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ASSESSMENT OF THE FUNCTION OF THE INTERNAL MARKET

Report by the Commission to the Council

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I. THE COMMON MARKET, THE BASIS FOR ACTION BY THE COMMUNITY

1. The existence of a large, completely unified internal market is a factor of decisive importance for reconstructing Europe's industrial might, as much because of the sense of security afforded by access to a large market as by reason of its economies of scale. This is particularly true as regards investment decisions, since every element of uncertainty is reflected as part of the cost.
2. Under present conditions, in which the decisive advantage of a unified market is sadly lacking, too many industrialists refuse to accept the risk of becoming organised at Community level, thereby exposing themselves to competition from non-European groups. At the same time, they are tempted by seductive offers of co-operation from outside the Community which, even though they will play a somewhat subordinate role, effectively improve their access to the international market which, as a result of such alliances, becomes paradoxically less risky than the Community market.
3. In order to break out of this vicious circle, the Community must decide to complete rapidly the unification of all aspects of its internal market. Only when they are convinced that this will happen will economic agents, in anticipation of the opening up of national markets, modify their behaviour accordingly. In this connection, barriers to the free circulation of goods or services, problems of establishment and differences in company law can be equally as important as, and perhaps more serious than disparities in exchange rates, monetary policies and inflation rates.
4. The present report concentrates on an evaluation of the manner in which the free movement of goods, persons, services, and capital is functioning. It does not seek to examine further either the consequences of the absence of a better monetary and fiscal framework at Community level, or a fortiori the more general considerations associated with the current economic crisis which can have an impact on the development of economic structures and on the functioning of the internal market.

Internally

5. At public authority level the inadequate approximation of macro-economic conditions means that in every Member State a separation is maintained between internal economic activity and economic relations with other Member States. Also the expectations of entrepreneurs are disappointed because intra-Community trade remains largely an off-shoot of external trade with all the reflexes which this situation provokes in the general public, the administrations and governments. In particular, any action by the relevant department of administration aimed at strengthening the internal market often comes up against opposition from other departments responsible for macro-economic aspects focussed on the national situation. It should be possible to cure this muddle by assessing - by means of government-level arbitration - the advantages and disadvantages of the decisions required: as between on the one hand the immediate constraints of the national macro-economic framework and on the other the consequences of belonging to the Community. Besides, it is admitted that the longer the difficult economic situation persists the less likely is it that any strategy conceived and applied from a purely national viewpoint will succeed.

6. In the context of the priorities adopted in Copenhagen, the objective of developing the internal market - repeatedly reaffirmed by the European Council - was placed in the context of a series of actions covering several fields. For obvious technical reasons, the parallelism cannot be monitored at all levels and at all stages of the Community's decision-making process without causing total paralysis. The European Council's decision to hold regular meetings led the Presidency of the Council to organise its work, with the agreement and help of the Commission, so that each policy can develop in a way which will facilitate the active participation of the different governments in the realisation of the compromises necessary for taking decisions.

Externally

7. Efforts at promoting more effective functioning of Europe's internal market with a view to optimising the operation of its economy can only be imagined in the context of a common commercial policy capable of defending the legitimate interests of Community industry. The development of the internal market must be considered above all as the foundation of the improved competitiveness of European firms. Any strategy aimed at getting out of the present economic crisis must be based upon the market's continental dimension.

8. The "continental dimension" is not merely a geographical term; it can only be defined by differentiating between Community members and countries that are not part of the Community. A differentiation of this type is inherent in any customs union and any economic union. The very term "internal market" presupposes that the identity of the unit involved differs from that which lies outside. The rules governing international economic relations comprise the principles set out within the GATT framework which allow the Community to reserve for its members the advantages resulting from an intensification of their mutual ties as long as this does not involve a deterioration in the treatment of non-Community countries by comparison with the earlier situation.

9. However, differentiation does not mean isolation, particularly since economic activity takes place in an increasingly interdependent world. The consensus which allowed the negotiation of the Treaty instituting the EEC - as well as the economic interests of the Community dictated by its nature as a processing region - mean that it must remain open to dialogue and negotiation with its trading partners. Thus the Community, the largest trading power in the world, has a clear responsibility to maintain a stable and equitable framework for international economic relations. It will continue to assume this responsibility as it has in the past, and will encourage its partners to do the same. Its relations with non-Community countries are based on mutual advantage, except where specific co-operation and development projects are concerned.

10. These principles having been reaffirmed, it will be noted that the Community has not yet - to any satisfactory extent - achieved its goals with regard either to its internal market or to its treatment of the extension of the latter into its external relations. As to this last aspect, a proposed regulation concerning the reinforcement of the common commercial policy, in particular as regards a defence against unfair trading practices, will shortly be presented to the Council.

11. Similarly convergence of present situations, which is the very purpose of developing an internal market, widens the basis on which divergent interests can thus be conciliated; in addition, it would not be acceptable to make agreement on external aspects a condition sine qua non for internal progress. Conversely, the operation and development of the internal market implies drawing the correct conclusions as regards the imperfections of our commercial policy - imperfections which must be regarded as a common fault, not as an acquired right of the Member States to "go it on their own" since the permanent recognition of such a right amounts to a denial of the Community itself.

12. Finally, experience has shown that divergences between Member States with regard to external relations become an insurmountable obstacle to progress in the creation of the Community when approached at questions of principle on a theoretical basis; as a contrast to this, when the stakes and interests of both parties are open for all to see it becomes possible to achieve progress.

II. THE ECONOMIC IMPACT OF THE INTERNAL MARKET

13. Building the common market, on the foundation laid by the customs union set up by the Treaty, has been a logical extension of the efforts which western Europe has been making to eliminate obstacles to trade - in goods in particular - since 1947. Progress on services has been slower, since very often harmonisation is the only means of eliminating the barriers in this area. As for the right of establishment and free movement of persons, the Treaty was not intended to spark off European-wide waves of migration but simply to allow those who wish to perform their activities wherever they feel would be to their maximum advantage. Nearly two million workers in the Community - almost all of them depending on others for their employment - have benefited from these Community rules. But for the professions, freedom of establishment in another Member State has been, and still is, of only marginal importance in terms of numbers affected.

14. Consequently, this quantitative assessment of the economic impact of the internal market concentrates primarily on trade in goods, though due account is taken of a number of points relating to investment and services. It also gives an idea of the degree of mobility of the factors of production achieved to date.

Growing interdependence

15. In the first phase the results of eliminating obstacles to trade in goods surpassed expectations. In the ECSC's first five years of existence intra-Community trade in coal and steel rose by 129%. Then from the establishment of the European Economic Community in 1958 up to the first enlargement in 1973, trade in all products between the Six, measured in current values, soared from 7 000 million units of account to 54 000 million units of account, growing faster than trade with non-Community countries. For instance, between 1959 and 1970 the annual growth rate for exports to countries outside the Community stood at 9%, whereas intra-Community trade grew by over 16%, with almost a six-fold increase over the whole period, as against the two-and-a-half-fold increase in exports to non-Community countries.

16. With the onset of the first oil crisis, this trend slowed sharply as regards the six founder Member States. In the new Member States the initial impetus began to make itself felt towards the end of the '60s, in all likelihood as economic operators looked towards the imminent enlargement of the Community. When they first joined the Community all the Member States were sending, on average, one third of their exports to their Community partners, the smaller Member States being more dependent on intra-Community trade than their larger partners. In 1973, this share rose to 53.7% but sank to 50.3% by 1975 to increase again subsequently.

17. In a third phase the second oil crisis at the end of 1980 had similar consequences: a downturn in intra-Community trade yet again from 54.5% in 1979 to 50.7% in 1981. In 1982 however it is tending to resume the previous average level: for the first nine months of 1982 it reached 52%.

18. It is not easy to pinpoint the precise causes of this contraction among which reference must be made to the increasing price of oil together with a certain reorientation of trade resulting from the increased demand created in the oil producing countries. Nevertheless, one can put forward as one explanation tentative figures for the costs generated by formalities at the Community's internal frontiers. The UK Department of Trade has put the cost at £ 203 million a year. According to the European Parliament's Committee on Economic and Monetary Affairs, time lost waiting at the frontiers alone costs 1 000 million ECU a year, the total cost of all crossings of the Community's internal frontiers now approaching 12 000 million ECU. Preliminary calculations by the Commission suggest that the cost of these formalities could be equivalent to between 5% and 10% of the actual value of the goods. The maintenance of substantial formalities at internal frontiers puts the Community market at a disadvantage by comparison with certain large markets outside the Community.

19. The reinforcement of the internal market is thus necessary to restore an advantage to intra-Community trade outlets by comparison with those of non-Community countries. The expansion of intra-Community trade has been a significant factor in improving the competitiveness of European firms. From the data in the Commission's study on the competitiveness of Community industry, it seems likely that the most competitive companies on the Community market also do best at world level. In addition, the national economies of the Member States have been growing increasingly interdependent as a result, with intra-Community exports steadily increasing their share of GDP to 9% in France, Italy and the United Kingdom in 1980, 11% in Germany, 13% in Denmark and over one third in the Netherlands, BLEU and Ireland. Together, these two factors clearly illustrate the key role which the internal market can play in economic growth: macroeconomic decisions permitting, the conditions are right for a general improvement in the competitiveness.
20. However the aggregate totals fail to reflect the full extent of this interdependence within the Community. The trade figures include products unavailable inside the Community (for example, raw materials or exotic products) and many low-value-added products. Similarly, GDP includes many activities which, by definition, are not traded but may nevertheless require imported goods or services (for instance, public administration, the retail trade or house-building). Increasingly, this interdependence will have to be taken into account when, for example, defining the reference market for checking companies' business practices.
21. An analysis confined to industry alone - however rough and whatever the imperfections of the method - has shown that manufactured products imported from non-Community countries total less than 10% of home production in France, Italy and Germany, between 15% and 20% in the United Kingdom and over 20% in the Netherlands and the BLEU.

The figure for the Community as a whole is approximately 12%. This suggests that from the macroeconomic point of view the pressure from non-Community competitors is being contained within reasonable limits. But although the final figures are relatively closely grouped, the breakdown by industry differs from one Member State to another, which explains the diverging commercial policy decisions being reached within the Community. Nonetheless the Commission feels that its analysis confirms its conviction that where commercial policy is concerned, there are justifiable grounds for differences on specific problems far more than on matters of principle.

22. Services are playing a growing role in the economy for the share represented by traded services for the Community as a whole increased from 46.5% in 1970 to 50.7% in 1980. As for inter-State trade, intra-Community imports of all services accounted for 9.0% of all goods and services imported that year. But before progress can be made towards creating a common market in this increasingly important sector, substantial legal and administrative obstacles remain to be overcome. Progress to date has been only modest.

23. Turning to investment, the statistics are too disparate, taking into account also monetary fluctuations, to form a basis for any perfectly reliable conclusions. Nevertheless they reveal phases comparable to the trade figures: regular and substantial growth up to 1973, a sharp contraction at the time of the first oil crisis, moderate recovery from 1976 to 1980, and now a new decline in investment since 1981. The rate of investment in the Community as a percentage of GDP slipped from 23% in 1970 to 20% in 1982. And the annual growth rate for investment, which still held steady at 3.4% from 1976 to 1980, has been negative ever since.

24. It seems that the diminishing attractiveness of the Community market for investments coming either from the Community itself or from non-Community countries has been accompanied by a re-orientation of Community investments towards other markets. Although only 3% of the total investments made by the Member States are abroad, it must be recognised that today 47% of German investment abroad is placed in the USA, as compared with 16% twenty years ago. At the same time the percentage placed in the other Member States has fallen back to the 1964 level of 28%. France divides its foreign investment equally between the Community and the USA - each receiving 28% - but twenty years ago France's Community partners attracted 54% and the USA 6%. Too few data are available to establish how far economic uncertainty - still too great - is responsible for the behaviour of the Community's investors or whether their unwillingness to enter into transnational operations within the Community merely reflects the fact that despite its promising start the Community has failed to build up confidence in the future of its internal market.
25. It is equally difficult to establish the precise cause-and-effect relationship between the shifts in investment within the Community and the sluggish progress towards free movement of capital. Since these efforts have advanced little beyond the two Directives adopted back in 1960 and 1962 to facilitate intra-Community trade and to prohibit all restrictions on certain foreign currency payments, the national capital markets have remained firmly partitioned. Finally, on the Euro-markets - where international foreign currency loans are negotiated and which are the main avenue for movements of capital, even for the Member States - countries with weak currencies are forced to run up their debts in strong currencies, since only they are traded. The liberalisation of capital movements, presently almost at a standstill, can only be resumed in step with the progress being made towards economic and monetary union in other fields.

Matters of interest to firms

26. This assessment of the economic importance of a properly functioning internal market would not be complete without an assessment of enterprises' views of the potential and limitations of the market.

27. The role of small and medium-sized firms in the Community's economy today, and their potential, are generally acknowledged. By their nature, the firms are highly diverse and often, initially at any rate, better-suited to the local market than to winning markets across the frontier. Their very size can limit to a certain extent their efforts to expand. To make matters worse, when they do seek wider markets - say, because a given product from their range fits into a particularly promising slot on the market - they run up against a series of uncertainties and problems caused mainly by the lack of standardised technical rules, legal uncertainty, or complex procedures. Often this effectively bars the possibility of Community-wide expansion of activities.

28. Big firms find it easier to overcome these obstacles since, amongst other reasons, (i) it is easier for them to gain access to information and, hence, to make the adjustments needed to win markets in neighbouring countries; (ii) they produce goods for mass consumption and are therefore in a better position to absorb the temporary extra costs involved in breaking into foreign markets; (iii) they benefit from a solid base in their home market, have extensive distribution networks in the other Member States and, as a result, generally do not experience too many problems launching new products, tailored to different markets wherever necessary. For all these reasons their interest centres on the obstacles which prevent them from operating as flexibly on the Community market as they can on their home market. In short, the concern of large firms is not so much that the obstacles are insuperable, but with the cost of overcoming them.

29. Co-operation between enterprises situated in different regions of the Community is an essential aspect of the internal market and of its economic role in the present crisis. At the same time, the lack of legal vehicles at Community level and the limited harmonisation of national laws has been shown by experience to be a real barrier to co-operation between enterprises, even if only for psychological reasons. Numerous co-operation projects of a promising nature have failed to materialise because of the lack of appropriate legal structures to accommodate them. In addition, a series of tax obstacles hamper co-operation, national taxation systems making virtually no allowance for transnational co-operation. A firm established in two States, for example, is subject to two separate fiscal systems. In addition, the drawing up of a single income statement showing the overall profit or loss is not possible.

30. These general points have emerged from the experience gained during the consultations to prepare Community legislation and from everyday practice with the Community acts already adopted. Beyond that, the Commission has sought, by means of a special study, to obtain a more detailed picture of the problems facing enterprises wishing to operate on the Community's internal market in the same way as on their own home market. The conclusions sketched below are drawn from this analysis of a limited, but nevertheless highly representative, sample of firms.

31. First, it was recognised that before enterprises could make the jump in quality from the home market to the wider Community market they had to overcome various management problems: lack of management resources, unwillingness to take risks, lack of planning and lack of knowledge of the prospects opened up by Europe's internal market. This applies, for example, to firms which have limited their operations to a specific local market and have never explored the economies of scale made possible by the common market, deterred by the apparently impenetrable, or at least more difficult market in other Community countries. Instead they prefer to take up the offer of State aid facilities and tackle markets in certain non-Community countries, however difficult the venture may be, particularly if they hold out the prospect of rapid, albeit temporary success. Non-European firms rarely experience such problems.

32. Social and cultural obstacles, and in particular language barriers, which are more pronounced within the Community than in the USA for example should not be overestimated. Only a minority of the enterprises questioned felt that they posed a genuine problem. Language problems create no insuperable difficulties at either the planning or sales stages, though they may create some problems at the planning stage and sometimes in the context of customs clearances. What is more, consumers are showing a growing readiness to accept tastes and fashions from other Community countries, at least as specialities, if not as everyday products. Finally, the nationalist feelings which sometimes triumph over rational economic criteria when European consumers purchase a car, for example, will lose their sway as components are drawn from several different Member States and the country of origin of the end-product becomes less and less evident. Finally, this fact must be publicised fairly, with firms refraining from campaigns to promote the purchase of national products.
33. The most tangible obstacles appear to have been created by intervention by the public authorities - for example, customs procedures, technical barriers, tax barriers, company law, national preference arrangements and State aid at the microeconomic level, and, for instance, currency movements, diverging inflation and interest rates and energy costs dictated by macroeconomic policies. Firms pursuing a market strategy geared to the Community dimension and to the market conditions in partner countries particularly object to the macroeconomic barriers, though they also speak out against the microeconomic obstacles, which are resented even more by small or medium-sized firms or by those as yet unaccustomed to the challenge of competition at Community level. Significantly, large firms or trade-mark holders hardly ever bring grievances before the Commission.

34. The State intervention to blame for the interference with the functioning of the internal market of which enterprises complain does not always take the form of formal, public action against which proceedings can be brought on the grounds that it contravenes Community law. In many cases the government action is not transparent but prefers a psychological approach, creating an atmosphere of uncertainty and discouraging the individual concerned from attempting to overcome the obstacle or from invoking the legal procedures available to remedy the situation. Conversely, ties between enterprises and public authorities, the result essentially of State intervention, lead to firms developing ambiguous attitudes, the attraction of the European dimension being insufficiently strong to incite firms to abandon the present comfort of national systems designed to accommodate and protect them.

III. THE RESPONSIBILITY OF THE AUTHORITIES

Much achieved, but more needs to be done

35. The achievements which the Community and its Member States, inspired by early enthusiasm for European integration, have managed to realise are considerable. Customs duties were abolished in 1968 - eighteen months earlier than provided for in the chapter on the Customs Union in the EEC Treaty. Quantitative restrictions and measures of equivalent effect have been banned. Several hundred Directives have harmonised the laws, regulations and administrative provisions of the Member States which directly affect the establishment or working of the common market. Thus, with regard to taxation, in 1967 the introduction of the VAT system did away with one of the most important distortions of competition, namely the cumulative tax on turnover. As regards the free movement of goods, the adoption of nearly two hundred Directives designed to eliminate technical barriers to trade, and the institution of proceedings in many cases for infringement of the rules stemming in particular from Articles 30 et seq. of the EEC Treaty, have made it possible to do away with innumerable obstacles to trade.
36. These undeniable successes, the economic impact of which was highlighted in the previous chapter, cannot hide the importance of what remains to be done. Contrary to the legitimate hopes aroused by the creation of the Community, the formalities at the internal borders of the Customs Union remain almost intact, and are as complex as those applying to imports from non-member countries. Similarly, undertakings in different Member States do not enjoy a single legal and taxation framework allowing them to co-operate transnationally.
37. Community legislation is progressing too slowly, which creates an additional feeling of frustration in the mind of the public at large. When agreements are finally reached after lengthy discussions in the Council, their implementation too often takes longer than the time limits laid down and in many cases distorts the substance of what has been agreed. Infringement proceedings - costly in terms

of resources and unpleasant from the political viewpoint - then have to be resorted to, if not only what has already been achieved but future agreements, too, are not to be jeopardised.

38. At the same time, the "acquis communautaire" is increasingly threatened by intervention on an ever-wider scale by the authorities. While the purpose of such intervention is not always out of line with the Treaties, further obstacles to the proper operation of the common market are nevertheless created by the greater disparity between Member States, which in turn requires harmonisation measures by the Community. Very often, intervention by the authorities runs counter to the "acquis communautaire", and punitive sanctions have to be taken: the increase in proceedings started by the Commission in response to complaints received bears witness to this unfortunate tendency.
39. Clearly, such intervention also includes the financial support which the authorities grant to firms: verification of whether these measures are compatible with the common market is entrusted to the Commission, which gives account of its actions in this respect in its annual report on competition.

Bureaucratic inertia

40. The creation of a single European market is a dynamic undertaking which requires a willingness to adapt traditional systems of administration and supervision to the new needs and conditions; it also requires confidence in the common institutions. Very often, the willingness shown at the highest political level clashes with the well-known phenomenon of bureaucratic inertia. This form of resistance to change, common to all administrative systems, represents a considerable obstacle to the proper working of the internal market on several grounds.

41. Firstly, a State's membership of the Community only rarely affects the behaviour of its civil servants. Opportunities are thus lost of making simple improvements, which are not expensive especially if introduced when existing structures are reformed or modified. It is astonishing, for instance, that channels reserved for Community citizens have not been introduced more often at frontier passport-control points. Similarly, it is hard to believe that separate tariffs for mail to destinations inside and outside the Community could not have been introduced on one of the many occasions when international postage rates have been raised. It is also surprising that the authorities responsible have not found a way of facilitating frontier crossings for low-volume border traffic. A change of outlook with regard to barriers of this kind would not only encourage tourism, but would make a fundamental contribution to public confidence in the Community.

42. When new acts or regulations are deemed necessary, it has not become the habit to draft instruments which create least difficulty as regards relations within the Community. From its experience of proceedings for infringement of the Treaty, mainly but not entirely with regard to Article 30, the Commission has found in quite a few cases that an infringement has not been caused by a deliberate desire to contravene Community law, but by an insufficient awareness on the part of the administrative department concerned of the Community and the framework which it defines.

43. A more serious matter is the attitude of technical aspects - very often apparent at meetings when legislation that requires unanimity is being prepared - who "stand pat" on their arguments because they regard their country's way of doing things as so good that it cannot be altered for the sake of reaching a Community solution. The Commission has often found that such resistance can more easily be overcome when it is inspired by specific interests which can be evaluated and compensated in some way, than when it is merely a dogmatic reaction.

Short-term considerations

44. Many of the defects in the operation of the internal market arise because governments find it difficult to sacrifice specific short-term considerations for advantages which, though concrete, are more remote. In the short run, factories are closing, the situation in certain local areas is deteriorating and budgetary austerity is limiting flexibility: all factors provoked by the present crisis which have political repercussions. In the medium term, economic rationality, the play of comparative advantages, the hope springing from new industrial developments which will create growth are all elements which logically and politically constitute the essential framework for the development of a common market in the Community.

45. Solutions to this dilemma are too rarely placed in the Community framework. Often, when the economic situation worsens, a defensive reflex dominates: open or disguised protectionist measures are taken and Community solidarity in the form of a joint decision is shunned for fear that it will be impossible to maintain the effort which that decision involves. Or, when joint measures - conceived as a positive, bold response to the economic crisis - are slowed down or prevented by differences within the Community, isolated initiatives are immediately taken. Such attitudes contribute in no small way to the deterioration of the Community's internal situation and, in particular, call into question all that has been done to improve the working of the internal market.

46. The responses to these two forms of retreat from a Community-oriented approach should of course be differentiated. Generally, a protectionist measure contravenes the Treaty and, as such, should be sanctioned. The isolated initiative cannot be sanctioned and therefore appears strictly speaking to be legitimate. It is nevertheless a breach of Community solidarity and may thus have very serious repercussions.

A variety of situations and methods

47. Compliance with Treaty rules, as these are defined by the courts, and the creation of a Community legal framework, often encounter a variety of genuine difficulties of a political or cultural nature: different administrative and legislative traditions; the degree of centralisation or regional autonomy; different conceptions of the respective roles of the State and private enterprise; a variety of macro- and micro-economic policies.
48. The common market can only be developed if the extent of these differences is grasped, leading first to an appropriate degree of transparency and thence to conciliation measures, and finally resulting in a joint solution, if not in the immediate future, then at least within a jointly agreed period which should be as short as possible. This positive approach implies that no Member State, regardless of its economic weight, its legal or political tradition, or its technological lead, can claim that the Community solution is identical to its own national version, it being exceptional for the harmonisation of laws and techniques to be realisable on the basis of a single Member State's rules.
49. An obvious example is provided by the (very topical) problems of standardising technical rules: progress towards industrial production on a continental scale depends very much on convergence in this field. The advantage of standardising industrial products has long since been demonstrated. However, a major innovation was introduced very quickly in one country, namely Germany, a century ago. It was found that the more comprehensive the specifications in standards were, the better the quality of the products and, at the same time, the more skilful the workforce became; accordingly, industry took the strategic decision to co-operate as regards standards and devote considerable resources to their preparation. The intrinsic qualities of German standard setting rapidly became such that the State considered it

could refer to these standards, drawn up by trade bodies, whenever its public-order obligations (health, safety, consumer protection, etc.) made its intervention essential. This situation, excellent though it is on grounds of practicality and efficiency, can however create a definite obstacle once commercial practice is also taken into account, to penetration of the German market by products manufactured in another Member State under a different system of standards. Conversely, in the eyes of German authorities and companies, other Member States' systems, based on wider public intervention, appear arbitrary and unjustifiably obstructive. The problem really is to define a system of standardisation and preparation of technical rules which either ensures that current barriers are done away with under a system of mutual recognition or gradually replaces present systems by a Community system. Whatever the solution finally adopted, there is no doubt that the first step cannot be to ensure real transparency, for the information being communicated on the basis of the system currently in force is clearly unbalanced and inadequate. The Council should take a decision shortly on this matter, but that will only be a beginning: the fundamental problem still remains unsolved.

50. Transport services provide a similar example. The slowness of liberalisation in this area is due to the fact that Member States stick to strategies the basic differences of which have been determined by those countries' economic, political and historical legacy, the peripheral States depending to a much greater degree on road transport than those in the centre, which have given greater prominence to rail. The unsolved problems of competition between rail, road and, to a certain extent, inland waterways and inter-regional air transport are a source of economic inefficiency and can affect trade in the same way as non-tariff barriers. A common transport policy - an essential element in reviving the internal market - is not necessarily synonymous with a uniform transport policy; on the contrary, it must be sufficiently flexible for the diversity of national situations to be taken into account.

Three specific examples

51. Public procurement activities represent about 15% of Community GNP, including purchases of military and space equipment. Their continued segregation constitutes a barrier to trade and innovation, at national as well as Community level. The measures taken by the Community to open up public procurement by ensuring greater transparency have had very disappointing results. Although the scope for Community action has been limited, one is bound to conclude that the procedures, even when formally applied, have seldom been correctly implemented, and purchasing departments have generally resorted systematically to the restricted procedures, which in the spirit of the Community directives ought to have been used in exceptional circumstances only. Moreover, the technical specifications are sometimes given too much importance as regards both invitations to tender and the awarding of public procurement contracts.

52. The Council having requested a report on the functioning of Directive 77/62/EEC, the Commission is examining the question as to whether, as well as technical amendments to Community statutes, national efforts in those industries where the size of the market encourages innovation and development should not be better concerted, if necessary by active policy-making at Community level.

53. This question is particularly acute in the telecommunications field, where the Commission has found to its regret that the few changes which it did propose have not received the unanimous agreement of the Council. As a result of this failure, which is a serious threat to the prospects of the industry in the Community faced as it is with world competition based on new information technologies, the Commission has no alternative but to start again from scratch in its search for a strategic plan that can ensure the continental dimension required. It nevertheless considers that rapid progress is possible as early as this year.

54. The responsibility of the authorities is a key factor in the future of pharmaceuticals as well. This industry is still one of the most competitive in the Community. The production of new substances, however, requires considerable investment, if the necessary research is to be financed. At the same time, the market is still fragmented. This fragmentation results partly from the behaviour of enterprises themselves, and partly from intervention by the Member States, and in particular from the diversity of methods employed by all Member States to restrict the growth of expenditure on drugs in the context of their social security programmes. This creates severe distortions of competition with regard to the income from sales by firms in the different markets. The Commission reserves the right to inform the Council about all aspects of this problem, pursuant to the resolution which Parliament has just passed; it is aware that this is a very thorny subject, politically and technically.

IV. LINES OF ACTION

Protecting the "acquis communautaire"

55. The progress made by the Community, whether in the form of Regulations passed under the Treaties or in the form of secondary legislation, is being jeopardised in a manner which is increasingly unacceptable. This can be forestalled in two ways: by preventing the occurrence of situations likely to disrupt the proper operation of the internal market and by stamping out violations of the rules established by the Treaty and by secondary legislation.

56. There are two types of preventative measures required. To begin with, at Community level, there should be more information about proposals for legislation or regulations - accompanied where necessary by a temporary halt - to allow the Member States concerned or the Commission to ask for proposals to be amended or to allow the Commission to propose harmonisation measures at Community level to replace national measures. The decision which the Council will shortly be taking on setting up an information system on technical standards and regulations in industry comes under this heading. Experience will show whether this method should be extended to other areas covered by national legislation and regulations.

57. A second type of measure is to tackle the very roots of the problem. The fact that many infringements of the Treaty are the result of bureaucratic negligence rather than attempts at protectionism (see paragraph 42) should prompt the Member States to set up national instruments to avoid the creation of further obstacles to the operation of the internal market. In fact, the idea was put forward at the European Council in Copenhagen that each Member State should reinforce its co-ordination procedures as regards the internal market. One such requirement would be to encourage the authorities responsible for passing legislation and regulations to opt for those solutions which

do least damage to the Community's internal market. It would probably be difficult to introduce this fonction by means of Community legislation, since this would necessarily require a uniform approach. Nevertheless, a statement of principle by the European Council along these lines, committing the Governments of Member States to pragmatic but steady progress, would certainly do much to boost public confidence.

58. Since 1977, the Commission has stepped up and streamlined its attempts to stamp out violations of Community laws. The processing of complaints is now much more efficient and faster. The Court of Justice has set some extremely important legal precedents (Cassis de Dijon, Gaston Schul, Reyners), defining with increasing precision the room for manoeuvre which in exceptional cases the Treaty allows the Member States. Nevertheless, the problem remains that, even when an infringement is quite blatant, corrective action still takes too much time.
59. Because of the sheer volume of complaints addressed to it, the Commission cannot process them all in an equally short period of time; this is bound to work to the advantage of those Member States infringing legislation. For this reason, the Commission, while continuing to take action to improve and rationalise its internal procedures, will be asking the Budgetary Authorities in the 1984 Budget for extensive additional resources. These resources are particularly necessary because, owing to the number of cases, the Commission is currently forced to base its action primarily on individual complaints. Even though this approach permits the Commission to deal with a large number of measures that are incompatible with the Treaty, it has a number of disadvantages as it may create imbalances between the Member States against whom action is being taken, between different economic sectors or between the different types of infringement. Although some imbalance is more or less inevitable in a process which, although it is judicial in nature, must also consider underlying political, institutional, economic and social factors, it is also important to proceed systematically, particularly when it comes to following guidelines laid down by judicial decisions or to using general notification or information procedures.

60. Systematic action, which will necessarily mean broader action - if only at the pre-litigation stage - can also help, at least in part, to overcome another disadvantage of procedures based essentially on complaints, namely the hesitation of potential plaintiffs. The Commission has observed that this reluctance, which is quite common at national level too because of fear of reprisals, is even more common at Community level. This is a complex problem which cannot be solved by legal measures, as these behaviour patterns are very difficult to detect. For this reason, some thought will have to be given to reducing as far as possible the extent of this phenomenon which can encourage reactions likely to reduce the confidence of economic operators in the advantages of a common market.

Eliminating disparities

61. As the objectives of economic unification being pursued by the Community are extremely ambitious and as progress to date is far from achieving them, merely to ensure that progress is not jeopardised is not enough to guarantee the proper operation of the internal market. Consequently, it is essential to use legislation to reduce the substantial inequalities between the situations existing in the Member States.

62. Apart from the political problems which the first chapter of this report tries to solve, the technical efficacy of the Community as a lawmaker has diminished considerably over the last few years. There are several reasons for this:

- (i) the increase in the number of Member States tends to have an automatic retarding effect;
- (ii) in many areas, the difficulties increase proportionally with the progress made by the Community, since there are wider differences of opinion, tradition or interest;
- (iii) as the scope of legislation widens it becomes more difficult to synchronise work being done by the Community institutions in order to find political settlements to the advantages and disadvantages to each Government of the various matters under discussion;

(iv) even before matters reach the Community stage, the vast number of different subjects makes it increasingly difficult to make political arrangements within each government, with the result that a position which was taken reluctantly can have a paralysing effect at Community level.

63. There are several ways of overcoming these problems, none of which will probably be effective on its own but all of which together can ease the situation. There is basically a need to restore flexibility to the negotiations within the Council and to simplify decision-making procedures.

64. Any attempts to make negotiations more flexible must come from:

(i) the Commission, which should justify its proposals more clearly, particularly by clearly stating why the measure is required and the options it has decided upon;

(ii) the governments of the Member States by assigning priority to those co-ordination measures concerning the internal market which:

- will ensure the simultaneous consideration of different areas where Community legislation is in progress in order to ensure the necessary flexibility in negotiations;
- as regards to procedures for translating Directives into national legislation will ensure their application within the given deadlines and which, once they have been adopted in all Member States, will allow the Council generally to cut the time it takes to adopt future directives;

(iii) jointly by the Commission and the Council, which should monitor progress being done with technical preparatory work in the Council so that this work:

- does not get held up at the stage of expert consultations;
- can be carried out in such a way as to present the Council with packages of legislative and operational decisions so that it can maintain the dynamic balance which is one of the main features of the Community and a guarantee of its progress.

65. As regards simplifying decision-making procedures, the Commission is increasingly convinced that efforts should be made to lighten the working procedures for harmonisation in fields other than those of such complexity as company law and intellectual property. As far as possible, the Council should offload technical matters by making more use of its powers of delegation as recommended by the European Council. Article 115 of the EEC Treaty makes express provisions for this possibility and opens the way to a simplified legislative procedure using management and regulating committees. This procedure has already been used successfully with customs matters and with the adaptation to technical progress of existing directives without any loss to the Member States of their right of scrutiny of Community activities. Since 1973 the Commission has adopted 43 Directives relating to technical barriers. All of them, without exception, received the favourable opinion of the committees made up of representatives of Member States. The encouraging results shown by the procedure for adapting Council Directives to technical progress suggest that this procedure should be extended to the adoption of specific directives arising from framework directives already adopted by the Council.

ANNEX I

TRADE BARRIERS AND CONSTRAINTS

Indication, based on actual cases reported to the Commission, of the type of difficulties and obstacles encountered by firms or individuals wishing to trade beyond their national markets or to take advantage of a Community market.

General barriers and constraints

A. National preference

1. Campaigns to encourage the purchase of national products, origin marking; activities of bodies responsible for promoting national products;
2. Preference granted in the context of taxation, aid and credit;
3. Reserving public contracts for national products or giving preference to national products in such contracts; (discriminatory technical specifications; awarding contracts to local tenderers or tenderers using national products); splitting-up of contracts to avoid open tendering procedures; recourse to emergency procedures or restricted procedures; incorrect application or late transposition of Community rules; exemptions provided for in Community rules (transport, water, energy, telecommunications; value thresholds);
4. Regulation of orders of oil and gas companies;

B. Legal uncertainty resulting from:

1. the demand for general powers to control frontiers within the Community;
2. the plethora of rules and regulations and the lack of transparency;
3. amendments to rules and regulations without adequate transition periods;
4. incorrect or late application of Community law; stagnation of Community activities;
5. blacklists of complainants;
6. ambiguous wording of provisions the text of which applies to products whatever their origin, but which in practice are applied only to products from third countries;

Frontier barriers

A. Formalities and inspections

1. Many complex customs, tax and statistical formalities;
2. Certificates and licences required without explanation (e.g. in the context of intra-Community transit);

3. Certificates of origin; justified or unjustified verification of origin in the context of Article 115 of the EEC Treaty;
4. Import declaration used as licences;
5. Discontinuation of the simplified procedures for steel products;
6. Personal checks; fuel checks;

B. Import restrictions

1. Import timetables;
2. Imports subject to the opinion of a committee in which national manufacturers are represented (e.g. in the case of fire-fighting equipment and solar collectors);

C. Administrative matters

1. Limited number of approved crossing points (e.g. for video recorders, textiles, clothing, steel products, animals and fruit); customs offices concentrated in ports and airports;
2. Shortages of staff and equipment at customs offices; many delays; infrastructure out of line with traffic requirements;
3. Liability of officials for amounts not collected;

D. Other

1. Requirement to go through a customs agent or a guarantor;
2. Methods of calculation which raise the value for customs purposes;
3. Excessive nature of criminal customs law;

Rules concerning technical safety and public health

A. Preparation of the rules

1. Plethora of rules, lack of transparency, frequent changes, inadequate transition periods; complexity;
2. Influence of national producers;
3. Product specifications instead of performance specifications;
4. Non-recognition of the rules of the other Member States; dissuasive conditions of access to quality labels;

B. Substance of the rules

1. Discriminatory effects; trade standards which penalise imports;
2. Complex rules (e.g. concerning fruit juice);
3. Provisions which require that meat products must have been cooked at 70°C (thus preventing the importation of cold sausage and dried ham);
4. Stringent rules (e.g. concerning construction materials, sanitary ware and the use of additives);
5. Incompatibility with Community rules and regulations (e.g. legislation on additives in wine and the designation thereof);
6. Imports of pigmeat banned because of sources of swine fever in certain areas of the exporting State;

7. Non-returnable packaging required (e.g. for apples and pears); requirement to market beer and soft drinks in recoverable containers approved by the authorities of the importing State; rules on the labelling of milk powder; requirement to use the language of the importing State (e.g. for foodstuffs, including tinned foodstuffs);
8. Beer purity law;
9. Rules concerning UHT milk;

C. Application of the rules

1. Limited number of check points;
2. Lengthy and expensive checks (e.g. bacteriological inspection of pasta);
3. Difficult to obtain an approval (e.g. for the importation of cars by individuals);
4. Special methods of analysis;
5. Lengthy and expensive approval procedures (e.g. for pharmaceutical products and electrical equipment);
6. Lengthy analyses (e.g. for perishable foodstuffs);
7. Elaborate inspections for imported seasonal produce (e.g. cherries and apples); barriers to imported agricultural produce; intransigent application of rules and codes (e.g. for meat, cold meat, poultrymeat, milk, dairy products, cheese and eggs); quarantine requirement for batches of imported oysters;
8. Non-recognition of certificates of conformity to technical standards or specifications (e.g. pressure equipment; particle-board, caravan; medical equipment; refrigerators, television sets; electrical equipment and electric tools);
9. Documents required which are difficult or impossible to provide (e.g. certificates of conformity and ageing certificates for certain spirits);

Other barriers and constraints

A. Transport conditions

1. Requirement to transport UHT milk by refrigerated means; rules concerning the carriage of dairy products in tanker lorries;
2. Exemptions from the obligation to use the tachograph, checking of driving time;
3. Checking the weights and dimensions of vehicles;

B. Taxation

1. Tax schemes (e.g. for alcoholic drinks; private vehicles, tyres; relief for locally-bottled mineral water, alcohol denaturing rules which can result in perfumes and toilet waters being treated in the same way as spirits; other schemes favouring local producers);
2. Value-added tax (e.g. differences in rates; collection procedures; flat-rate repayment rates for agriculture);

C. Aids

1. Distortion of competition; lack of transparency;
2. Aid made subject to the purchase of national products;

D. Price rules

1. Minimum or maximum prices (e.g. for pharmaceutical products; fixing of the price of gas); fixing of profit margins;

E. Services

1. Banking; insurance;
2. Air transport services (licences, professional certificates etc.: pricing system); road transport (quotas; driving time; checking the weights and dimensions of vehicles; taxation).

Table 1
 INTRA-COMMUNITY TRADE WITH REGARD TO TOTAL TRADE
 (in %)

	1958		1973		1981	
	I	E	I	E	I	E
D	34.3	35.8	53.0	48.2	48.2	46.9
F	26.7	28.6	55.8	57.0	48.2	48.2
I	29.5	33.1	49.4	51.8	40.7	43.2
NL	50.1	57.1	61.3	73.2	52.4	71.3
UEBL	54.7	53.6	70.9	73.8	59.3	70.0
UK	20.4	20.3	33.1	33.1	39.4	41.2
IRL	68.2	81.5	71.8	76.3	74.7	69.9
DK	59.0	58.2	45.9	46.4	47.9	46.7
GR	53.3	50.4	50.0	55.0	50.0	43.3
EUR	33.8	35.3	52.1	53.7	47.6	50.7

I = Imports

E = Exports

NOTE: The development of these figures is influenced, in part, by the increase in the price of petrol as well as by reorientation of trade caused by the additional demand in petrol-producing countries.

Table 2
INTRA-COMMUNITY TRADE WITH REGARD TO GNP
(in %)

	1958		1973		1981	
	I	E	I	E	I	E
D	4.7	5.9	8.3	9.3	11.5	12.0
F	2.8	2.8	8.2	8.1	10.3	8.6
I	3.2	2.9	8.9	7.5	10.7	9.4
NL	21.6	21.9	24.8	29.1	24.8	35.0
UEBL	17.9	17.0	33.1	35.1	37.2	39.4
UK	3.7	3.2	7.2	5.7	8.4	8.1
IRL	27.1	21.4	30.3	24.5	47.4	32.8
DK	17.2	15.8	12.5	10.1	14.8	13.2
GR	10.4	4.0	10.6	4.9	12.1	5.0
EUR	5.5	5.4	10.5	10.4	12.6	12.5

I = Imports

E = Exports

Table 3
GROWTH OF INVESTMENTS
(Annual change in %)

	1961-70	1971-80	1982
D	4.7	2.0	-6.3
F	7.8	2.4	-1.4
I	5.1	1.2	-2.4
NL	7.0	0.3	-4.0
B	5.8	2.2	-5.2
LUX	3.5	2.4	0.1
UK	5.0	0.6	1.1
IRL	9.7	5.2	-2.1
DK	7.3	-1.0	-1.0
GR	9.3	2.5	-4.8
EUR	5.0	1.6	-3.0

1982 = estimate

Table 4
INFRINGEMENTS OF THE EEC TREATY
Number of procedures ex. art. 169

Year	Formal Notices	Reasoned opinion	Cases brought to the Court	Decisions of the Court
1959	2	1	-	-
1960	20	3	-	-
1961	22	6	3	1
1962	8	5	2	2
1963	8	4	3	-
1964	17	7	1	1
1965	28	5	1	1
1966	25	3	-	-
1967	18	5	-	-
1968	20	12	3	1
1969	46	21	11	4
1970	50	16	2	8
1971	42	4	2	1
1972	40	18	4	1
1973	30	7	4	4
1974	30	11	1	1
1975	60	23	2	1
1976	90	38	6	2
1977	68	28	8	2
1978	100	46	15	5
1979	200	79	18	8
1980	240	82	28	20
1981	243	150	50	17
1982	332	166	46	23

NOTE: The increase in the number of infringement procedures at the end of the seventies is explained, in part, by the increase in the volume of Community law and by the fact that in 1977 the Commission reinforced and nationalized its internal procedures. In 1982, 37 % of matters brought before the Court concerned the incorrect transposition, or the absence of any transposition, of directives into national law; at the beginning of the eighties, three quarters of infringement procedures concerned this.

Table 5
TECHNICAL HARMONISATION
(Industrial products)

	Directives adopted by the Commission	Commission Proposals	Directives adopted by the Council	Proposals pending 31.12.
69-72	0		35	
1973	1	12	11	34
1974	2	33	14	59
1975	1	15	12	65
1976	4	13	22	55
1977	1	6	17	51
1978	5	11	11	46
1979	7	7	11	42
1980	1	25	10	58
1981	5	6	6	57
1982	14	4	7	58
Total	43		150	

Table 6
NOTIFICATIONS OF NEW TECHNICAL REGULATIONS
(by virtue of the arrangement of 1969)

	1975	1976	1977	1978	1979	1980	1981	1982	Total
D	3	-	1	-	-	-	-	-	4
F	1	4	-	7	9	9	8	7	45
I	1	1	-	-	-	-	-	3	5
NL	-	1	1	-	1	-	2	-	5
B	2	2	1	1	1	-	-	-	7
LUX	-	-	-	-	-	-	-	-	-
DK	1	1	1	1	1	1		1	7
IRL	-	-	-	-	-	1	1	-	2
UK	-	-	-	-	-	-	-	-	-
GR	-	-	-	-	-	-	-	-	-
Total	8	10	5	12	14	12	12	14	87