measure having equivalent effect  
 - Costs of inspections - Charge having equivalent effect.

**Judgement of the Court of 15 September 1994** ..... § 87  
**Case C-293/93**  
 Reports of cases 1994 pages I-4249  
 Criminal proceeding against Ludomira Neeltje Barbara Houtwipper  
 Reference for a preliminary ruling: Arrondissementsrechtbank Zutphen - Netherlands  
 Free movement of goods - Precious metals - Compulsory Hallmark.

**Judgement of the Court of 22 June 1982** ..... § 87  
**Case 220/81**  
 Reports of cases 1982 pages 2349 - 2363  
 Criminal proceeding against Timothy Frederick Robertson and others  
 Reference for a preliminary ruling: Tribunal de Première Instance - Brussels  
 Measures having an effect equivalent to quantitative restrictions.

**Judgement of the Court of 2 August 1993** ..... § 93  
**Case C-303/92**  
 Reports of cases 1993 pages I-4739  
 Commission of the European Communities v Kingdom of the Netherlands  
 Failure of a Member State to fulfil obligations - Failure to implement directives within the  
 prescribed period.

**Judgement of the Court of 9 August 1994** ..... § 160  
**Case C-359/92**  
 Reports of cases 1994 pages I-3681  
 Federal Republic of Germany v Council of the European Union  
 Action for annulment of measures - Directive 92/59/EEC on general product safety - Legal base -  
 Article 100a and third indent of Article 145 of the EEC Treaty

**Judgement of the Court of 24 March 1994** ..... § 167  
**Case C-275/92**  
 Reports of cases 1994 pages I-1039  
 Her Majesty's Customs and Excise v Gerhart Schindler and Jörg Schindler  
 Reference for a preliminary ruling: High Court of Justice, Queen's Bench Division - United  
 Kingdom  
 Lotteries

**Judgement of the Court of 22 March 1994** ..... § 167  
**Case C-375/92**  
 Reports of cases 1994 pages I-0923  
 Commission of the European Communities v Kingdom of Spain  
 Failure of a Member State to fulfil its obligations - Freedom to provide services - Tourist guides -  
 Professional qualification required by national rules

**Judgement of the Court of 9 August 1994..... § 167**  
**Case C-43/93**

Reports of cases 1994 pages I-3803  
Raymond Vander Elst v Office des migrations internationales  
Reference for a preliminary ruling: Tribunal administratif de Châlons-sur-Marne - France  
Freedom to provide services - Nationals of a non-Member Country

**Judgement of the Court of 20 October 1993 ..... § 219**  
**Joined Cases C-92/92 and C-326/92**

Reports of cases 1993 pages I-5145  
Phil Collins v Imtrat Handelgesellschaft MbH and Patricia Im und Export Verwaltungsgesellschaft MbH and Leif Emanuel Kraul v EMI Electrola GmbH  
Reference for a preliminary ruling: Landgericht München I and Bundesgerichtshof - Germany  
Article 7 of the Treaty - Copyright and related rights.

**Judgement of the Court of 20 March 1990 ..... § 264**  
**Case 21/88**

Reports of cases 1990 pages I-0889  
Du Pont de Nemours Italiana Spa v Unita sanitaria locale N. 2 di Carrara and 3 M Italiana Spa  
Reference for a preliminary ruling: Tribunale amministrativo regionale della Toscana - Italy  
Public supply contracts - Reservation of 30% of such contracts to undertakings situated in a particular region.

**Judgement of the Court of 18 March 1992 ..... § 268**  
**Case C-24/91**

Reports of cases 1992 pages I-1989  
Commission of the European Communities v Kingdom of Spain  
Directive 71/305/EEC - Award of public works contracts - Publication of notice of contract  
rogation for reasons of urgency.

**Judgement of the Court of 3 May 1994 ..... § 268**  
**Case C-328/92**

Reports of cases 1994 pages I-1569  
Commission of the European Communities v Kingdom of Spain  
Failure to fulfil obligations - Public supply contracts - Pharmaceuticals products and specialities.

**Order of the President of the Court of 22 April 1994 ..... § 269**  
**Case C-87/94 R**

Reports of cases 1994 pages I-1395  
Commission of the European Communities v Kingdom of Belgium  
Application for interim measures - Urgency - Balance of interests - Public safety - Public contracts  
- Transport sector - Council Directive 90/531/EEC

**Judgement of the Court of 14 April 1994 ..... § 270**  
**Case C-389/92**

Reports of cases 1994 pages I-1289  
Ballast Nedam Group nv v Belgian State  
Reference for a preliminary ruling: Raad van Staat - Belgium  
Freedom to provide services - Public works contracts - Registration of contractors - Relevant identity

**Judgement of the Court of 26 April 1994 ..... § 271**  
**Case C-272/91**

Reports of cases 1994 pages I-1409  
Commission of the European Communities v Italian Republic  
Concession for the lottery computerization system.

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## **Annex 4 - Recent reports, studies and surveys on the single market**

*(The following list does not purport to be exhaustive. It is a selection of publications dealing with the practical operation of the single market in general which have been brought to the attention of the Commission during 1994. It does not include the many academic works which are published regularly in this field).*

- *The Single European Market: Centralization or Competition among national rules*, The Royal Institute of International Affairs, 1994
- *Resolution and report of the conference of the Ministers for Economic affairs of the German "Länder" on the implication for business of the transitions to the Single market*, German "Länder", March 1994
- *The internal Market, a balance sheet*, BEUC, 14 April 1994
- *European Business Survey*, Grant Thornton International Business Strategies Ltd, May 1994
- *Single Market Compliance unit: breakdown of detailed cases*, Department of Trade and Industry, May 1994
- *Rapport: achever la réalisation d'un vrai marché unique pour renforcer nos entreprises*, CNPF, June 1994
- *Report: road freight transport in the single European Market*, Committee of Enquiry, July 1994
- *Enquête: "Marché intérieur européen: où en est-on?"*, Fédération des Entreprises de Belgique, September 1994
- *Conference on Technical Barriers to Trade in Europe*, Danish Ministry of Industry and Coordination/European Commission/Confederation of Danish Industries, 13 September 1994 (Copenhagen)
- *Avis sur le rapport annuel sur le fonctionnement du marché intérieur*, Comité Economique et Social, September 1994
- *Non Tariff Barriers in the European Union*, Eurochambres, October 1994
- *Enquête: "Europe, mode d'emploi"*, Direction Générale Provence-Alpes-Côte d'Azur, May-October 1994
- *Ligne ouverte pour l'identification des problèmes des entreprises espagnoles dans le marché unique*, Ministère du Commerce et du Tourisme, October 1994
- *Enquête sur le fonctionnement du marché unique*, VNO-NCW (Pays-Bas), December 1994
- *The Single Market and the future development of the European Union*, Confederation of British Industry, October 1994
- *The EC's internal market: implementation, economic consequences, unfinished business*, Peter Hoeller and Marie-Odile Louppe, OECD, Paris, 1994

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## **Annex 5 - Organizations which provided contributions to the Report**

- Association of European Airlines (AEA)
- Association of European Cooperative and Mutual Insurers (ACME)
- British Telecom (BT)
- Bureau International des Producteurs d'Assurances et de Réassurances (BIPAR)
- Commissao do Mercado de Valores Mobiliarios
- Confédération Européenne de l'Immobilier
- Confédération Fiscale Européenne (CFE)
- Confederation of British Industry (CBI)
- Confederation of the Food and Drink Industries of the EEC (CIAA)
- Conférence Européenne des Administrations des Postes et des Télécommunications (CEPT)
- Coordination Committee for the Textile Industries in the European Economic Community (COMTEXTIL)
- Danmarks Rederiforening Danish Shipowners' Association
- E C Committee of the American Chamber of Commerce in Belgium (AMCHAM)
- EFTA Surveillance Authority
- Eurocommerce
- European Association of Consumer Electronics Manufacturers (EACEM)
- European Association of Cooperative Banks (EACB)
- European Association of Craft, Small and Medium-Sized Enterprises (UEAPME)
- European Automobile Manufacturers' Association (EAMA)
- European Business Aviation Association (EBAA)
- European Chemical Industry Council (CEFIC)
- European Community Mortgage Federation
- European Community's Independent Airline Association (ACE)
- European Confederation of Associations of Manufacturers of Insulated Wires and Cables (EUROPACABLE)
- European Confederation of Medical Suppliers Associations (EUCOMED)
- European Consumers' Organisation (BEUC)
- European Cosmetic Toiletry and Perfumery Association (COLIPA)
- European Crop Protection Association (ECPA)
- European Federation of Engineering Consultancy Associations (EFCA)
- European Federation of Equipment Leasing Company Associations
- European Fertilizers Manufacturers' Association (EFMA)
- European Grouping of the Electricity Supply Industry (EURELECTRIC)
- European Organisation of Reinforced Plastics and Composite Materials (GPRMC)
- European Petroleum Industry Association (EUROPIA)
- European Proprietary Medicines Manufacturers' Association (AESGP)
- European Salt Producers' Association
- European Savings Bank Group (ESBG)

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- European Society for Opinion and Marketing Research (ESOMAR)
- European Telecommunications and Professional Electronics Industry (ECTEL)
- Fédération des Experts Comptables Européens (FEE)
- Federation of European Publishers (FEP)
- International Air Transport Association (IATA)
- International Confederation of Paper and Board Converters in Europe (CITPA)
- Liaison Group of the European Mechanical, Electrical, Electronic and Metalworking Industries (ORGALIME)
- Liaison Office of the Rubber Industry of the E.E.C. (BLIC)
- Sociedade Portuguesa de Autores
- Union des Confédérations de l'Industrie et des Employeurs d'Europe (UNICE)