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**THE SINGLE MARKET:
THE 1991 PROGRAMME FOR
COMPLETING THE INTERNAL MARKET
AND ITS IMPLEMENTATION**

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THE 1991 PROGRAMME FOR
COMPLETING THE INTERNAL MARKET
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FOREWORD

The following study is the result of different notes prepared at the request of Members of the European Parliament concerning the state of play in regard to the EC's 1992 Single Market programme. Therefore they aim in the first place to arrange and summarize information available from ready-made sources. As such the study as a whole lays no claims to originality although parts of it are of original conception. However in view of the continuous need for guidelines in the vast and complex whole of measures and programmes which the 1992 operation implies, the contribution was considered useful for purposes of clarification. All sources upon which it is based are mentioned in the list of literature at the end. For those paragraphs where sources have been used more extensively footnotes have been used. The study presents the situation up to the end of June 1991.

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THE SINGLE MARKET

AN OVERVIEW OF THE 1992 PROGRAMME FOR COMPLETING THE INTERNAL MARKET AND ITS IMPLICATIONS FOR EUROPE'S TRADING PARTNERS

I. INTRODUCTION

1.1. Objective of the European Economic Community

The idea of creating a single European economy based on a common market is not a new one. The opening lines of the Treaty of Rome signed in 1957 spelt this goal out in specific terms:

The Community shall have, as its task, by establishing a common market and progressively approximating the economic policies of Member States, to promote throughout the Community a harmonious development of economic activities, a continuous and balanced expansion, an increase in stability, an accelerated raising of the standard of living and closer relations between the States belonging to it. (Article 2, EEC Treaty).

The Treaty clearly envisaged that the Community's prosperity, and in turn, its political and economic unity, would depend on a single, integrated market.

1.2. An incomplete market

When the European Community was established in 1957 many different economic barriers existed between the six original Member States which hindered the attainment of a single internal market. These barriers included customs duties, quotas on the import and export of each others' goods, immigration controls on the movement of citizens, monetary controls on the flow of capital between Member States and restrictive rules on the establishment of companies. The Treaty of Rome contained fundamental provisions aimed at eradicating such barriers.

In the period between 1957 and 1969 a Customs Union was established. In addition a Common Customs Tariff (CCT) was put into place. The establishment of the CCT and the exercise of powers by the Community in its administration led to the development of a Community trade policy. Competition was to be encouraged by the implementation of comprehensive anti-trust rules. Rapid progress was made in the early years. At the end of the transitional period the initial outlines of the common market were drawn in. In the field of non-tariff barriers action by the European Commission, backed up by the Court of Justice's dynamic decision-making, advanced the liberalisation of trade considerably. In addition, initial measures were taken to liberalise the factors of production. At the same time, common policies were being developed in a number of fields: customs cooperation, agriculture, transport, competition, research and development, industry, the regions, social adjustment and the harmonisation of indirect taxes. However,

the recession of the 1970s, two oil crisis and the difficulties caused by the accession of six new Member States, have all reduced progress. The Council became dogged by political in-fighting and Member States began to introduce protectionist measures. By the 1980s most of the transitional periods had passed but a whole series of trade barriers still existed, leaving the European market fragmented.

1.3. Europe's degrading position

In the race for competitiveness Europe lost more and more ground to its rivals, the United States and Japan, in an international market which was undergoing complete re-organisation. By whatever criteria - rates of industrial growth, share of external trade, investment or productivity-Community industry was lagging behind that of Japan and the USA. This was most marked in the high technology sector (data processing, office automation, precision instruments, electrical goods and electronics)¹. The reasons for that state of affairs included the relatively smaller size of Community companies, the persistence of national markets separated from one another by technical, legal or administrative barriers, and industries' consequent inability to achieve the necessary economies of scale in research, development and production. There was a consequent unwillingness to invest. Only a single European market of 320m people which allows business to flourish on a large scale, both in terms of manufacturing, research and innovation, could provide the base and the environment to meet the challenge. The failure of what is potentially the largest trading block in the world² to achieve the objective enshrined in the Treaty of Rome and, indeed the growth in the number of national protectionist measures inhibiting intra-Community trade, raised fundamental questions as to the value of the common market. In 1984 the Member States found the renewed political will to achieve the original objective of the Treaty of Rome by 31 December 1992. The Commission was asked (European Council, Brussels, 1985) to draw up a detailed action programme and a precise timetable. The Commission's response was the White Paper on completing the internal market.

¹ The Community's share of external trade in manufactured goods fell by 1.4% between 1979 and 1985 as against increases of 0.7% for the US and 5.4% for Japan, whilst in the information technology and office automation sectors the Community's share fell by 2.2% whilst that of the US and Japan increased by 3.3% and 5.5% respectively. Investment in the Community in the period 1981 to 1987 increased by 4% compared with 30% in the US and 31% in Japan. The highest Community productivity rate in electrical and electronic goods was 47% of that in the US whilst that of Japan was almost two and half times the US rate.

² Population: EEC 323m., US 244m., Japan 122m.;
GDP: EEC 3,669bn ECU, USA 3,869bn ECU, Japan 2,058bn ECU (1987 data).

II. THE 1992 PLAN

2.1. Target

The 1992 plan represents an ambitious attempt by the European Community and its Member States to develop a single coherent and cohesive European market place free from internal barriers. It is to be defined as an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured (Article 8A, EEC added by Article 13 of the Single European Act).

The internal market will be a self-contained market in which goods can circulate freely under conditions of undistorted competition and throughout which individuals and companies, regardless of where they are based within the Community, may carry on their business upon equal terms with their competitors. This is to be achieved by eliminating all artificial barriers to trade between the individual markets of the Member States.

2.2. The operational and legal instruments

The programme for the completion of the internal market was set out in the Commission's White Paper of June 1985 (COM(85)310). The White Paper, to which the European Parliament made a significant contribution, presents a detailed analysis of the barriers which need to be abolished and the positive action which needs to be taken before the single market can be achieved. It details some 300 measures (now reduced to 282) which must be implemented and the timetable within which this is to be accomplished. The White Paper's analysis of the steps to be taken is set out under three convenient headings:

- (1) Removal of physical barriers;
- (2) Removal of technical barriers;
- (3) Removal of fiscal barriers.

Subsequent to the publication of the White Paper, the European Community adopted the Single European Act (SEA) in February 1986 and ratified it in July 1987. The Single European Act reforms the Treaty of Rome. It provides the appropriate legal framework for completion of the internal market and lays down the guidelines for accompanying policies, which are essential for the proper functioning of the single market. Its objective is to accelerate European integration through improvements in the functioning of the institutions (widening of powers) and a greater flexibility in the decision-making process. A significant change designed to facilitate implementation of the White Paper was the introduction of a new 'cooperation procedure' which involves increased participation by the European Parliament and decision-making in the Council by qualified majority (replacing the established unanimity rule) with respect of measures concerning the internal market.

In February 1988, an agreement was reached at the EEC Summit meeting in Brussels to reform Community finances. This agreement may have resolved a major barrier to increase economic integration by providing the EC Commission with a budget that is large enough to carry out the 1992 programme. More

significantly, the Brussels Summit eliminated the budget issue as a major point of contention among Member States and demonstrated a continuing commitment to the goals of the EEC Treaty.

2.3. Barriers and their removal

The removal of physical barriers

Immigration and customs (or, more specifically, tax) controls represent the major visible barriers to the creation of a single European economy. In 1957 the EEC Treaty abolished tariffs and quantitative restrictions for intra-Community trade. However, other non-tariff barriers have proved to be persistent and costly, imposing burdens on industry through border formalities, transportation and handling charges for goods that are shipped from one Member State to another. The direct costs of frontier formalities for goods traded within the Community, and associated administrative costs for the public and private sector are estimated to amount to 24.3bn ECUs per year, the equivalent of 8.8% of the total value of goods traded in the EEC (Commission Report, 'The Economics of 1992'). Politically, it is important for individuals to feel part of an integrated Community within which they can move freely from one country to another without scrutiny. Rather than attempting to simplify existing procedures the EEC Commission proposes abolishing all frontier controls between Member States. Although internal frontier borders will be eliminated, goods and people entering the EEC will continue to be subject to customs and immigration controls.

1. Free movement of individuals

All frontier controls are to be abolished in stages, and Community citizens are to bear a European Community passport. Immigration, security and tax policies (tax free allowances for intra-EEC travellers, tax exemptions for imports of personal property) are to be coordinated among Member States to eliminate intra-EEC border delays. A common policy will be developed to deal with problems relating to national security, such as crime, drugs, terrorism and firearms. Policies affecting third country citizens will also be implemented (right of asylum, status of refugees, visa policies and extradition). The elimination of internal border controls will lead to tighter external border controls.

2. Free movement of goods

Non-tariff related frontier formalities have proved to be a major obstacle to the realisation of an integrated economy. The paper work involved in moving goods across national borders takes many forms and represent the spectrum of non-tariff barriers to trade, including tax collection, statistics collection, export and import licensing restrictions, trade quota enforcement, plant and animal health controls, and control of banned products, among others. The Commission has put forward a number of proposals aimed at simplifying formalities and the gradual abolition of controls.

3. Transport

Transportation between European countries is heavily regulated. Transport quotas limit the number of trips that transporters are allowed to make. The elimination of the current systems of national and Community permits allocated by quotas by the end of 1992, will remove the need to check permits at frontiers. Moreover, the process of harmonisation of vehicle safety standards will allow safety checks at frontiers to be phased out. The EC Commission has introduced proposals for the development of a common transport policy to allow transport firms to operate freely throughout the EC.

The removal of technical barriers

Technical barriers are not visible in the way that frontier barriers are. However, they are frequently as disruptive to trade and at considerable cost to doing business across borders. The targets are barriers which exist within Member States as a result of law, standards or practices which inhibit or prevent intra-Community trade in goods and services, or the freedom of business to set up in other Member States. They are imposed to protect health, safety and the environment. The objective of the 1992 plan is to replace national standards with European standards.

1. Elimination of barriers in relation to goods

In the past the Community has proceeded towards the elimination of technical barriers by an elaborate process of harmonisation of national legislative provisions of the Member States. The traditional method of harmonisation has proved to be totally inadequate to take account of new production conditions and the new requirements of industrial society, whether in regard to safety, pollution prevention or consumer protection. Based on the *Cassis de Dijon* Judgement of the European Court of Justice³ and the Resolution of 7 May 1985 adopted by the Council, the Commission formulated its new approach to achieving common standards in its 1985 White Paper. The 'new approach' is based on two guiding principles: mutual recognition of existing standards where possible, and harmonisation in those exceptional cases where there are legitimate but conflicting views on essential public policy matters among the Member States. The approach also implies a different orientation of harmonisation efforts, away from the time-consuming development of so-called 'vertical' standards (this is standards developed on a product-by-product basis) and towards simpler 'horizontal' standards (which define broad features that whole categories of products are to have). In practice this new approach should increase the speed and flexibility of the Community in reducing technical trade barriers.

³ The Judgement established a principle of mutual recognition of standards. Products legally manufactured and marketed in one member country have legal access to markets of the other member countries, even when the regulations differ. The import and sale of a product can only be refused if, in the particular circumstances of the case, it is necessary to satisfy a limited range of public interests (health, safety and consumer and environmental protection).

The White Paper lists as priority areas for action the sectors of food stuffs, information technology and TV communications, and construction and building products. It envisages introduction of 'framework' or 'horizontal' directives for broad categories of products, including industrial machinery, pressure vessels, and building materials, mainly setting forth safety requirements. Finally, it proposes a series of directives for specific products, including motor vehicles, tractors and agricultural machines, processed food, pharmaceuticals, chemicals, construction products and miscellaneous manufacturers (e.g. household appliances, toys, measuring instruments, and personal protective devices).

In summary the Commission's approach consist of the following main elements:

1. Increased mutual recognition of voluntary standards. In future internal market initiatives a clear distinction will be drawn between what is essential to harmonise and what may be left to mutual recognition of national regulations and standards.
2. Legislative harmonisation will in future be restricted to laying down essential health and safety requirements which will be obligatory in all Member States. However, EEC wide mandatory standards will also be developed when there are compelling commercial reasons for doing so (inter-operability of equipment, maintenance of free competition, consumer choice), for example, in telecommunications, information technology, and other high technology areas, such as bio-technologies. Conformity with these mandatory requirements will entitle a product to free movement.
3. Harmonisation of industrial standards by the elaboration of European standards will be left to the European standardisation bodies CEN and CENELEC. In the transitional period while European standards are being developed, the mutual acceptance of national standards, with agreed procedures, should be the guiding principles.
4. Finally the creation of new technical barriers is prevented on the basis of the so-called 'mutual information' directive (83/189). It empowers the Commission to impose a one-year standstill on standard activities which form a risk for trade discrimination.

The success or failure of the 1992 plan will depend, to a greater extent, on the elimination of the technical barriers that currently divide Europe into twelve separate markets. Those industries in which technological innovation is most rapid should benefit in significant ways from harmonisation. The ability to introduce new technologies or to incorporate the latest technical advances into products without fear of new barriers should provide a substantial inducement to companies operating in Europe.

The introduction of the new approach procedure has increased pressure on the activities of the standardisation bodies. The actual establishment of new standards is beginning to lag the schedule demanded by the timetable set by the new approach directives and the EC's standards mandate for CEN/CENELEC. The Commission has published a Green Paper on the developments of European standardisation (3 October 1990). Industry is given time (until 30 April 1991) to comment on it. The objective of the Green Paper is to draw the attention of producers and users of industrial products in the private and

public sector to the strategic significance of European standardisation for the realisation of the Single Market.

2. Elimination of barriers in relation to services

The provision of services constitutes a key sector which has taken second place in Community legislative policy until now. (58.5% of Value-Added to the Community economy 1985). Certain service sectors, such as banking, insurance and telecommunications, are heavily regulated and subject to differing rules in the various Member States. In most cases companies must meet the rules of the country in which they wish to set up business or provide services, this is the rule of the 'host country'. The Commission's approach to the constraints upon competition caused by such restrictions is to rely on 'home country' rules and supervision.

Apart from measures to eliminate the need for frontier checks, the Commission's initiatives concerning the completion of the internal market in transport centred on the attainment of the freedom to provide freight and passenger services in the air, sea, road and inland waterway sectors and the elimination of distortions of competition. The White Paper not only outlines specific measures to achieve these aims, but also emphasise the role of a common transport policy for the Community, covering such measures as state aids policy, improvement of railway financing, harmonisation in the road sector and adding a Community dimension to infrastructure planning and investment.

If Community firms are to catch up with their international rivals in the strategically important new technology sectors (notably information technologies and telecommunications), they will have to benefit from an EEC wide market without technical barriers. The internal market programme therefore includes measures to ensure common standards for the next generation of digital cellular mobile telephones (Directive adopted June 1987), high definition TV and satellite broadcasting, to create a Community wide market for TV services, to establish a coordinated Community policy on the information services market, and guarantee full mutual recognition of type approval of telecommunications terminal equipment.

3. Elimination of barriers in relation to free movement of individuals

The removal of remaining obstacles preventing free movement of workers is regarded as a crucial part of the programme by the Commission. The Commission's proposals in this field are concentrated on the comparability of vocational training qualifications, mutual recognition of higher education diplomas and various professional qualifications, right of residence and harmonisation of income tax provisions for workers in frontier areas. For those professions where specific harmonisation did not already exist, the Commission proposed a framework directive establishing a general system for the mutual recognition of higher education diplomas awarded on completion of professional education and training of at least three years duration (adopted by the Council in December 1988). A similar framework directive regarding professional education and training of less than three years duration was proposed by the Commission in 1989, but has not yet been adopted by the Council.

4. Opening up of public procurement

The public procurement and supply contracts of the Member States represent a significant proportion of the Community GDP (9% GDP, 15% GDP including national industries), yet only a fraction of such contracts have been awarded to companies from other Member States. Potential savings from opening up public procurement contracts to the most competitive bidder could account for some 17.5bn ECU per year (*The Economics of 1992*, Commission Report). The public sectors in the Member States have consistently favoured national suppliers for strategic reasons (e.g. defence), to support high technology, to maintain dual national suppliers and national competition, to maintain employment or protect important private sector companies. The most important industries benefitting from this protection are building and construction, transport equipment, other than motor vehicles, electrical goods, capital equipment and telecommunications. These practices have continued notwithstanding long-standing Community directives. The Commission has made a number of specific proposals:

- to tighten up controls on the procedures for tendering and award of public supply and works contracts;
- to extend public procurement to four important areas - transport, production and distribution of energy, water and telecommunications;
- to increase transparency of the public procurement procedures;
- to establish effective means of monitoring and enforcing the operation of the proposed directives.

5. A favourable environment for business cooperation

If companies are to take full advantage of the creation of a genuine common market, they must be able to cooperate with each other, particularly cross frontiers, without being hampered by excessive legal, fiscal and administrative problems. The Commission's internal market programme therefore includes measures to consolidate the existing EC programme on harmonising company law, to harmonise legal protection of bio-technology inventions and computer programmes and to offer Community-wide protection of intellectual property without having to apply for national protection in each Member State (notably the proposed Community patent and trade mark). In addition the programme includes measures to remove disincentives to cross border corporation between companies arising from taxation.

6. Capital movements

According to the Commission's White Paper the liberalisation of capital movements in the EEC, with the ultimate aim of creating a common market in financial services, should serve three objectives: it must support the large internal market by giving undertakings access to more efficient financial services; promote monetary stability, which is an essential pre-condition for the proper operation and development of the internal market; stimulate the Community's economic development by promoting optimum allocation of savings within the EEC. The final stage of liberalisation of capital movements in the Community was agreed by the Council of Finance Ministers on 13 June 1988 and came into force on the 1 July 1990.

The removal of fiscal barriers

The targets are barriers created by the existence in the Member States of different types and rates of indirect taxes. Problems arise particularly from value-added tax and excise duties. At the moment, indirect taxes are collected by the country where the goods are finally consumed. The exporter exports goods tax free; an importer pays VAT and excise duties in the country of importation. As long as indirect taxes and rates differ substantially between Member States, frontier controls will be necessary to ensure the due collection of taxes. The Commission takes the view that varying rates of indirect taxation have further negative effects: they create artificial price differences between countries to the detriment of consumers and represent an obstacle to free movement of goods and limit competition. In August 1987 the Commission issued a package of all the proposals needed for the elimination of fiscal frontiers and the approximation of VAT and excise duties. Rates of VAT were to be approximated within two bands, 4%-9% for basic necessities and a standard rate between 14% and 20%. The complex structure of excise duties would need complete harmonisation. The concept behind the proposals was that Member States were highly unlikely to eliminate tax controls at frontiers for as long as there was a substantial risk that their citizens would travel in large numbers to make purchases in other Member States in order to benefit from lower tax rates, thereby depriving their home country of tax revenue. At present the original Commission proposals have been shelved. The Community still intends to move to a system of paying VAT in the country of origin, but a transitional system will remain in effect through 1996, while the whole issue is reviewed and studied. Different Member State VAT policies and levels will continue to be applied, subject to a process of gradual approximation.

2.4 Progress and problems in implementing the White Paper

As both the Commission and the European Council at Hannover (June 1988) have stated, the process of completing the single market is now irreversible because of the combined effect of the speeding up of decision-making, which has shown that the objective is credible, and the preparation being made by businesses, which are already integrating the European dimension in their strategy. Almost 70% of the proposals in the 1985 programme have now been adopted (decision taken or Common Position reached). This total includes key decisions in areas such as liberalisation of capital movements and banking services, the opening up of public procurement, merger control, mutual recognition of diplomas, the implementation of the new approach in the field of standards and the opening up of air transport.

Rapid progress has been achieved in the areas relating to the removal of technical barriers, this is mostly in those areas for which qualified majority voting in the Council applies. The Commission's balanced approach of combining mutual recognition and harmonisation in such a way as to avoid excessive regulation whilst at the same time assuring at Community level a greater protection of public interest, contributed to quicker results.

For a long time the implementation of the White Paper programme has shown serious imbalances in particular in those areas where internal market proposals are based on articles requiring unanimity. Only recently (December

1990/March and June 1991) a breakthrough was reached in the field of taxation, although actual measures still have to be adopted by the Council. As regards free movement of persons Member States are coming closer to an agreement. The Schengen Convention serves here as an inspiring example. However more and more use is made of the Treaty-type intergovernmental instrument, which places the legal text outside the scope of community law. In some fields where decisions can be taken by qualified majority voting, such as animal and plant health, customs, agro-food, pharmaceuticals and new approach sectors, application demands the adoption of implementing measures at Community level. Because of difficulties in reaching agreement in the Council on delegating implementing powers to the Commission on matters which are essentially management issues, the process has slowed down.

A new area of concern regarding the success of the 1992 project is also developing. The accelerated rate of adoption of legal instruments by the Council masks a worrying lack of progress in transposing these into national law, and in the effective implementation of decisions taken at Community level. Although the situation has improved markedly (from 30% to 70% transposition rate, December 1990) the slow progress in some countries is giving cause for concern. Lack of consistency in practical application can have economic and industrial consequences or consequences for the credibility of the Community in the eyes of the general public. The uniform application of Community legislation is a necessary pre-requisition for the effective and equitable operation of the single market.

2.5. Accompanying policies

A vast number of Community policies contributed to the completion of the internal market, while pursuing their own particular aims (e.g. technological research and development, and energy policy). Many of these policies were given prominence in the Single European Act, which referred in most cases to their link with establishment of the internal market. In this context, seven areas are particularly important:

1. Economic and social cohesion

One of the Community's basic objectives here is to narrow the gaps between the different regions and to promote the development of the least favourite. The main instrument for achieving this objective is to be found in the structural funds for which the rules of application have been fundamentally revised with effect from 1 January 1989. The most important task for the Commission now is the full establishment of the Community's Support Framework (CSF) on the basis of the plans proposed by the Member States.

This will provide the overall guidelines to be followed by the structural fund allocations which, from now on, will reflect the five priority objectives defined during the revision process.

- (1) Development of undeveloped regions;
- (2) Conversion of industrial regions in decline;
- (3) Long-term unemployment;
- (4) Professional insertion of youth;
- (5) Adaption of agricultural structures and development of rural zones.

Implementation of the CSF takes account of growing awareness of the opening up of public procurement, support for product testing and certification infrastructures, the abolition of trade restrictions authorised pursuant to Article 115 and the effects of the suppression of controls at the Community's internal borders. At present discussion focuses on the Commission's already modified Proposal (COM(89)238) concerning the medium-term transport infrastructure programme, which the Council has still not adopted. The proposal provides the creation of a supplementary credit line in the Community's budget, which is not acceptable to the Council.

2. The social dimension

There is a broad consensus regarding the conception that a single Community market should rest on the foundation of coherent social conditions. It is essential that the measures to be taken do not reduce the level of protection already attained in working conditions in the Member States. Therefore the Commission has presented a total of ten proposals for directives to the Council, of which six have already been adopted or about to be adopted. In the follow-up to the Hannover European Council (June 1988), the Commission has adopted a programme of work with a view to arriving at a Community social threshold. This comprises various factors closely linked to the establishment of the internal market (free movement; protection measures; working conditions and labour relations).

The European Council meeting in Madrid, following on from the Conclusions of the Hannover and Rhodes European Councils, thus took the view that when completing the single market social and economic aspects should be given equal weight and should therefore be developed in a balanced way. At the December 1989 European Council meeting in Strasbourg the Heads of State or of Government of 11 Member States (excluding the United Kingdom) therefore adopted the Social Charter, declaring certain fundamental rights for workers throughout the EEC. The Commission has also presented its action programme for implementing the Charter (COM(89)568).

3. Competition policy

The Commission regards a strong competition policy as being fundamental to the successful achievement of the single market for two reasons:

- (1) To prevent mergers which impede the effective competition, including, but not limited to, mergers which create dominant positions (a dominant position may exist with market share as low as 35 or 40%), and
- (2) To enforce strictly the state aid rules to prevent individual Member States from inhibiting competition in certain industries by funding uncompetitive or declining companies or preserving 'national champions'.

The 1992 Programme will encourage more joint ventures and other forms of corporation arrangements, particularly by small- and medium-sized enterprises. The Commission anticipates that the strategies adopted by industry to take advantage of the change in competitive environment will lead to a large number of mergers and acquisitions. It believes that substantial mergers may be required in industries where there is significant over-capacity or far more companies than in the corresponding US or Japanese markets (e.g. boiler making and turbine generators) and that from the competitive viewpoint the market should be viewed as the whole Community. In other markets it is encouraging mergers which do not lead to dominant positions.

The Commission possesses certain limited powers to control mergers under Article 86 of the Treaty, which curtails abuse of a dominant position and possibly under Article 85 following the *Phillip Morris* Decision of the Court of Justice in 1987. However these powers are inadequate, since it would only allow a posteriori control. In December 1989, the Council of Ministers completed (after 13 years of difficult discussions) the adoption of a regulation on mergers having an EC dimension. This major step, which had to be agreed on unanimously, for the first time, places control over large scale mergers effectively in the hands of the EC rather than Member Governments. The regulation has taken effect from 1 September 1990.

4. The environmental protection

The Single European Act has confirmed the environmental policy as one of the Community's fundamental policies by stressing the importance the Community attaches to the protection of the environment and by setting out the objectives of and the basic principles underlying the Community's environmental policy. The SEA marks a distinct shift in emphasis in the Community's environmental policy from being primarily motivated by economic concerns to being more concerned with protecting the environment and the improvement of the quality of life.

One of the basic principles underlying the Community's environmental policy is that '*the polluter should pay*'. A further basic principle is that EC measures relating to the environment must '*take as a base a high level of protection*'. In this field the European Parliament carefully watches the harmonisation process. It has stimulated the Commission to introduce measures, particularly on such matters as chemicals or emissions from motor vehicles, that in no way conflict with environmental protection objectives. Nevertheless, in order to avoid deadlocks in the Council, as a result of the unanimity procedure (Article 130S EEC), the Commission continues to base its proposals on Article 100A EEC rather than Article 130S EEC whenever the measure concerned is capable of affecting the free movement of goods. The White Paper for the completion of the single market does not involve any important new initiatives on the environment but a continuation of existing policies, including:

- reduction of gaseous emissions from vehicles;
- maximum levels of pesticide residues in animal and human food;
- control of plastic materials in contact with food;
- permissible noise levels for products ranging from tower cranes to lawn mowers and household appliances.

5. Science and technology

The Community, organised within the framework programmes for research, is developing a common scientific and technological policy in important areas (e.g. new technologies, energy, the environment, raw materials) with the aim of maintaining or restoring Europe's international competitiveness and, as a result, helping to reduce unemployment in the Community through innovations and new technologies. In particular Community policy in this area is promoting the single market (e.g. through the development of uniform specifications and product standards, etc.). At the moment the third framework programme for 1990-1994 has been launched (5.7bn. ECU budget).

6. Consumer protection

The free circulation of goods and services is based on the protection of health and safety, and more generally, consumer protection. The implementation of health and safety principles must be translated into a permanent improvement of product quality on which consumers can feel safe to rely on in a market without frontiers. Consumer protection is covered by current legislation either laying down essential product safety requirements or measures to harmonise rules on the provision of services. To supplement these specific measures, the adoption of the proposed general product safety directive will give consumers more effective protection and supplement the directive on product liability. To complete the set of horizontal directives a proposal on civil liability for defective services is on its way. The Commission's aim is to establish a Community safety policy associated with the completion of the internal market. (See also the adopted Directive on consumer credit).

7. Trans-european networks

In December 1989 the Council adopted a resolution calling on the Commission to develop an integrated approach to European infrastructures, based on the networks most essential to the operation of the single market. In response to that request and after the presentation of the intermediate report drawn up by the working group which was produced in January 1990 (COM(90)310 final), the Commission presented a new Communication to the Council and the European Parliament - 'Towards Trans-European Networks for a Community Action Programme' COM(90)585 final.

In this Communication the Commission proposes a programme of action aiming at the achievement of projects or networks, with the adoption of guidelines on financing as well as a series of measures of general importance destined to accelerate the emergence of trans-european networks, and also a draft Resolution of the Council for the adoption of a programme of action in the field of transport, energy and telecommunications.

III. THE IMPACT OF THE 1992 PLAN

3.1. The expected benefits

A large number of analyses have been made of the potential benefits of the internal market. The first of these was the report which the Commission had carried out into the costs of non-Europe, the so-called Cecchini Report (The Economics of 1992, Commission report). The Commission projects that the elimination of physical, technical and fiscal barriers will result in

- (1) a medium-term economic gain throughout the EEC of an increase in GDP of 4.5% to 7%;
- (2) a drop in consumer prices of 4.5% to 6.1%;
- (3) the creation of as many as 1.8 to 5 million new jobs.

Although the original study was followed by a flow of commentaries and more detailed analysis, the Commission's macro-economic assessment holds to, even though alternative estimates are sometimes lower, and also higher than those of the Commission.

The internal market will undoubtedly serve as a catalyst for growth by improving the conditions of Community supply, and the markets response has so far been positive. The introduction of major innovations (micro processors, biotechnology, computer assisted design) heralds a new technological revolution which may well stimulate economic growth. The dynamic effects of 1992 cannot be over-estimated. Economic recovery in the Community is partly due to the present favourable economic climate and the redirection of economic policy in the early 1980s, which have helped to make investment cost effective, and to the investment drive following the low level of investment of the 1970s. The catalytic effect produced by the positive expectations of companies is a clear sign that the credibility of the 1992 programme must be maintained.

3.2. Anticipating activity

Both business circles and governments are actively preparing and anticipating, to such an extent that, in the assessment of the Council meeting in Strasbourg (December 1988) with 3 years still to go, the benefits are being felt in all sectors of the economy. The authorities are taking appropriate implementing measures in such diverse areas as the budget, physical planning and taxation. These preparatory measures have played their part in economically and politically strengthening the Community since 1984 (industrial output has grown by 20% and 8.5 million jobs have been created). The single market is already having a dynamic effect on intra-Community trade: in constant decline between 1973 and 1985, it climbed back in 1988 to its early 1970s level at 62% of the volume of Member States' exports. This turn around is the best testimony to the revitalisation of economic integration in the Community.

Necessary adjustments are being made at all levels (at national and regional level). The most obvious impact of the internal market is at

sectoral level. The White Paper's legislative programme more directly concerns certain industrial sectors - e.g. through the opening up of public procurement and the elimination of technical barriers - and services, in particular transport, banks and insurance companies. The Commission, and subsequently the Member States, have identified the industrial sectors most directly affected by the internal market. There are 40 out of 120 sectors, accounting for some 50% of value-added by industry which will probably be most directly concerned. However, although the internal market has a major impact on the sectors which depend traditionally on public aid (telecommunications, electrical equipment, energy and railway equipment, pharmaceutical products), some sectors may also be affected by the opening up of the Community market and increased competition from non-Community countries (e.g. textiles, footwear, consumer electronic products, toys, shipbuilding and the car industry). Corporate strategies within these sectors will determine how successfully they can cope with changes in the competitive environment.

At the individual company level changes are most needed to face the increased competition generated by the growth in intra-community trade which the abolition of barriers and a general internationalisation of the economy will bring. Firms are planning to step up investment to meet a search in demand motivated by the prospect of 1992. They are currently taking decisions both on allocating resources in-house and on establishing strategies on acquisitions and corporation in anticipation of the post-1992 market structure. The corporate strategies adopted can be seen at all levels in the value-added chain:

- research for an optimum size which may lead to a reduction in the number of production sites, an increase in production per site and mergers and acquisitions within the same sector both inside and outside the Community;
- at the production level where investment is being made in new products, product ranges are being extended and production processes improved;
- at the level of trade where cooperation agreements are being concluded to penetrate new markets and distribution networks are being bolstered;
- investment in human resources through better training and pan-European recruitment.

These strategies are today being followed by numerous large companies, as well as by a still too limited number of small- and medium-sized operators (Community SME programmes).

The approach of 1992 has boosted a significant increase in both mergers and joint ventures. Mergers and acquisitions will be driven by companies disposing of peripheral activities to concentrate on core activities and the desire to acquire a market position in new geographic markets. The opening up of heavily regulated sectors is not expected to motivate companies to set up new operations in new markets but rather to acquire an existing company with an established position in the new market as a platform for expansion. Joint-ventures are expected to increase as a result of collaboration on research and development and agreement to share the risks of setting up or expanding production in marketing. There is also expected to be a significant increase in the acquisition of minority interests in competitors in new markets as a means of cooperation and expanding the other parties' activities. Such minority stakes also have defensive advantages for the other company in protecting them against an unwanted bid.

3.3. The limits to the benefits of the internal market

A number of areas will not be harmonised. In particular, continuing inconsistencies in company taxation may give rise to significant distortions in the provision of goods and services across borders. Likewise, labour law and trade union practices will continue to differ between Member States. Overhead costs will vary between countries because of differences in wages, personal taxation, national insurance or social security contributions, pensions, energy costs and so on. Natural barriers caused by differences in languages, cultures, traditions and methods of doing business will perpetuate some divisions in the internal market. Some products such as food products may not be sold throughout the Community because of varying tastes. Products may have to comply with different specifications, even following harmonisation (e.g. right-hand drive cars for the UK and Ireland).

3.4. Outlook

Economic and Monetary Union will help to bolster the impact of the internal market by encouraging greater integration of European economies and fostering the competitive environment needed to instil dynamism into industry. It will also be of direct benefit to European industry because it will reduce exchange rate uncertainty and make intra-community transactions cheaper. It is, however, also essential if the potential benefits of 1992 are to be translated into reality, particularly those deriving from the liberalisation of movements of capital and the integration of the financial services market in the Community. Finally, European Monetary Union and the 1992 programme share a common purpose in that they impose discipline and additional constraints on Member States by making them more inter-dependent.

IV. THE SINGLE MARKET AND EUROPE'S TRADING PARTNERS

4.1. The significance of external economic relations for the EC

A brief outline of the importance of external economic relations for the European Community shows the following picture:

- EC exports to third countries represent 20.4% of total world trade and imports from third countries 19.5% (excluding intra-Community trade);
- In 1988 EC exports to third countries amounted to 9.2% and imports from third countries to 9.8% of the gross national product of the Community;
- The EC's main markets (customers and suppliers) are the USA, Japan, Switzerland, Sweden and Austria;
- The Community plays a major role in international service markets and in contrast to the USA and Japan, has achieved a surplus on the invisible account in recent years.

However, despite the positive developments of recent years, the Community is faced with:

- a general increase in protectionist tendencies (growing number of non-tariff barriers); and
- a diminishing share of the high technology market in third countries.

4.2. Europe as a World Partner

The EC's external economic relations have reached a scale where third countries are affected by most Community policies, in particular policies connected with the creation of the internal market. With a 20% share of world trade, the EC is the world's largest trading area, and more than 120 bilateral treaties and around 30 multilateral agreements connect it to a network of interdependency.

In this context the deadline of 1992, as it approaches, is causing concern in many third countries. In view of the confusingly large number of extremely technical regulations and legal, fiscal and administrative measures which must be harmonised or introduced in the 12 Member States of the Community, it is perfectly understandable that anxiety has arisen among Europe's trading partners. The debate is primarily over whether the Community will become an inward, protectionist fortress using existing and possible new trade measures in a way that would impede trade with non-Community countries, or whether it would adopt a more liberal trading position and become, in the words of the Commission's Press Release of 19 October 1988 'Europe World Partner', in international trade.

The Community has repeatedly rejected the protectionist option and has, as shown in 4.1., good reasons for doing so. Indeed, a protectionist

internal market would lessen its prosperity and endanger its political influence. In view of the fact that Community exports already account for some 10% of the EC's gross national product, free and open world trade is of vital interest to the Community.

In October 1988 the European Commission stressed that the Community of 1992 will not be a fortress, but a reliable partner for third countries, fulfilling its international commitments and continuing to fight for the liberalisation of world trade, while naturally defending its own interests. In connection with 1992, this means that new advantages arising from the large internal market should be matched by comparable advantages in third countries.

The Community Heads of State or Government gave a clear statement of this policy on 27-28 June 1988 at the meeting of the European Council in Hannover:

'The internal market should not close in on itself. In conformity with the provisions of GATT, the Community should be open to third countries, and must negotiate with those countries where necessary to ensure access to their markets for Community exports. It will seek to preserve the balance of advantages accorded, while respecting the unity and the identity of the internal market of the Community.'

This statement was confirmed by the Rhodes European Council of 2-3 December 1988 in its long declaration on the international role of the European Community:

'The European Council reaffirms that the single market will be of benefit to Community and non-Community countries alike by ensuring continuing economic growth. The internal market will not close by itself. 1992 Europe will be a partner and not a 'fortress Europe'. The internal market will be decisive factor contributing to greater liberalisation in international trade on the basis of the GATT principles of reciprocal and mutual arrangements. The Community will continue to participate in the GATT Uruguay Round, committed as it is to strengthen the multilateral trading system. It will also continue to pursue with the United States, Japan and the other OECD partners, policies designed to promote sustainable non-inflationary growth in the world economy.'

In summary, the following principles apply to foreign trade in relation to the internal market:

- 1992 will benefit not only in undertakings in the Community but also in third countries;
- The Community will ensure that the large internal market has no protectionist effects;
- The Community will continue to fulfil all its bilateral and multilateral obligations;
- In sectors of the internal market where there are as yet no multilateral rules (e.g. services, excluded sectors in public procurement) the EC will strengthen the multilateral system on the basis of balanced, mutual advantages.

4.3. The attitude of third countries to 1992

In general, the attitude of individual countries and groups of countries is determined by their competitive strength and current degree of penetration of Community markets, although attitudes tend to vary depending on the sectors of the economy involved.

This paragraph only deals with the attitude of industrialised countries and does not touch upon problems relating to development countries.

1. EFTA countries

EFTA countries have a basically positive attitude stemming from their competitiveness and close links with the EC market. However, they are concerned that they may be increasingly affected by Community regulations, the drafting of which they cannot influence (e.g. in connection with the removal of technical barriers). The proposed reciprocity in the services sector also gives cause for concern. Closer institutional cooperation and a greatest possible de facto integration in the internal market is being sought by the establishment of a European Economic Area.

2. Central and East European countries and the USSR

These countries have expressly welcomed the internal market in some cases (Soviet Union), while voicing concern at possible protectionism (which they see in the application of EC anti-dumping procedures), rather than the programme for the internal market. Some of them will have officially applied for full EC membership by the end of the century.

3. The USA and Canada

Both countries were initially strongly critical but now take a fairly positive view of 1992. The large multinational undertakings in particular see opportunities in the internal market. As in EFTA countries, close attention is being paid to the Community's application of reciprocity in the various sectors (inter alia services and public procurement) and to the dismantling of intra-Community trade restrictions and the harmonisation of industrial standards.

4. Japan

Japan fears that the internal market may further restrain its export offensive, that current national export quotas in the automobile sector may be transferred to Community level, and that technical standards and provisions may be adopted to its disadvantage. Japanese industry is therefore intensively engaged in building factories in Community Member States, with a view to being inside the internal market by 1992 and also to escape the pressure of EC anti-dumping proceedings. The 1991 bilateral agreement between the EC and Japan would in principle resolve the pending trade disputes in particular with regard to automobiles. It foresees gradual liberalisation of Japanese car import and production (transplants) in the EC.

4.4 Trade policy issues

The implementation of the measures for completing the internal market will have economic implications for third countries. However some of these measures, covering key areas of the single market (financial markets, high technology, testing and certification) are referring directly to trade policy issues such as import restrictions, local content, rules of origin and reciprocity. It is precisely in those areas, where high interests are at stake, that Europe's most important trading partners are closely watching and critically commenting on the Community's 1992 policies. In trans-atlantic trade relations the antagonisms of 1988 appear to have been dispelled with the Bush administration looking for achieving consensus (Trans-Atlantic Declaration, December 1990).

However the GATT talks which were to have finished during the meeting in Brussels in December 1990 broke down over an EC-US dispute over the scope of agricultural liberalisation.

Both the EC and US apparently miscalculated the depth of each other's entrenchment. The EC tried to present the problem as resulting from overambitious US expectations for agricultural reform. But the US position enjoyed widespread support, and Cairns Group members and many developing countries are deeply disappointed with the EC's unwillingness to make significant concessions. The US failed to realise the extent to which the farm negotiations had tested the EC's political process to the limit. The dispute within the EC will take time to resolve and will be subject to trade-offs with other European issues, such as monetary union.

Despite the preoccupation with agriculture, advances were made in other areas. Finalisation of these agreements, however, is in limbo, pending a final agricultural settlement. The importance of these agreements to the US weighs heavily in favour of American support for an agricultural compromise; many sectors of US business were solidly behind these talks, particularly those on services and intellectual property. They will push the Bush administration to agree on an agricultural compromise in order to rescue these other agreements.

Yet many developing countries, and especially Cairns Group members, believe they stand to gain little in these areas, and thus their focus remains on agriculture. Therefore many of these agreements might not survive the failure to agree on agriculture.

Sectoral agreements which would be at stake in the case of a Uruguay-Round failure are in particular:

1. **Services.** Negotiators made breakthroughs in establishing the framework for a General Agreement on Trade in Services (GATS) to liberalise world trade in services.
2. **Textiles.** Negotiators were near to an agreement on phasing out the Multi-Fibre Arrangement (MFA) in three stages over a ten-year transition period beginning in 1992.
3. **Rules of origin.**

4. **Intellectual property.** The outlines of a limited intellectual property agreement were appearing, which would have set minimum levels of intellectual property protection and mandate that these levels be applied on an MFN basis.

It is not only the above-mentioned sectoral agreements that would be at stake in the case of a Uruguay-Round failure. In particular, on the part of the USA there has been a trend towards seeking bilateral solutions to trading problems instead of taking a multilateral approach within the framework of GATT. While it is unlikely that a reduction of the role of GATT and increasing protectionism would lead to a repetition of the trade wars of the thirties, a high degree of regionalisation of world trade would probably be seen. Europe would form one bloc with the EC as the centre, East Asia another with Japan as the centre, and North and South America would be the third centred around the USA.

1. **Safeguard measures (quantitative import restrictions)**

One of the major imperfections of the common market as it operated prior to the launching of the 1992 programme, and as it still operates, is the existence of 'protective' or safeguard measures, quotas or surveillance at a national level. These are measures sanctioned by the GATT agreements and by Article 115 EEC, which permit a Member State, in certain specified and limited circumstances, to deny access to its market of certain specified products.

There are safeguard measures in existence in relation to a large range of products⁴. The public is most familiar with national import restrictions on Japanese cars.

The solution proposed by the Commission to the safeguard problem is the elimination of all safeguard measures as between Member States as a logical consequence of the abolition of all internal border controls. The Council has already accepted to eliminate a number of quantitative restrictions in the framework of the Uruguay Round negotiations. The Commission has also engaged in informal talks with Japan on solving the problems expected to arise when national import quotas are scrapped. The Commission envisages replacing safeguard measures which protect national economies either by safeguard measures that protect the whole Community or by restraint agreements applicable to the whole Community in the framework of GATT. Certain safeguard measures will disappear altogether. (See also following paragraph).

2. **Rules of origin and local content: the question of 'forced investment'**

Fears of protectionism have resurfaced, provoked by recent Community measures in the areas of cars, high technology and broadcasting. It is claimed that the EC is using its origin rules and anti-circumvention rules for

⁴ The total number of restrictions can be broken down by a Member State as follows: Spain 33%, Italy 24%, Portugal 13%, France 8%, Benelux and Germany 5%, United Kingdom, Denmark and Greece 3% and Ireland 1%.

dumping to favour local content, and hence force foreign companies to manufacture in the Community.

The Community has no general 'local content' policy, though there are specific instances where a reference to content of a product is used. Certain policies established or being considered by the EC, especially in the areas of import restrictions, anti-dumping, utilities procurement and broadcasting, will possibly have the effect of inducing non-European investment in the EC, as a substitute for import. However, this is not necessarily the intended effect of such policies.

Where 'local content' applies, (in areas such as telecommunications, broadcasting, cars, semi-conductors and electronic products) the question of the origin of a product will be of great importance. The rules of origin determine the 'nationality' of goods and thus eligibility for preferential trading privileges or the applicability of anti-dumping duties. The Community's definition of origin is set out in Article 5 of the 1968 Framework Regulation 802/68 and is in conformity with agreed international tariff rules under the Kyoto Convention. Where two or more countries are concerned in the manufacture of a product, it will have its origin in the country where the '*last substantial process or operation is carried out*', provided that this is economically justified. This rule has been proposed as the leading principle in the first GATT agreement on rules of origin which could be concluded as soon as the ongoing Uruguay Round can be successfully ended.

Car industry

The EC decision on quotas for passenger cars and other vehicles imported from Japan has been a widely followed trade issue relating to the 1992 project. The local content debate was rekindled by an Anglo-French conflict which broke into the European arena when the then UK Trade and Industry Secretary, Lord Young, complained to the Commission in March 1989 that exports to France of Nissan cars produced in Sunderland were being countered against France's annual quota of Japanese cars.⁵ During the course of 1989 French and German industry confederations came down on the opposite side of the car quota issue in major public statements.

On 19 December 1989 the Commission itself finally issued its statement of general policy (a *single Community motor vehicle market*) in which it indicated that it would seek an EC wide limitation on Japanese passenger car imports for a transitional period of at least five years in order to avoid a sudden shock to EC car industry. The Commission has endorsed the policy of an open market as its ultimate goal. It makes an important commitment that the EC will not establish local content rules for cars produced by Japanese companies in the EC.

⁵ France restricts imports of Japanese cars to 0.87% of the French car market. Although locally produced components accounted for over 60% by value of all components used at the Sunderland Plant (a threshold already used in the Community's '*Assembly plant*' anti-dumping legislation) and were set to increase, France complained that production did not meet its own rules on local content, stipulating a minimum local content of 70%, and so were classified as Japanese, not British.

The United States is concerned that 'transplants' (Japanese owned plants manufacturing vehicles outside of Japan) may be covered by export restrained arrangements to be negotiated by the EC with Japan in the years following 1992, either explicitly or through the introduction of origin rules. They are also concerned at the possible diversion of trade to US markets caused by restrictions on Japanese direct exports and on Japanese transplants worldwide.

Semi-conductors

The most intensive trade policy debate between the United States and the EC regarding any industrial product concerned the new EC rule of origin for semi-conductors.

On 3 February 1989 the Commission announced the finding of its origin committee that henceforth the 'wafer fabrication' stage of production would have to be completed in the EC, to confer EC origin. Previously, testing and assembly in the EC were considered adequate.

The EC has justified its decision on the grounds of 'last substantial transformation', according to its rules of origin. Clearly, wafer fabrication is the stage of most substantial transformation and greatest value-added, but it is technically arguable whether this stage represents the last substantial transformation.

The decision has two effects: an immediate import substituting effect⁶ and, combined with other EC policies, a potential down-stream effect⁷.

The European Commission and the United States Government have held a number of discussions on the semi-conductor rules of origin decision and the probable ensuing decision on rules of origin of printed circuit boards. Both parties agreed on submitting the case to GATT discipline.

The EC recommends that the GATT agreement starts by confirming that last substantial transformation should be the sole basis for origin rules (according to the Kyoto Convention). The US approach would be based on GATT assigning the Customs Cooperation Council the task of determining problem areas for origin decisions (given the criteria for existing tariff headings).

Substantively, both points of view concentrate on the need for improved transparency, with the Community also proposing criteria of consistency, non-

⁶ The EC maintains a 14% tariff on imported semi-conductors, compared to a zero tariff in Japan, the United States and Canada. However it should be reminded that the United States and Japan together account for 87% of the world market.

⁷ The down-stream effects could affect a wide range of industries. First, the EC is currently considering a rule of origin for printed circuit boards (PCBs) of which the primary component is semi-conductor chips. The EC uses a long-standing principle that 45% or more EC content in a product may be used as a basis for conferring EC origin. By comparison the US currently confers origin on PCBs according to where they are mounted.

discrimination among trading partners and an exemption for origin rules applied under preferential trade agreements.

Whatever the outcome of the GATT Round regarding these points of view, the Court of Justice issued an important decision which may restrict the Commission's interpretation of origin. The Court of Justice reviewed the Commission's application of its anti-dumping circumvention policy to the importation of typewriters made in Taiwan by the Brother Company of Japan. In this case, the Court of Justice held that '*an intellectual transformation is not necessary to confer origin*'. That is to say, the Court found that the Commission should not single out the location of the technologically advanced elements of the manufacturing process as part of the criterion for determining where the last substantial transformation occurs. This decision will be significant not only for determining original anti-dumping cases, but also for the general application of rules of origin.

Anti-dumping

The most controversial application of EC anti-dumping rules has been directed at electronic products from the Far-East. Most notably, in the 1989 Ricoh Case, the EC accused the Japanese company of circumventing its anti-dumping order on photocopiers by assembling the products in the United States and shipping them to the EC. The Commission found that major parts were produced in Japan, and that no substantial value or further processing and manufacturing were contributed at the US facility.⁸ The so-called '*screw driver*' plant rule is used only for products subject to anti-dumping enforcements. The screw driver rule is thus not a general principle of origin or local content. Rather, it establishes that a product must contain a minimum level of non-dumping country content (40%), if it is to avoid anti-dumping penalty duties, after the producer has been found guilty of dumping by the Community. The EC does not demand that all of this content be added in the EC itself, but only outside the country named in the original complaint.

Procurement of utilities

The United States has expressed concern over the discrimination against foreign suppliers built into the procurement utilities directive agreed by the Council on 22 February 1990. This provides (in Article 29) that contracting bodies may refuse tenders, if 50% or more of the value of manufactured products forming part of the tenders is of non-EC origin. It is also stipulated that when EC and non-EC tenders are considered equivalent (taken into account a 3% price differential between tenders) the former must be preferred.

The Council and Commission have clearly stated that the 50% rule and the 3% price difference would be on the table for negotiation in the context of the GATT procurement. But it would be for the US to put on the table both

⁸ Japan has appealed this Case to GATT. In March 1990 a GATT panel ruled that the collection of anti-dumping duties on products already assembled in the Community, and the practice of resolving anti-circumvention cases through undertakings, were not in conformity with GATT obligations.

its 'Buy American' preferences and non-federal purchasing entities (including all those with special rights).

Broadcasting

The EC Council of Ministers adopted on 3 October 1989 the 'television without frontiers' directive providing for a single European market in the area of broadcasting. The Member States have to comply with the directive before 3 October 1991.

Member States are also required by the directive to 'ensure, whether practicable and by appropriate means, that broadcasters reserve for European works a majority proportion of their transmission time.' Although Commission officials stressed that the decision represented a political commitment and was not legally binding, the US considered the clause to introduce in the directive a local content requirement. Therefore it has requested GATT consultations with the Community. The Community has agreed to consult with the US although it does not consider this matter is covered by GATT obligations since GATT only covers products whereas the broadcasting directive regulates services. Consultations took place in Geneva in December 1989. The discussions focused on the question of applicability of GATT provisions to the directive. Both sides will decide whether further consultations are necessary.

From an economic point of view, the expansion of the European market predicted for the years to come will benefit US producers, providing them with greater opportunities to increase their sales to a unified market. The Community preference is based on cultural objectives (recognised by the OECD, GATT and the US themselves). The Community considers that the EC directive is compatible with its international obligations and will be applied in conformity with them.

3. Standards, testing and certification

More than any other aspect of the 1992 programme, the issue of technical standards, testing and certification, affects a broad group of industries of Europe's trading partners. The ongoing process of harmonisation has raised concern with regard to its potential of protectionism. Under the GATT standards code the Community is required to accord importers and Community producers the same rights.

The Community is fully involved in the international standards organisations and the EC policy is to work towards full international standards wherever possible. The United States has increased pressure on the Community to be formally included, or at least consulted, in work to develop the Community's new range of technical product standards. Although the 'new approach' to technical standardisation has reduced the number of European product standards, replacing them with a system of minimum requirements and the mutual recognition of national standards, the European Community's standardisation bodies, CEN (European Centre for Standardisation), CENELEC (European Centre for Electro-Technical Standardisation) and ETSI (European Telecommunications Standards Institute) continue to play an important guiding role in drawing up the specifications that producers must meet if their goods are to be traded freely in the European Community. A report by the White

House Foreign Affairs Committee criticised the EC's programme of technical standardisation for erecting protectionist barriers against US exports by refusing to take account of US technical specifications. The Commission stressed that it has no power to include third countries in the formulating of its own technical standards by CEN and CENELEC. *'This is an internal affair which concerns the Community alone'*, a Commission source said.

The Commission has repeatedly argued that the new procedure will facilitate access to the Community market for products from third countries. Stronger European standardisation reduces the risks of national deviation from agreed international standards and reinforces international discipline and standardisation at the regional level.

Several high level meetings between US Government representatives and the EC Commission have resulted in more accessibility of CEN/CENELEC to non-European manufacturers and standard bodies. However in view of an orderly participation, foreign access is limited to the official ISO/IEC national representatives.

On 21 December 1989 the Internal Market Council arrived at an agreement concerning the broad substance of the Commission's proposed framework policy regarding testing and certification. As in standardisation the global approach of the Commission is based on the principle of mutual recognition. However, recognition of non-Community tests and certificates of conformity depends upon the conclusion of a series of individual agreements with the trading partners concerned. The Community is ready to embark upon such negotiations, provided that the technical competence of the trading partner is assured and the opportunities provided by the mutual recognition agreement are equivalent for both parties.

4. Reciprocity

The controversy over reciprocity reflected again the fear of Europe's trading partners for a protectionist single market. The debate was whether the EC was moving towards a general and unilaterally defined reciprocity policy. It grew from a seat of ambiguity in the EC's proposals on liberalising trade in banking services contained in the draft Second Banking Coordination Directive. The issue was of particular concern to US banks and financial institutions, but there was also broad concern among other US companies, because of reciprocity policies appearing in a number of other 1992 policies and because the Second Banking Directive seemed to call into question rights acquired under Article 58/EEC by non-European companies long established in the EC.

The issue has now been largely diffused, if not entirely resolved. The October 1988 Commission statement, *'Europe World Partner'*, clarifies that the EC would not require *mirror image* reciprocity in foreign treatment of EC companies. Instead, it was seeking for its companies a *guarantee of similar opportunities - or at least non-discriminatory opportunities* The statement also indicates that there will be no derogation from national treatment in the EC for established companies. Concerns over the EC application of reciprocity have been further moderated by the final text of the Second Banking Directive, and by redrafts in some other policy areas.

The principle of the 'single licence' and 'home country control' will apply to non-EC subsidiaries regardless of whether they were established in the Community before or after 1992. Foreign banks will also be able to provide a whole range of financial services including securities, leasing, factoring, etc. which, in many countries, are still the preserve of specialised institutions. In return the Community asks that on third markets EC banks should have - in practice as well as in theory - the same opportunity as local banks.

On the basis of these deregulatory principles the Community is seeking to further liberalise world trade in services in the GATT services negotiations.

V. MEASURES OF GENERAL APPLICATION

5.1. Taxation⁹

Completion of the internal market requires the abolition of tax frontiers between Member States. The existence of these tax frontiers means that transactions within a Member State are currently treated differently from intra-Community transaction, and their abolition calls for major changes in indirect taxation.

1. VAT

A. The initial proposals

In order to abolish intra-Community trade barriers by 1993, differences in VAT charged in the Member States must be reduced. To bring about these necessary changes, the Commission, in its 1987 proposals, introduced a new system for charging VAT in the EC. This system would be based on the following two principles:

- VAT rates would be approximated by introducing compulsory bands: a normal rate between 14% and 20% and a reduced rate between 4% and 9%. The reduced rate would be compulsory for the following basic goods: foodstuffs (excluding alcoholic drinks), energy products for heating and lighting, supply of water, pharmaceuticals, books, newspapers and periodicals, and passenger transport, and zero rates would no longer be allowed (although derogations were proposed in 1989),
- A system of taxation in the country of origin would be introduced, thus shifting the onus of taxation from the importer to the exporter. Goods and services would be thus taxable in the country in which they are supplied and a 'clearing house' system would supervise that differences paid in the country of destination would be repaid, thus ensuring equal tax of trade within and between Member States.

The Commission's initial proposals, the approximation of rates, the abolition of the current system of refunding the VAT on exported goods and changing it on imported goods and the scrapping of limits on travellers' tax allowances, form a coherent package of measures which would allow the removal of tax frontiers in intra-Community trade. In addition a proposal on rate convergence aims to prevent any changes in the system currently in force in the Member States which would take them further away from the proposed common rate bands.

⁹ The following paragraph has been taken over from the CEC data base *Info 92*.

B. Developments

In May 1989 the Commission adopted a Communication (COM(89)260) outlining a series of suggestions and modifications to its original proposals (August 1987) in the field of indirect tax approximations. The initiative can be defined as the Commission's flexible response to end the existing deadlock in the Council on the issue. However, at its meeting on 9 October 1989, the Economic/Finance Council unanimously concluded after lengthy and difficult discussions against the principles as laid down in the Commission's new proposals expressing the fear that there would not be an accurate means of assuring reports of VAT revenue, ones collected in the exporting state. Originally the Commission refused to withdraw its proposals, since the new Council guidelines¹⁰ maintained for a transitional period beyond the date of 1992 the principle of VAT to be paid in the country of destination of the goods. However, in view of the fact that the success of the single market programme depends largely on the abolition of border controls, it was essential that the Commission cooperated constructively with the Council in this area.

At the beginning of May 1990 the European Commission adopted three proposals¹¹ to submit to the Council aimed at eliminating all controls on goods at intra-Community borders with regard to VAT as from the beginning of 1993. These proposals will implement the guidelines upheld by the Economic/Finance Council, which the Commission accepted, provided certain vital conditions were met (mainly their transitional character). They joined the proposals on excise duties (cigarettes, petrol and other petroleum products, alcoholic beverages) which are already on the Council table. On the alignment of rates, it was agreed that no increase could occur on current VAT rates of 20%, just as no decrease could occur on rates of 14%, until Member States commonly agreed on a Community-wide range of rates.

At its meetings in November and December 1990, the Council (Economic and Financial Affairs) reached agreement on the main arrangements for applying the transitional VAT system which will come into force on 1 January 1993. The political compromise reached covers not only the chargeable event of the tax but also the principles for controlling intra-Community transactions. 'Chargeable event' means the occurrence by virtue of which tax becomes chargeable, i.e. the moment when the goods are delivered or the services are performed. The tax authorities will regularly exchange information collected from firms selling to other Member States. Such a system guarantees that there will be no tax checks at the Community's internal frontiers and that goods subject to VAT will move between Member States without having to be accompanied by any administrative document. In principle from 1 January 1997, the transitional VAT arrangements will be replaced by definitive tax arrangements based on the principle of taxation in the country of origin.

¹⁰ ECOFIN Council, October, November and December 1989.

¹¹ 1) Proposal for an amendment to the Proposal for a Council Directive supplementing the common system of value-added tax and amending Directive 77/388/EEC.
2) Proposal for a Council Regulation concerning administrative cooperation in the field of indirect taxation.
3) Amended proposal for a Council Regulation on the statistics relating to the trading of goods between Member States.

Before 31 December 1994, the Commission will submit to the Council a report on the operation of the transitional arrangements accompanied by proposals on the definitive arrangements. The Council will act before 31 December 1995 on the procedures applicable under the definitive arrangements and on their entry into force, with the transitional arrangements being automatically continued until such time as the definitive arrangements enter into force.

The agreement reached by the Council (Economic and Financial Affairs) had still to be supplemented in a number of respects. On 18 March 1991, the Council (Economic and Financial Affairs) came to an agreement supplementing that of December 1990 and relating to the special arrangements to be introduced during the transitional period. Substantial progress was also made regarding the fixing of the VAT rates. The arrangements adopted by the Council will facilitate the search for an overall solution to the problem of the approximation of rates.

Three sets of special arrangements will be introduced in 1993 :

- Firstly, intra-Community **distance sales of goods** to private individuals, institutional non-taxable persons or exempt taxable persons whose intra-Community purchases of goods do not exceed a given threshold (see 3rd -) will be taxed in the Member State of destination of the goods. The term 'distance selling' here covers intra-Community sales of goods where the vendor is responsible for carriage of the goods. They are therefore sales made on the basis that the goods are delivered to the purchaser residing in a Member State other than that from which the goods came. The goods will be taxed on arrival where the annual amount of distance sales made by the vendor to one particular Member State reaches the level of ECU 1 000 000. If the above-mentioned threshold is not exceeded, the vendor will supply his goods at the VAT rate applicable in the Member State of origin. He will, however, be able to opt for taxation in the Member State of destination.
Mail-order sales will be subject to a specific threshold of ECU 35 000. The threshold above which the arrangements applicable to **purchases by institutional non-taxable persons and exempt taxable persons** will apply will be set by each Member State and may not be less than ECU 10 000. The Commission will be responsible for monitoring the operation of the special arrangements. It will propose appropriate measures where significant distortions of competition arise, in particular as regards the application by some Member States of zero rates or other extra-low rates, and also for distance sales.
- Secondly, intra-Community sales of new vehicles, whether boats, aircraft or motorized land vehicles, will be subject to tax in the Member State of destination if the purchaser is an individual, an institutional non-taxable person or an exempt taxable person whose intra-Community purchases of goods do not exceed a given threshold (see 3rd -). These arrangements will apply regardless of whether or not the new vehicle has to be registered in the Member State of destination. Detailed rules still have to be established for the levying of the tax and its control. A 'new vehicle' is defined as any vehicle which is part of the vendor's stock and which has not yet been adapted by a final consumer for his own purposes.
The condition of adaptation by the final consumer for his own purposes will be deemed to be fulfilled provided all the following criteria are met:

- documentary evidence of the sale will need to be constituted by the invoicing, delivery and, whenever registration is required, registration of the vehicle;
- the duration of actual possession should be longer than three months;
- the vehicle will have to have covered a minimum distance (3 000 km for motorized land vehicles).

These special arrangements will apply only to sales made by taxable persons. Member States will take the necessary measures to ensure that sales made by taxable persons in cases where the condition of adaptation for the consumer's own purposes has not been fulfilled. The Member State of origin will also have to take the measures necessary to prevent any double taxation.

- Thirdly and finally, the mechanism for taxing intra-Community transactions between taxable persons (intra-Community purchases of goods) will be extended to cover intra-Community purchases of goods by institutional non-taxable persons and exempt taxable persons where, in the year in question, such purchases exceed a threshold to be set by each Member State. Based on the amounts to be adopted for the 22nd VAT Directive (according to the current proposal for a 22nd VAT Directive these amounts would be between ECU 10 000 and ECU 35 000), this threshold will be fixed at a level to ensure that small firms are not obliged to declare intra-Community purchases while being exempt from declaring their sales. Even where the above-mentioned purchases do not reach the threshold set by the Member State of destination, the operators concerned will nonetheless be able to opt for their intra-Community purchases of goods to be taxed in the country of destination.

The Council considered that the introduction of the three special sets of arrangements described above under the transitional VAT arrangements should prevent most distortion of competition without hampering the free movement of goods or imposing disproportionate burdens on firms or tax authorities.

On 24 June 1991 the Council (Economic and Financial Affairs) reached a comprehensive and unanimous political agreement on the VAT arrangements after 1992.

With regard to the approximation of rates and classification of products, the conclusions adopted provide for Member States to apply, as from 1 January 1993, a standard rate of VAT not lower than 15%. All the higher rates of VAT will be abolished; alongside the standard rate, Member States will have the option of applying one or two reduced rates, not lower than 5%, to the products and services listed in the conclusions of the ECOFIN Council meeting of 19 March 1991.

Under the transitional arrangements, Member States will have the option of applying a VAT rate lower than the 5% minimum fixed for the reduced rate, i.e. they will be able to retain their existing extra-low rates (1% to 4%) and zero-rating. Those Member States which, on 1 January 1991, applied to certain goods and services a rate lower than the minimum laid down for the reduced rate will have the option of retaining this extra-low rate, including zero-rating, for those goods and services. If this option involves distortion of competition for Ireland in the area of energy products for lighting and heating, it may apply a reduced rate to such products.

Those Member States which will be obliged to increase their standard rate of VAT, as applied at 1 January 1991, by more than 2% will have the option of applying an extra-low rate to other goods and services, provided that they fall within the scope of the reduced rates and that the rate applied is not zero. Furthermore, they will have the option of applying a reduced or extra-low rate, provided it is not zero, to restaurant services, children's footwear and clothing and housing.

Those Member States which, on 1 January 1991, applied a reduced rate to certain goods and services which do not appear on the list relating to reduced rates will have the option of applying the reduced rate, or one of the two reduced rates, to those goods and services, provided, however, that that rate is no more than three percentage points lower than the minimum adopted for the standard rate. For Portugal this rate may be lower than the minimum adopted for the normal rate, at first by seven percentage points up to 31 December 1993 and then by five percentage points up to 31 December 1995. The Council will re-examine these transitional arrangements.

2. Excise duties

A perceived lack of flexibility in the 1979 proposals on the harmonisation of excise duties prompted their amendment in November 1989. With the aim of ironing out the present disparities in excise duties, the Commission, in its amendments, has introduced minimum rates of excise duty which must be applied by 1 January 1993, in order to bring about a gradual movement towards target rates which are to be reached by Member States thereafter. Once minimum rates have been applied, the Council shall monitor progress at least every two years.

On 19 September 1990, the Commission completed the general framework for creating the single market in the field of taxation, i.e. for abolishing all tax controls at Community frontiers from 1 January 1993. It adopted four new proposals for Directives, three of which round off the series of measures proposed in 1989 on the approximation of excise duties. Those proposals are not concerned with rate levels but with the following:

- general arrangements for the movement and control of products subject to excise duty after 1992;
- harmonized rules on structures.

The Council (Economic and Financial Affairs) reached an agreement on these new options at its meeting of 17 December 1990; at its meeting on 24 June 1991, it reached an agreement on the approximation of excise duties after 1992. This agreement, which is particularly concerned with petroleum products, alcoholic beverages and manufactured tobacco, supplements the measures already adopted. As from 1 January 1993, these products will be subject to movement and control arrangements.

The proposal on general arrangements lays down the definitive scheme for excise duties. Unlike in the case of VAT, no transitional period is envisaged. The proposal provides for goods to move between warehousekeepers under duty-suspension arrangements in accordance with the procedure for the interconnection of warehouses (summary 2.2.1).

As regards structures, three Directives have been proposed concerning the structures of excise duties on alcoholic beverages, manufactured tobacco and

mineral oils. They replace earlier proposals some of which have been before the Council since 1972. They are aimed at clarifying the definition of taxed products in order to ensure a uniform basis of assessment for taxation and to define the exemptions applicable (summaries 2.2.2 - 2.2.4).

The wide differences in rates between Member States make it difficult to achieve their complete harmonization by 1992. In its communication to the Council and the European Parliament of 14 June 1989 (COM(89)260), the Commission indicated that it was going to be more flexible in its efforts to bring excise duties closer together, taking account of the very different emphasis given to the taxation of these products in Member States, some of which were themselves producers.

This approach must be consistent with the requirements of the Single European Act and must under no circumstances undermine the basic principle of the abolition of customs and tax frontiers by 1 January 1993. It is reflected in the proposal that minimum rates be introduced for all products subject to excise duty, except for certain oil products for which the Commission is proposing ranges of rates in order to prevent distortions of competition.

Following its Decision of 25 October 1989, the Commission amended its proposals concerning the excise duty rates on cigarettes, tobacco, mineral oils and beverages. In practice, these minimum rates or ranges will have to be applied by all Member States as from 1 January 1993.

After that date, this initial flexibility will ultimately have to lead to a movement in rates towards reference levels, termed 'target rates', in accordance with the internal market objectives.

On 13 February 1991, the Commission adopted a supplementary proposal on excise duty rates for petrol and diesel oil. The aim of the proposal is to amend and add to the proposed Directive on the approximation of excise duty on mineral oil (summary 2.3d). It lays down the target rate for petrol and raises the rate band for diesel oil proposed in 1989.

These target rates, which are not compulsory common rates, will involve Member States in a long-term process of convergence; at Community level, they will have to be compatible with public health, transport and energy policies and with environmental requirements.

In the case of spirits and tobacco, the single rates proposed in 1987 have been replaced by minimum rates, which are at a lower level, and by target rates at a higher level. These target rates are consistent with the need to protect health.

Similarly, encouragement will be given to the increased use of unleaded motor fuels; these rates meet environmental requirements. The rate ranges proposed for diesel, heavy industrial fuel and domestic heating oil are consistent with the harmonization objectives of the common industrial and transport policies.

Control measures will be taken within Member States to prevent fraud and to ensure the removal of all frontier tax controls by the end of 1992. In this way, individuals should be able to purchase products wherever they wish and transport them freely, provided that no commercial transactions are involved.

However, provision has been made for a review of the minimum rates and target rates every two years, starting on 31 December 1994, so as to adapt them to any changes in tax, health, energy, transport and environmental policies after 1992.

Every two years, the levels of the various rates (minimum rates, ranges and target rates) will be examined by the Council on the basis of a report from the Commission. The Council will decide on any adjustments to be made to these rates in the light of Community policy in the various fields (transport, energy, environment).

Independently of such adjustments, the Council, acting on a proposal from the Commission, will index the various rates every two years so as to maintain their real value.

2. Taxation of companies¹²

The current differences in company taxation between Member States can influence investment decisions and distort competition.

A major problem in cross-border operations as compared with operations within a Member State is the risk of additional costs or double taxation due to differences in national tax laws.

The new approach to harmonisation in the area of company taxation concentrates on the coordination and approximation of national policies, in line with the principle of subsidiarity, rather than pursuing harmonisation with Community-wide regulations. The ultimate aim of these initiatives is the removal of tax obstacles in cross-border operations.

Specifically, the corporate tax harmonisation proposals of 1975 (adopted by the Council on 23 July 1990) have been officially withdrawn, but a package of three Commission initiatives has been formally adopted by the Council, and it is hoped that they will be rapidly implemented by Member States in order to ensure successful removal of tax obstacles in company business. The two Directives and the Convention (which are summarised below) are generally aimed at preventing double taxation in cases of cross-border operations between related firms.

After a 21-year deadlock, these new initiatives symbolically represent a significant step forward. Having dropped the ultimate goal of one single corporate tax rate or band, the Commission is now primarily concerned with insuring that the Single Market does not suffer from burdensome administration.

The *mergers Directive* (90/434/EEC) applies to mergers, divisions, transfers of assets and exchanges of shares in which companies from two or more Member States are involved. The capital gains that result from such transactions will then be exempt from taxation at the time of the operation in

¹² The following paragraph has been partly and in a summarized way taken over from the *Business-guide to EC initiatives - Spring 1991* by the EC Committee of the American Chamber of Commerce in Belgium.

question, with such tax being deferred until the assets so transferred (or the shares received in exchange) are ultimately disposed of.

The *parent-subsidiaries Directive* (90/435/EEC) aims at eliminating the double taxation on profit distributions by a subsidiary established in one Member State to its parent company established in another Member State. The Member State of the parent company must either refrain from taxing such profits altogether or it may tax them as long as the parent company may claim credit for any corporation tax paid by the subsidiary on the income in question. The Member State in which the subsidiary is located must not subject the distribution to any withholding tax.

The *Convention on double taxation* (former arbitration Directive) (90/436/EEC) establishes an arbitration procedure ensuring that any double taxation is eliminated in the case of transfer pricing of disputes between two Member States. It lays down rules for an amicable procedure, first pursuing the standard governmental mutual agreements before resorting to a neutral panel if the mutual agreement procedure fails to eliminate the risk of double taxation.

Measures included in the two above Directives provide for their implementation by 1 January 1992, and the Convention will enter into force once it has been ratified in each Member State. Along with the Commission's two latest proposed Directives in the direct tax field, these will be a large step towards eliminating the obstacles to trans-border corporate transactions.

The Commission has put the final touch to two more proposals now pending before Parliament and the Council. The first resembles the parent subsidiary directive, but would apply to *interest and royalty payments* between parents and subsidiaries (COM(90)571 final). The purpose of the Directive is to abolish withholding taxes on interest and royalty payments between related companies, i.e. parents and subsidiaries, which are established in different Member States so that dividends distributed by subsidiaries to their parent company, (which by definition must control 25 percent of their subsidiary's holdings), would be exempt from tax. Undertakings which come under this proposed Directive must be registered for tax purposes in the EC and must also be subject to local corporate tax.

The second, more radical directive, COM(90)595 final, would let companies use up losses of subsidiaries in one country against profits in another. This proposed Directive addresses the problem of disadvantageous tax conditions generally caused by doing business across national frontiers, which may lead to a situation where losses incurred in one country and profits made in another are separately accounted for. With an increasing number of companies establishing foreign branches and subsidiaries in other Member States, it is essential that companies can and do account for losses incurred by all of their foreign branches and subsidiaries. At present, tax accounts at the parent company do not take into account the losses of foreign branches and subsidiaries thus resulting in heavier taxes than enterprises working in a single country. Following this directive all European companies would enjoy the same competitive advantages, regardless of whether they are concentrated in one country or in several. This measure is strongly supported by business, but is likely also to meet with powerful resistance by Member States.

Finally, two other paragraphs regarding company taxation are still pending before the Council. The amended proposal on the Tax Treaties of carry-over of losses (COM(85)319 final) aims at harmonising tax arrangements in the Member States in this field. Firms would be able to choose from one of two alternative approaches to the carry-over of losses. The abolition of indirect taxation on transactions in securities, which impede the free movement of capital, is the objective of the second amended proposal for a directive (COM(87)139 final). It abolishes taxes on such transactions, except where transfer of unmovable property are effected by share transfers. However it will be noted that Member States are tending to abolish these taxes on their own initiative and that half of the Member States are no longer applying them.

5.2. Public procurement

The Commission's action programme for the opening up of public contracts is aimed at ensuring equal opportunity for all EC businesses in the awarding of public contracts. The Commission's programme to open up public procurement in the Community has the following objectives:

- The improvement of the application of existing Directives in this area;
- The promotion of the use of EC standards for invitations to tender, as well as the prolongation of the submission period to allow adequate time for non-national bidders to prepare their proposals;
- The extension of the field of application of existing Directives to include telecommunications, transport, energy and water supply;
- The adoption of further Directives to extend the scope of EC legislation into other public procurement sectors such as services and defense.
- To improve enforcement and remedies and to increase transparency.

The first of the Commission's initiatives under its programme to complete the Single Market for public procurement was the adoption of a Directive amending Council Directives 77/62/EEC and 80/767/EEC concerning public supply contracts in March 1988 (OJ L 127/88). It is designed to stamp out abuses of the older supplies Directives and improve monitoring and compliance. In June 1989, a similar amending Directive was adopted for public works contracts (OJ L 210/89). It is concerned specifically with the procedures for awarding public works contracts and aims at creating greater accessibility and intra-Community competition for contracts. To complement both these Directives, a further Directive was adopted in December 1989 laying down procedures to address infringements of existing legislation. It obliges Member States to provide effective and rapid judicial remedies for tenderers who feel unfairly treated by illegal procedures (Council Directive 89/665/EEC; OJ L 395/89).

In 1990, work continued with the adoption of a Directive to open up competition in the awarding of contracts in areas previously excluded from the public works and contracts Directives i.e. transport, energy, water supply and telecommunications (OJ L 297/90) and the finalisation of two further proposals. One of these proposals provides for an additional appeals procedure against unfair contract awards in the excluded sectors and the other is designed to open up competition in the procurement of public services

(COM(90)372 final). A draft communication on the question of regional preferences in public procurement still awaits final approval by the Commission.

1. Public supply

A significant step was made towards the opening up of the market by adoption of Council Directive 88/295/EEC of 22 March 1988 which Member States must implement by January 1989 (except Spain, Greece and Portugal which have until 1 March 1992).

The Directive applies to all public supply contracts above certain thresholds, the main threshold being 200,000 ECUs. This Directive does not yet apply to transport, or distribution of energy and water, or to telecommunications.

The main features of the Directive are:

- (1) The open procedure whereby tendering is open to all interested suppliers will become the normal rule. Two other procedures may only be used in limited circumstances. These are the restricted procedure, whereby only those suppliers invited by the contracting authorities may submit tenders and the negotiated procedure, whereby contracting authorities consult suppliers of their choice and negotiate the terms of the contract with one or several of them.
- (2) Increased safeguards against discrimination will include a requirement that contracting authorities which do not apply the open procedure set out their reasons in a report, a duty to comply with new European standards, and an extension of minimum time limits in relation to tender and application to tender.
- (3) Increased transparency through wider advertising obligations, including advance notice by contracting authorities of their total expected purchases for the year and notice of the outcome of award decisions. Member States will be obliged to provide annual statistics on the award of public supply contracts.
- (4) A derogation from the Directive is permitted until 31 December 1992 in the case of contracts made for the benefit of the most disadvantaged regions.

2. Public works

The Council adopted a new public works directive drafted along the lines of the supply directive: Council directive 89/440/EEC of 18 July 1989, to be implemented by the Member States by 19 July 1990 (except Spain, Greece and Portugal which have until 1 March 1992). The main features of the directive are:

- (1) The financial threshold will be raised by 1 million ECUs to 5 million ECUs to take into account the increase in construction costs since the previous Directive.

- (2) The draft Directive is wider in scope than the existing public works Directive. The Directive will cover not only contracts for the execution of works, but also contracts relating to the procurement of the works and, in particular, the management and financial aspects of public works' contracts. The term 'contracting authorities' will extend not only to regional or local authorities in the Member States, but also to undertakings holding public service concessions or to whom national, regional or local authorities have granted special or exclusive rights. Contracts entered into by other entities which are financed directly by public funds will also be subject to the Directive.
- (3) As in the supply Directive, provision will be made to increase safeguards against discrimination, to increase transparency (requiring bidders to disclose in advance the proportion of the work that will be sub-contracted), and to increase contracting authorities' accountability to bidders and the Commission.

3. The Enforcement Directive (remedies)

In the past the Commission had no effective means to monitor and ensure the application of the public procurement directives. The existing procedure only provided in a posteriori control. On 21 December 1989 the Council adopted Directive 89/665/EEC which provides for accurate enforcement instruments. The Directive aims at providing urgent examination of alleged infringements before a contract is awarded, with early relief for injured parties. Member States are required to take measures enabling judicial or administrative authorities to make decisions at the earliest opportunity, including decisions to suspend the award procedure, to order the removal of discriminatory specifications, to set aside decisions taken unlawfully, and to award damages to injured parties.

The Commission will have the right to intervene directly in urgent cases to suspend the award procedure. It will also have the right to give its view on the application of the rules on public procurement to ensure uniform interpretation of the Directives.

Analogously to this directive the Commission introduced a proposal for a directive (COM(91)158 final) providing in remedies for the enforcement of the Utilities Directive.

4. The Utilities Directive

The Utilities Directive (90/531/EEC - OJ L 297/90) extends the scope of the Community's public works and public supply directives to transport services and the production, distribution and transmission/transport of drinking water and energy supplies, and telecommunications services. These sectors were excluded from the original directives on the grounds that the legal status of the authorities responsible in these sectors varied from one Member State to another (public bodies in some countries, private ones given exclusive concessions in others), even though they performed a public service. It was therefore argued that the obligations imposed by Community public procurement directives could weigh more heavily on some Member States than others and the application of EC public procurement rules could put companies operating in a competitive environment at a disadvantage.

The situation has not changed. However as 1993 draws near and given the high strategic states attached to the sectors in the Community's development, this argument no longer holds water.

The Commission's aims are to ensure equal treatment by the bodies that award public procurement contracts in objectively similar situations in the different Member States, regardless of the bodies public or private status.

The directive thus extends the public procurement rules to ports and airports, railway companies, gas and electricity suppliers and telecommunications service, water and mass transport suppliers. The sectors already governed by Community deregulatory measures, such as telecommunications, terminals and road, maritime and air transport, are thus not affected by this directive.

Given that the contract award practices of the entities operating in the four sectors are quite different from those of the administrative bodies that are the subject of the existing public procurement directives, the Commission has adopted a much more flexible approach. However the general principles governing these directives have been maintained in the utilities directive. As such, calls for tenders would have to refer to European or other recognised standards. The specifications used by the large entities that, due to their size, effectively set market specifications will have to be revealed to bidders. It lays down rules governing the procedures for awarding contracts, including the notification and awarding of contracts. The thresholds are 200,000 ECU in the case of public supply contracts or the procurement of software for use in connection with telecommunications networks or services and 5 million ECU for public work contracts in all sectors.

The selection of tenders must be based on objective and non-discriminatory criteria. Contracts shall be awarded on the basis of the most 'economically advantageous' bid or the lowest price received. An offer may nonetheless be rejected if less than 50% of the bid consists of Community products and where the Community has not negotiated, either bilaterally or multilaterally, with that third country for comparable effective market access. A preference will be granted to a Community bid over a non-Community bid where the conditions of the bid are equivalent and the price differential does not exceed 3%.

Only drinking water will be covered in the water sector, while in the energy field, hydrocarbon exploration and the supply of energy or fuel for the production of energy are excluded. In the transport domain, air and sea transport are excluded as competition in those markets is already felt to be healthy.

5. The effect on the public procurement market

There are mixed reports on how much these directives are - either in force or anticipated - are actually affecting the public procurement market. In one case, for example, the French construction company, Bouygues, claimed irregular procedures in the award of the Danish Storebelt building contract. The company at least won the recovery of its bidding costs. Other examples of intra-EC public works contract bidding successors, such as the winning of the Marseille metro contract by a German firm and of a road building contract

in the Lyon's region by an Italian company seem to indicate progress in opening up contracts. On the other hand difficulties seemed to continue to be encountered in the opening-up of local and regional tendering. To date, for example, most of the County Councils of the UK, the département in France and the Länder in Germany have ignored the Community publishing requirements.

5.3. Company law

The measures foreseen in the White Paper Programme aim at improving the legal framework of industrial cooperation in the Community. However very little progress has been made in this field, an exception forms the adoption of the regulation on the European Economic Interest Grouping and the adoption of the Directive allowing branches of companies of publishing separate accounts (11th Company Law Directive) and the directive on Single Member Companies (12th Company Law Directive). However, only 9 Member States have so far incorporated in national law the Statute for the EEIG.

Four important proposals are before the Council: the 5th Company Law Directive, on company structures, is deadlocked in the Council on the worker participation issue, and the 10th Directive concerning Cross-Border Mergers is at a standstill in Parliament because it refers to national laws on worker participation. The proposal to make takeover and other general items more transparent (13th Company Law Directive), with a view to the protection of shareholders and workers, has completed its first reading before the European Parliament. Of all the amendments, the most notable perhaps are that the proposals' provisions should only apply to listed companies and that the employees of the target company should be consulted more extensively.

Nevertheless progress in a number of important areas is still being held up by lack of agreement in the social aspects of the proposals (5th Directive on company structure, 10th Directive on cross-border mergers).

1. The European Economic Interest Grouping (EEIG)¹³

This is a new form of business organisation. Its purpose is to enable existing companies from more than one Member State to retain their independence, whilst coordinating certain non-profit making aspects of their activities. Thus the EEIG does not replace the corporate structure; it is an additional structure. It is particularly designed for small and medium-sized enterprises less able to take advantage of other proposed structures.

The EEIG may only carry out activities related and ancillary to the activities of its members. The EEIG must be non-profit making and its activities are likely to be in support areas such as research and development and marketing.

The EEIG must consist of at least two members from separate Member States. Members may be either companies or individuals with an industrial,

¹³ The following paragraph has been taken over from *The 1992 introductory guide* by CLIFFORD CHANCE. See Regulation 2137/85/EEC (OJ 1985 L 1991/1) in force since 1.7.1989.

commercial or professional activity in the Community. The public cannot be invited to take shares in an EEIG and, as a structure distinct from its members, it cannot employ more than 500 employees.

The EEIG must register initially in the Member State where it has its official address, as defined in the Regulation. It must further register in any Member States in which it has an establishment.

The EEIG is managed by its members. It has legal capacity and can therefore enter into contracts in its own name. Its purpose is to benefit its members, not to make profits for itself. If any profit is made, it must be divided between the members. The members have unlimited liability for the losses of the EEIG as against third parties.

2. The European Company Statute

The Commission issued a memorandum in summer 1988 outlining revised proposals for the creation of a new form of company, the European Company, based on Community law. It believes that this proposal will encourage Community cooperation.

The right to incorporate a European Company would be limited to certain cases: for instance, to give effect to a merger between two companies, or for the formation of a holding company, a subsidiary or a joint subsidiary. Only companies already incorporated in the Community could form a European Company, but this right is extended to European subsidiaries of third country parent companies. A European Company, which could establish its registered office in any Member State, would have the following characteristics:

- companies incorporated in different Member States will be allowed to merge, or from a holding company, or joint subsidiary, while avoiding the legal and practical constraints arising from the existence of 12 different legal systems;
- the regulation proposes two management structures (a two-tier structure and a single-tier structure), the choice between them has to be made by the founder companies of the European Company;
- there would be no constraint on the form of the shares;
- the profits of a permanent establishment of a European Company in any Member State would be taxable in that Member State alone;
- the European Company could be converted into a limited company under the law of the Member State in which effective management was located;
- employees would be actively involved in the decision-making process, at least in respect of major decisions with a direct effect on jobs.

The Parliament, in its January 1991 plenary session, adopted the proposed Directive complementing the Statute for a European Company with regard to the involvement of employees in the European Company and Regulation on the Statute for a European Company, but with several amendments to each text. The Commission is at present considering these amendments but certain areas are likely to prove contentious.

5.4. Intellectual property

Intellectual property rights are national in character and create monopoly or quasi monopoly rights for the commercial exploitation of ideas and inventions. The existence of separate national rights readily enables the partition owner of a right to petition national markets. This was recognised at an early stage in the development of the common market as an important barrier to the development of the single market. The Commission has developed competition rules applicable to intellectual property agreements which further eliminate restrictions on trade, but some further harmonisation of national intellectual property rights is required.

The fundamental solution to these problems is the creation of a single Community right; this is being attempted for patents and trade marks. The Community is also eager to encourage innovation and ensure that appropriate intellectual property protection is afforded to new technologies such as computer, software and biotechnology.

The adoption of the Community trade mark and the entry into force of the Community Patent Convention remained the two key decisions to be taken to guarantee legal security for firms operating in the Single European Market. The main obstacle for the adoption of the former is the problem of the site of the Community Trade Mark Office and the choice of its working language. With the exception of the directives on the legal protection of micro circuits and the first directive on the harmonisation of national trade mark law, both adopted by the Council, all other proposals of the Commission in this field are pending before the Council. To keep a minimum level of copyright protection at world level, the Commission has adopted a proposal for a Council Directive on rental right, lending right and on certain rights relating to copyright. A discussion paper concerning copyright and broadcasting was designed to facilitate the consultation of interested parties and will lead to the finalisation of the proposal. In addition the Commission will present before the end of 1991 proposals dealing with home copying of sound and audiovisual recordings and the legal protection of data bases.

1. Patents

There are two multilateral conventions relevant to patents: the European Patent Convention (EPC) and the Community Patent Convention (CPC). The EPC which came into force on 7 October 1977, provides for centralised application for national patents. One application is made for the European Patent Office in Munich, and if the subject matter is deemed to be patentable, a bundle of individual national patents is then granted for the countries designated by the patentee. This is distinct from the grant for a *single* patent covering the whole Community. The CPC was signed on 15 December 1975, but it cannot come into force until all the original signatories have ratified it. But an agreement adopted at the third inter-governmental conference of December 1989 stated that if the entry into force requiring the ratification of the 12 Member States has not taken place by the end of 1991, a further inter-governmental conference will be convened to unanimously determine the number of Member States which will have to ratify the Convention before it would enter into force. However the diplomatic conference managed to resolve two remaining technical problems, namely the sale for distributing income from

Community patent (renewal) fees among Member States and the arrangements for the translation and publication of the Community patent.

2. Trade Marks

The Commission was proposed the creation of a Community trade mark which will be broadly comparable to the Community patent. The proposed regulation provides for an application to be made to the Community Trade Mark Office for a Community trade mark which will be valid and have identical effects throughout the whole Community.

The Council Directive 89/104/EEC (adopted 21.12.1988) on the harmonisation of trade mark laws of Member States aims to approximate those national provisions which most directly affect free movement of goods and services. It ensures that the conditions for obtaining and continuing to hold a registered trade mark are identical in all the Member States. Member States must take the necessary measures to comply with the provisions of this Directive by 28 December 1991; however the deadline can be extended to 31 December 1992.

Once the Community trade mark becomes a reality, businesses which function at a Community level, will be able to obtain trade marks for their goods and services which are effective throughout all the Community countries.

3. Copyright

In June 1988 a green paper was issued by the Commission on *copyright and the challenge of technology* (COM(88)172). The stated aim of this discussion document is to bring copyright law into the modern electronic age and to deal with various multilateral issues. It is not intended to be a comprehensive review of copyright law, nor is it intended to harmonise the laws of Member States. It seeks to focus on certain areas which are thought to be of importance, and to suggest minimum standards of legal protection and enforcement.

Some areas which are not discussed are industrial design copyright, infringement of copyright by photocopying and public displays of material broadcast on satellite or cable TV, all of which are important. Issues being discussed on it are: piracy, home audio taping, rental rights, data bases, and computer programmes.

With regard to the latter, the Commission formally published its directive on the legal protection of computer programmes on 10 April 1989. It would base EC legal protection on the principles of the Berne Copyright Convention.

The United States has lobbied hard to ensure that the Commission's proposed directive would not weaken the legal rights of software owners. At issue is the question as to how far reverse engineering (decompilation of software) would be considered a legal practice. For the Community this is a question not simply of protecting intellectual property, but of ensuring that US suppliers do not abuse their rights by preventing EC consumers from accessing their computers and private networks, this is by withholding information on interface protocols. That would enable the US suppliers to

effectively operate quasi monopolies, as IBM sought to do several years ago. It is therefore a fundamental question for the EC policy on competition, on harmonisation (since part of the Commission's strategy has been to ensure that computer and telecommunication systems throughout the Community may inter-operate) and indeed on trade, since EC producers using US software could well find export strategies determined by the owners of that software.

4. Biotechnology

In the communication to the Council in 1983 the Commission noted the lack of European strength in the biotechnology sector stemming primarily from major unresolved legal issues and lower levels of research expenditure.

On 17 October 1988 the Commission published a proposal for a directive on the legal protection of biotechnological inventions (COM(88)496). The aim of the proposal is to harmonise and improve the protection afforded by the existing national patent laws to biotechnological inventions in the Member States. It would correct current inconsistencies, deficiencies and uncertainties in the application of the Member States' patent laws to biotechnology. It also seeks to apply general patent principles to biotechnology rather than propose a completely new system of protection as suggested by some. The provisions of the proposal differ substantially from the laws of the Member States and may therefore be expected to be controversial (e.g. patentability of living matter). After some delay the Parliament approved its first reading of the proposal, with amendments in December 1990. The Council should adopt a common position on the amended text in the second half of 1991.

VI. MEASURES AFFECTING SPECIFIC ECONOMIC SECTORS

6.1. Financial services¹⁴

The Commission's aim is to open up financial services to Community-wide competition. The achievement of the internal market should make it possible for, say, a Spanish citizen, to have a bank account in France, insure his car with a UK insurance company, take a mortgage from a German institution, receive investment advice from a Dutch independent broker and invest in shares on any EC stock exchange.

Significant progress has already been made. The sector has already entered the implementing phase with the dates of implementation reached or very nearly.

1. Banking

(1) The second banking Directive (89/646/EEC) adopted 15.12.1989

The Directive is the 'centrepiece' of Community legislation in the banking sector. Its ultimate aim is to provide, in the long term, full freedom of financial services in the Community.

A single banking licence

This is the key feature of the Directive. Its aim is to enable any bank validly established and licensed in one Member State (its 'home country') to provide a large number of financial services, defined in the Directive, in any other Member State ('host country') either directly from home or through a branch in that Member State, without having to obtain any further authorization. In other words, a banking licence to operate in one Member State will, as a rule, entitle a bank to provide the financial services authorised in the licence anywhere else in the Community provided that the financial services are included in the agreed list of activities annexed to the Directive.

The agreed list covers a wide range of activities including deposit taking, lending, consumer credit, trade financing, money transmission services, leasing, factoring, money broking, participation in securities issues and trading in foreign exchange. The list remains open so that new financial techniques may be taken into account.

¹⁴ The following paragraph has been partly and in a summarized way taken over from *The 1992 introductory guide* by CLIFFORD CHANCE. It has been updated with information from the EC Committee of the American Chamber of Commerce in Belgium (*Business guide to EC initiatives, Spring 1991*) and direct CEC sources.

Home country control and mutual recognition

Banks providing their services outside their home country will remain subject principally to their home country rules and control. This means that they will be able to continue to provide the same range of services in host countries as they do in their home country.

A host country is required to permit a properly regulated bank from another Member State to open branches and provide services on its territory. National supervisory authorities are required to accept that the supervision carried out by the authorities of other Member States is broadly equivalent to their own (the principle of mutual recognition).

Minimum harmonisation

In order for the principle of a single banking licence to be acceptable and for mutual recognition of financial supervision to apply satisfactorily, the Commission has provided for a number of minimum standards. They include the following:

- a minimum capital base of 5 million ECUs;
- information on major shareholders.
- limitations on equity participation in non-financial companies.

Limits on home country control

Pending further harmonisation, a host country's supervisory authorities will retain primary responsibility for the supervision of liquidity and exclusive responsibility for monetary policy, and may retain control over the advertising of banking services in its territory.

Non-EC Institutions

Reciprocity provisions will not be retroactive and, therefore, banking subsidiaries of non-EC banks (and their branches) already established within the Community will automatically enjoy the benefits provided by the Directive to European banks with their head offices in the Community. Existing branches of non-EC banks (not established in the Community via a subsidiary) will be entitled to continue with their existing business, but will not enjoy the additional advantages of expansion through Europe given by the single banking licence.

As to new non-EC undertakings in the Community after the date on which the Directive comes into force, they may be subject to scrutiny, pending negotiations with the applicant's home country.

(2) Measures complementing the second banking directive

A number of measures dealing with capital adequacy have been introduced to complement the second banking directive and ensure that financial institutions operate on a 'level playing field'.

Directive on own funds on credit institutions (89/299/EEC) adopted 17.4.1989

This Directive seeks to harmonise the meaning of capital. It sets standards of capital adequacy and defines a common basis of measurement of 'own funds', thereby coordinating comparable future supervision among EC banks.

Directive on solvency ratio for credit Institutions (89/647/EEC) adopted 18.12.1989

A precondition for the single banking licence within the Community will be that banks limit their exposure to a certain fixed multiple of their own funds. This will bolster cross-border confidence by strengthening average solvency standards.

Recommendation on large exposures (87/62/EEC) adopted 22.12.1986); proposed Directive on the large exposures, proposed 21.3.1991.

This recommendation is designed to discourage an excessive concentration of exposure to a single client (or client group) by introducing reporting requirements for large exposures. In the same sphere, the proposed Directive introduces common standards for monitoring and controlling exposures of credit institutions to ensure that risks which are undertaken are properly spread among clients and do not risk the solvency of the lending institution.

(3) Other measures and initiatives

Directive 86/635/EEC on the annual and consolidated accounts of financial institutions; implemented into national law by 31 December 1990.

Directive on accounts

A Directive providing for the harmonisation of banks' annual accounts and consolidated accounts was adopted in 1986 to take effect in 1993 (Directive 86/635/EEC).

A further Directive (89/117/EEC adopted 13.12.1989) requires EC branches of non-EC banks to publish branch accounts in certain cases specified in the Directive.

Proposed Directive on reorganisation, winding up and deposit guarantee schemes.

The Commission has proposed a Directive which provides that the home country authorities will be principally (exceptionally host country rule) responsible for the reorganisation and winding up of banks with financial problems.

The proposed Directive also has provisions dealing with deposit-guarantee schemes. These schemes, which are already set up in some Member States, provide compensation for depositors, in the event of the failure of a bank, out of the common fund to which all banks contribute.

Proposed Directive on mortgage credit.

The Commission has proposed a Directive which would allow mortgage credit institutions to lend funds secured by mortgages on real property situated in another Member State. Although the lending and funding methods authorised in the home country will govern the provision of such services, the host Member State's law in relation to land must continue to be observed.

Interoperability of payment cards

The Commission intends to facilitate the use of the electronic payment systems by introducing standardised magnetic payment cards to obtain cash from automatic dispensers throughout the Community.

In the Discussion Paper on Payment Systems, the Commission proposes a framework for small or medium-sized payments, for which very high costs are incurred owing to the lack of a true integrated payments system (COM(90)447 final)).

- Proposed Directive on the supervision of credit institutions on a consolidated basis and replacing Directive 831/350/EEC, pending a first reading in the European Parliament.

This proposal specifies the aims of supervision on a consolidated basis and the consolidation methods to be applied, by extending the provisions of the 1983 Directive, to cover banking groups whose parent undertakings are what are referred to as 'financial holding companies'. The objective of the proposal is to give the supervisory authorities a clearer view of the solvency of credit Institutions belonging to a group and to reinforce the protection of the depositors.

- Amended proposal for a directive on the protection of use of the financial system for the purpose of money laundering of 14 February 1991, pending a second reading by the Parliament. This Commission's proposal falls within the framework of international initiatives aimed at the criminalization of money laundering from drug dealing.

2. Securities

(1) Proposed investment services Directive in the securities field

A Directive was proposed on 14 December 1988 by the Commission in the field of investment services which has been amended and awaiting adoption by the Council. It will complement and closely follow the second banking Directive in its aim to establish an integrated financial market by 1992, and will apply to non-banking institutions which engage in investment business.

The proposed Directive will establish a broad framework for the regulation of securities business throughout the Community.

It will impose mutual recognition of authorization and supervisory systems upon all Member States. Once a securities firm has been authorised by its home country regulators, it will be able to open branches and market an agreed list of services throughout the Community. The agreed list includes stockbroking, dealing, fund management, trading in hedging instruments, such as options and future, and underwriting new issues.

(2) Existing measures

There are already in place a number of Directives setting out the procedure for obtaining and maintaining the listing of securities on the Stock Exchanges of the Member States.

(3) Directive on Undertakings for Collective Investments in Transferable Securities (UCITS)

This is the principal Directive concerning *fund management* and constitutes an important measure towards the establishment of a single market (Directive 85/611). The principal feature of the Directive is that of home country authorization. So long as a UCITS (which covers both unit trust companies and investment companies) is authorised by its home country, that authorization will apply in all Member States.

(4) Principle complementing measures relating to disclosure requirements and conduct in the securities field

Directive on public offerings of non-listed securities (89/298/EEC adopted 17.4.1989)

There will be an obligation to publish a prospectus in the case of an offer for subscription or sale of unlisted securities to the public at large. This will not apply where offers are made to a 'restricted circle of persons'.

The Directive leaves much to the willingness of the Member States to cooperate between each other on the mutual recognition of formalities leading to a single market in securities.

'Anti-raider' Directive 88/627/EEC

In December 1988, the Council of Ministers adopted a Directive which provides for a duty to disclose information relating to the acquisition and disposal of large shareholdings in a listed company. The duty is imposed on the owner of the shares and there is a parallel duty on the company.

Insider trading Directive 89/592/EEC adopted 13.11.1989

This Directive aims to prohibit insiders who have access to information from taking advantage of information which they obtain as a result of their privileged status. 'Insider' is broadly defined and includes not only primary insiders but also secondary insiders who obtain their information from primary insiders, having been 'tipped off' by them.

(5) Proposed Directive on capital adequacy of investment firms and credit institutions, awaiting first reading by the European Parliament.

This proposal is designed to complement both the proposed Directive on freedom to provide investment services in the securities field and other Directives already covering credit risks but not explicitly other risks. The proposal coordinates the rules governing start-up capital on ongoing capital requirements for non-bank investment firms.

3. Insurance

The Commission aims to make it possible for insurance companies established in any Member State to provide services freely throughout the European Community. Insurers would be subject to similar controls in each of the Member States where they might wish to open an office. Policyholders would have a wider choice of insurers and would be able to cover their risks, wherever situated in the Community, with any Community insurer of their choice. To help the Commission in its work on insurance, a proposal for a directive has been presented to the Council to create an Insurance Committee (COM(90)344).

Community provisions distinguish between two concepts: freedom of establishment and freedom of services.

The Commission is now concentrating its efforts on freedom to provide services based on home country control, so that insurance companies would, as far as possible, only be subject to one set of rules.

(1) Non-life insurance

This is the area where greatest progress has been achieved. Non-life insurance business (or general business) includes insurance against accident, sickness, damage to and loss of property, insurance against liability (e.g. motor vehicle liability). It also includes credit insurance, suretyship insurance and insurance against various other financial losses.

(a) Freedom of establishment

This was provided for in Directive 73/240/EEC and has now been incorporated into the domestic law of most Member States. Where the Directive has been implemented, non-life insurance companies from any Member State are free to establish themselves in any other Member State, subject to obtaining an official authorization from that other Member State.

(b) Freedom to provide services

Directive 88/357/EEC on non-life insurance services (2nd Directive) adopted by the Council in June 1988 constitutes a significant step towards freedom to provide non-life insurance services. The Directive provides that eight Member States must apply the large risk regime as from 1 July 1990. A number of insurance contracts remain excluded from the scope of the Directive, in particular those relating to liability for pharmaceutical products and compulsory insurance of building works. These exclusions are temporary and are subject to review by the Council.

The Directive distinguishes between insurance of large risks, principally for major industrial companies, and other risks generally referred to as mass risks, relating to private individuals and to small businesses.

The Directive will eventually lead to a more flexible and competitive market which should result in benefits to policy-holders. Attention should however be given to the development of the current proposal of the framework for non-life insurance.

(c) Direct insurance other than life insurance

The Commission is aware of this and has taken urgent action to extend the freedom to provide insurance services to motor insurance (3rd Directive 90/618/EEC) to harmonise rules on technical reserves, and to provide home country control for mass risks (3rd non-life insurance Directive proposal, pending before the European Parliament and Council).

Under the provisions of the Motor Liability Insurance Directive, insurance companies established in one Member State will be entitled to sell compulsory and optional motor insurance cover to clients in another Member State without being established there. However, they have to ensure that compulsory motor cover complies with the rules of the Member State in which the risk is situated. In the same sphere, a Directive (90/232/EEC) has been adopted which deals with a number of outstanding problems relating to the coverage of passengers throughout the Community.

The objective of this third non-life insurance Directive proposal is to liberalise the movement of insurance products in the Community. Companies will be authorised and supervised by the authorities in their home market and will operate on the basis of a single passport and home country control. The Directive will lay down coordinated rules on the admissibility, diversification and valuation of assets and on their currency matching requirements.

(2) Life insurance

(a) Freedom of establishment

A Directive providing for freedom of establishment was adopted in 1979 (Directive 79/267/EEC). It follows the line of the establishment Directive in the non-life insurance sector.

(b) Freedom to provide services

The second Directive on life assurance (90/619/EEC) of 8 November 1990 gives companies which offer life insurance services the liberty to sell such services in a Member State other than in which they are established, without prior authorization, provided the client is an individual who has approached them on his or her own initiative or provided the insurance contract is a group coverage contract.

(c) Impact on insurance companies

The proposed third life insurance Directive, adopted by the Commission (21.12.1989) completes all the main legislation necessary for a single European financial market, by following the general strategy laid down in the White Paper. The Commission proposes a universal set of principles applicable to the calculation of technical provisions which companies must add against their potential liabilities and the right for life insurance companies to place their resource for investment purposes in any Member State.

(3) Pension funds

To ensure equal treatment pension funds must enjoy the same degree of liberalisation as that already introduced for the finance, insurance and securities sectors. A draft proposal, therefore, lays the foundations for a pan-European pension fund where no restrictions are placed on cross-border membership of schemes, where investment of the fund is liberalised and where a pension fund manager, established and authorised in one Member State, can operate in all Member States through the principle of mutual recognition of supervisory systems.

(4) Further harmonisation measures relating to all insurance companies

Four other proposals have been made by the Commission:

- on the form of accounts of insurance companies, on which urgent action is being taken by the Commission and the Council (COM(89)474);
- on the winding up of insurance companies (COM(89)394); and
- on the terms and conditions of insurance contracts. The Commission has indicated that it may abandon this proposal if differences in contracts do not appear to impede competition.

- a proposal for a Council Regulation on the application of Article 85(3) of the Treaty to certain categories of agreements, decisions and concerted practices in the insurance sector, has been presented by the Commission (COM(89)641). The purpose is to authorise certain agreements and concerted practices between insurance companies.

6.2. Transport services

After a long period of stagnation significant steps towards the establishment of a genuine Community market in transport services have been taken.

1. Maritime transport

The aim of the Commission in this field is to ensure freedom to provide services with respect to transport by inland waterway and sea, whilst safeguarding Community shippers from unfair pricing and other anti-competitive practices by third countries.

Four regulations have been adopted:

(1) *Freedom to provide services*

Regulation 4055/86/EEC applies the principle of freedom to provide maritime transport services between Member States, and between Member States and third countries. The Regulation also stipulates that existing cargo sharing arrangements shall be phased out, and prohibits subsequent cargo sharing arrangements;

(2) *Competition rules*

Regulation 4056/86/EEC provides for the application of EC competition rules to maritime transport and identifies certain types of agreement eligible for exemption;

(3) *Anti-dumping*

Regulation 4057/86/EEC is designed to provide protection for Community ship owners against the unfair pricing practices of ship owners from third countries.

(4) *Coordination*

Regulation 4058/86/EEC sets out a number of forms of coordination action by Member States (e.g. diplomatic representations and counter measures) which may be taken in order to safeguard free access to cargoes in ocean trades where such access is restricted by third countries.

In August 1989 the Commission presented the so-called positive measures to improve the operating conditions of Community shipping (COM(89)266 final). This new package of measures include:

- (a) a Regulation establishing a Community ship register and the flying of the Community flag by sea-going vessels;
- (b) a recommendation on improving the effectiveness of port state control in the Community to ensure the application of international standards on ships.
- (c) a Regulation on a common definition of a Community shipowner in order to affirm the identity of the EC also in this field;
- (d) a Regulation applying the principle of freedom to provide services to maritime transport within Member States (cabotage).

Some consensus was achieved in relation to proposals (b) and (c), the cabotage file and the creation of a Community flag still face resistance within the Council of Ministers.

2. Road transport

The Commission's aims for road transport, as expressed in the White Paper, include:

- the phasing out of road transport quotas;
- allowing non-resident carriers to operate in other Member States for the transport of goods and passengers by road (cabotage);
- establishing freedom to provide services for the transport of passengers by road.

A great deal of progress has been achieved in this area:

- (1) A Regulation to abolish all national bilateral quotas on the carriage of goods by road between Member States from 1 January 1991. In the meantime, there will be an increase in the number of Community quotas issued each year. These allow a licensee to carry goods throughout the Community without being subject to national quotas. The Regulation was adopted by the Council at the meeting of Transport Ministers on 21 June 1988 (Regulation 1841/88/EEC);
- (2) A Regulation introducing a cabotage in the road haulage sector, was adopted by the Council in 1989. This Regulation, which should gradually come into force from 1 July 1990, will require further measures before the definitive cabotage regime is complete, because its scope is limited. All measures form part of an integrated package for reorganising the transport market, including harmonisation of the conditions governing access to the road haulage profession - a necessary flanking measure for the introduction of cabotage - and the introduction of a system to allow full freedom in passing road transport between Member States.

- (3) The Council also adopted a Regulation on the introduction of the definitive arrangements for the organisation of the market in the carriage of goods by road foreseeing the measures to be taken in the event of a crisis (Regulation 3196/90/EEC).

3. Air transport

The provision of air transport services within the Community is characterised by the following:

- bilateral agreements between Member States relating to fares, capacity and access;
- bilateral or multilateral agreements or concerted practices between air carriers.

Each type of agreement results in a restriction on the freedom to provide air transport services and upon competition between air carriers. In broad terms, current Community policy in the area of air transport is to achieve complete liberalisation by 1992.

A number of measures have been adopted:

(1) Competition:

Regulation 3975/87 applies the competition rules contained in Articles 85 and 86 EEC to air transport. The Regulation sets out procedural rules and gives the Commission powers to investigate alleged infringements and to impose fines.

(2) Competition - Exemption:

Regulation 3976/87/EEC permits the Commission to provide block exemptions for air carriers from the application of Article 85(1), in certain specified circumstances.

The Commission adopted on 26 July 1988 three further implementing regulations on specific exemptions from the operation of Article 85(1) for:

- (1) joint planning and coordination of capacity, sharing of revenue and consultations on tariffs on scheduled air services and slot allocation at airports (Regulation 2671/88/EEC);
- (2) computer reservation systems for air transport services (Regulation No. 2672/88/EEC);
- (3) ground handling services such as refuelling, handling of baggage and mail and in-flight catering (Regulation No. 2673/88/EEC). The new regulation adopted in June 1990 (Regulation 2344/90/EEC) extended until 31 December 1992 the block exemptions previously granted.

(3) Air fares:

Council Directive 87/601/EEC lays down the procedures for the establishment of scheduled air fares on routes between Member States.

This Regulation was replaced by a new one (Regulation 2342/90/EEC) which was designed to make the system even more flexible, and for certain cases the Regulation introduces an experimental system of double disapproval according to which a fare proposed by an airline may be rejected only if the authorities of the two Member States concerned, disapprove of it.

(4) Passenger sharing/access to the market

Council Decision 87/602/EEC regulates bilateral agreements relating to passenger-sharing between the air carrier of one Member State and that of another and the access to the market.

The new Regulation (Regulation 2343/90/EEC) adopted aims at allowing greater access to the market which will encourage the development of the air transport services and therefore improved user services. The Regulation accordingly lays down more liberal provisions on multiple designations and third, fourth and fifth freedoms abolishes gradually the bilateral restrictions on shares of capacity, and encourage the development of inter-regional air services to resolve the problems of saturation at certain major airports.

6.3. Telecommunications

In its Green paper on the Development of the Common Market for Telecommunications Services and Equipment (COM(87)290), the Commission adopted a series of basic principles which aim to create a more liberal and flexible competitive environment for markets in telecommunications services and equipment. Four areas of activity were identified. The Commission's use of Article 90 EEC in implementing its telecommunications policy raised much controversy. This issue has been settled by the Court Decision of 19 March 1991, which confirmed the Commission's power to use Article 90 to open up the telecommunications sector.

1. The use of telecommunications networks and infrastructure.

The Commission has accepted the principle that the national telecommunications authorities of the Member States may retain their monopoly or special rights over the provision and operation of the network infrastructure. Member States may, if they wish, opt for a more liberal regime, but must safeguard the integrity of the general network infrastructure if they do so.

The Open Net Provision (ONP) framework Directive is a demonstration of Member States' political commitment to embark on a standardisation policy leading to the interconnection of networks. The aim of the proposed Directive is to eliminate disparities in standards or barriers deriving from the lack of harmonised technical interfaces, different conditions of use and lack of transparency in charging. The technical conditions for the provision of services will thus be fulfilled.

2. Provision of telecommunication services

The Commission believes that the services monopolies of the national telecommunications authorities should be restricted. For these purposes, the Commission distinguishes 'basic' or 'reserved' services from 'competitive' services. The former category would still be the preserve of national monopolies or undertakings with special rights, but would be restrictively construed and its content reviewed regularly. At present, this would only apply to voice telephony. 'Competitive services' will, however, comprise all other services, and in particular value added services. These services are to be open to free and unrestricted provision by third parties, both within and between Member States, in competition with the national telecommunications authorities.

3. The supply of telecommunications equipment

The terminal equipment monopolies of the national telecommunications authorities will be abolished. This has two aspects: the supply of equipment itself and the regulation of type-approval standards and compatibility. The former aspect is simpler, and existing monopolies will be abolished as soon as possible. As to the second aspect, the Commission will address questions of access and interconnection obligations, so that, through Community-wide standards for equipment and services and the mutual recognition of type approval, liberalisation of equipment markets will become a reality.

4. The application of the single market concept

The Commission believes that the entire structure of the telecommunications sector must be reviewed and adapted to suit market conditions. In particular, the Commission will introduce strict requirements for network infrastructure and services to promote Community-wide interoperability. Consensus must be achieved on frequencies and tariff principles, and on trans-frontier services. One major issue of the Commission's approach will be the separation of the existing regulatory and operational functions of the national telecommunications authorities. The liberalised telecommunications market will be subject in all respects to the EC competition rules and the sector will be reviewed continually to ensure compliance.

So far the follow-up on the 1987 Green Paper has awarded certain controversial issues such as:

- the need for a European (independent) regulating authority in the communications area;
- tariff reform;
- the limits of EC Competition Policy to establish pan European telecommunication networks;
- the degree of consensus among the telecommunication operators as opposed to competition;

- external aspects of telecommunications policy (reciprocal access in third markets; the EC as a negotiating partner).

Currently, the Community is discussing the 1990 Green Paper on Satellite Communications, opening up the space segment to competition; at the end of 1991 a Green Paper on Mobile Communications is expected.

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ANNEX

THE FIGURES (situation as at 31.07.1991) OF THE 282 MEASURES OF THE WHITE PAPER:

Measures entered into force	159
Council adoptions	195
Partial adoptions*	7
Common positions of the Council	3
Commission proposals submitted to the Council	87
Proposals submitted to the European Parliament	
- for opinion	8
- for first reading	3
- for second reading	5

* These will be subject to further Council decision

Source: European Commission Info 92.