

PRESS RELEASE

9035/89 (Presse 174)

1352nd Council meeting

- INTERNAL MARKET -

Luxembourg, 10 October 1989

Presidents: Mrs Edith CRESSON

Minister for European Affairs  
of the French Republic

Mr Francois DOUBIN

Minister for Trade and Craft Trades  
(Ministry of Industry and Town and  
Country Planning) of the French  
Republic  
(for item on Domestic Trade)

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The governments of the Member States and the Commission of the European Communities were represented as follows:

Belgium:

Mr Paul DE KEERSMAEKER  
State Secretary for European  
Affairs and Agriculture

Denmark:

Mr Nils WILHJELM  
Minister for Industry

Germany:

Mr Helmut HAUSSMANN  
Federal Minister for Economic  
Affairs

Mr Otto SCHLECHT  
State Secretary, Federal Ministry  
of Economic Affairs

Greece:

Mr D. DANILATOS  
Secretary-General, Ministry of  
Trade

Spain:

Mr Pedro SOLBES  
State Secretary for Relations with  
the European Communities

Mr RUIZ LIGERO  
State Secretary for Trade

France:

Mrs Edith CRESSON  
Minister for European Affairs

Mr François DOUBIN  
Minister for Trade and Craft Trades  
(Ministry of Industry and Town and  
Country Planning)

Mrs Véronique NEIERTZ  
State Secretary for Consumer  
Affairs

Ireland:

Mr Michael SMITH  
Minister of State at the Department  
of Industry and Commerce (with  
special responsibility for Science  
and Technology)

Italy:

Mr Pierluigi ROMITA

Minister for Community Policies

Mr CASTAGNETTI

State Secretary for Industry

Luxembourg:

Mr Georges WOHLFFAERT

State Secretary for Foreign Affairs

Netherlands:

B.I.M. Baron van VOORST tot VOORST

State Secretary for Foreign Affairs

Portugal:

Mr Vitor MARTINS

State Secretary for European  
Integration

Mr Jorge Mendes ANTAS

State Secretary for Internal Trade

United Kingdom:

Mr John REDWOOD

Parliamentary Under-Secretary of  
State, Department of Trade and  
Industry

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Commission:

Mr Martin BANGEMANN

Vice-President

Sir Leon BRITTAN

Vice-President

Mr Antonio CARDOSO E CUNHA

Member

DISTRIBUTIVE TRADES IN THE CONTEXT OF THE SINGLE MARKET

The Council adopted the following Resolution:

"The Council of the European Communities,

Having regard to the Treaty establishing the European Economic Community,

Having regard to the Council Resolution of 19 June 1989 on the implementation of a plan of priority actions in the field of statistical information: Statistical programme of the European Communities (1989 to 1992),

Having regard to Council Decision 89/490/EEC of 28 July 1989 on the improvement of the business environment and the promotion of the development of enterprises, and in particular small and medium-sized enterprises, in the Community,

Having regard to Commission Decision 81/428/EEC of 20 May 1981 establishing a Committee on Commerce and Distribution and the opinions of that Committee on, inter alia, electronic payments, franchising and selective distribution,

Having regard to the conclusions of the meeting of the Directors-General responsible for Trade, held in Brussels on 19 July 1989 at the Commission's instigation, dealing in particular with statistics, legal information, integrated distribution networks (franchising) and electronic means of payment,

Emphasizing the socio-economic importance of trade in goods and services, which represents the second largest sector of activity in the Community, employing 20 million people and making a contribution of 15% to Community wealth and some 20% to the Community's external trade,

ASKS THE COMMISSION TO

continue its work in greater detail, dealing in particular with the following matters:

- with regard to statistics:

improving trade statistics by making them compatible with Community definitions;

increasing as far as necessary the supply of such statistics to the Statistical Office of the European Communities;

rapidly embarking on the sectoral programme for commerce without increasing the administrative burden on undertakings.

- with regard to co-operation and the exchange of information with a view, inter alia, to improving the transparency of the sector:

establishing a data bank, accessible to the administrations, professional organizations, undertakings and study and research institutes concerned, designed to gather and keep up to date the provisions of national and Community law governing or directly affecting trade in goods and services;

involving commercial occupations more closely in the preparation of Community policies, in particular through consultation of the Committee on Commerce and Distribution, and analysing the impact of such policies on commercial activity;

at the same time and for the same purposes strengthening co-operation between the Commission and the Member States by means of meetings between officials responsible for internal trade;

- with regard to the sector's development:

undertaking with the assistance of the existing advisory bodies, taking account of the diversity of commercial undertakings and of national laws as well as the constraints on small and medium-sized undertakings, consideration of certain areas such as the conditions governing the operation of integrated distribution networks, e.g. franchising, including the question of information prior to the conclusion of membership contracts;

ensuring that, as regards payment systems, and in particular the relationship between cardholder and card issuer, account is taken in future of the views of existing consultative bodies and of the principles laid down in the European Code of Conduct relating to electronic payment; a study of the impact on trade of these new methods of payment would also be necessary;

highlighting the role that commerce has to play in other Community policies, in particular competition, protection of the environment and consumer protection.

The Council invites the Commission, while endeavouring to use existing structures and to avoid setting up new procedures, to make the proposals it deems appropriate in these areas and to draw up a programme of activities for 1990."

CONTROL OF CONCENTRATIONS BETWEEN UNDERTAKINGS - CONCLUSIONS

The Council agreed to proceed with final adoption of the Regulation by the end of this year. The Permanent Representatives Committee would prepare the final text on the basis of the latest text of the Regulation and the compromise tabled by the Presidency, having regard to the following guidelines: several delegations commented that they could agree to some of these points only as part of an overall compromise which was satisfactory on all points.

A. Thresholds - Commission action below the thresholds

- There was a clear tendency to favour an initial implementation phase lasting four years and an initial threshold of ECU 5 000 million (with the other thresholds being set at ECU 250 million and two-thirds). Final agreement by several delegations was still, however, subject to agreement on the following two points on which some delegations were not able to agree:

= the Council would agree that the revision should be downwards,

= the decision to progress to a definitive threshold level would be taken by the Council by a qualified majority in accordance with the procedures to be defined by the Permanent Representatives Committee.

In addition, the Council envisaged index-linking the thresholds as from their revision.

- The Commission confirmed its intention of proposing at the end of the first phase that the thresholds be revised to ECU 2 000 million.

- The Council and the Commission stated that at the time of revising the thresholds they would be prepared to envisage criteria other than turnover, such as market share.
- The Permanent Representatives was instructed to consider in detail an approach which would involve giving the Commission the power to act below the threshold at the request of any Member State on whose territory the operation in question would significantly affect competition, the aims being: firstly, to take account of the relevant Treaty provisions and, secondly, to comply with the need for a clear division of responsibilities in relation to the main threshold and avoid any risk of dual control.
- The Permanent Representatives Committee would determine the most appropriate arrangements for the calculation of turnover in the banking sector.

#### B. Criteria

Article 2 of the Regulation would be drafted on the basis of the present text of the Presidency's compromise and would consist of:

- a prohibition clause (declaration of incompatibility), in addition to the authorization clause (declaration of compatibility);
- the concept of a dominant position;
- the notion of technical progress provided this was to the advantage of consumers and did not constitute a barrier to competition.

The objective of economic and social cohesion, being a fundamental Treaty objective, should be referred to in a recital.



C. Application to the public sector

The Council agreed to resolve this problem by including a recital laying down, in particular, the principle of non-discrimination between the public and private sectors.

D. Taking into account of local and national markets above the threshold

- The Council acknowledged the possibility of the Commission, on a case-by-case basis, authorizing a national authority to intervene in respect of an operation above the threshold where competition was affected on a local market, subject to compliance with the principle of exclusivity which it had accepted in November 1988.
- Such intervention could be envisaged by the Commission, by way of exception, throughout the territory of the Member State concerned when the Commission had established on the basis of strictly defined criteria that the national market in question presented all the characteristics of a local market.

E. Legitimate interests

- The Council agreed to include a provision making it possible to protect the legitimate interests of Member States, other than those taken into account in the Regulation, which are compatible with the general principles and other provisions of Community law.
- The following three categories should be taken as a basis here: public security, media multiplicity and prudential rules. Any further public interest raised by a Member State would have to be confirmed by the Commission after an examination of its compatibility with the Treaty.

F. Third countries

The Permanent Representatives Committee would consider how the Community could demonstrate its determination to seek better access for Community undertakings to international takeover markets.

G. Other problems

- The Permanent Representatives Committee would check that the solution advocated by the Commission (warning system) adequately accommodated the twofold concern of not hampering firms in their operations and of minimizing risks of disinvestment.
- The Permanent Representatives Committee would finalize the definition of concentration in such a way as to obtain delegations' unanimous agreement, on the basis of the wording of Article 3.
- The solution to the problem of involving representatives of the banking supervisory authorities with the Advisory Committee would have to be confirmed on the basis of the text of Article 18.
- The Council noted the Commission's intention of publishing the study carried out on barriers to takeovers within the Community and of submitting proposals based on the study to the Council.

EUROPE-WIDE NETWORKS

On the basis of a Commission communication, the Council held a preliminary discussion on the role that an integrated and coherent approach to the development of infrastructure networks could play in completing the single European market.

Initial reactions revealed that this broad overall appraisal of infrastructures was regarded as a useful step and should be examined in greater detail at forthcoming meetings.

It was accordingly noted that the Commission had indicated four fields of crucial importance: telecommunications and information technology, energy, transport, and training.

The Council noted that the Commission might submit a further communication to it at its December meeting, outlining an overall concept in the light of Member States' comments.

RIGHT OF RESIDENCE

The Council held a wide-ranging debate on three draft Directives concerning the right of residence for students, retired people and others not pursuing any economic activity.

At the end of this discussion the Council agreed on the general principle that those enjoying the right of residence should not be a financial burden upon their host country.

On that basis, and allowing for the different situations covered by each Directive, the Council worked out certain principles relating to the conditions which would have to be fulfilled with regard to resources in order to obtain the right of residence.

The Council asked the Permanent Representatives Committee to continue work in the light of those principles.

The Council, which has still to examine the Opinion awaited from the European Parliament, announced that it wanted to take decisions on these three Directives as soon as possible.

MISCELLANEOUS DECISIONSRelations with the EFTA countries

The Council authorized the Commission to negotiate on behalf of the Community, and within the framework of its powers, an Agreement with the EFTA countries on mutual administrative assistance in customs and agricultural matters to complement the bilateral agreements concluded or to be concluded by the Member States.

The Council adopted Decisions concerning the conclusion of Co-operation Agreements between the EEC and

- the Kingdom of Norway
- the Republic of Finland

on research and development in the field of the protection of the environment.

Research

The Council noted that the Commission intended to conclude the Agreement between the EAEC - represented by the Commission - the Government of Japan and the United States Department of Energy for and on behalf of the Government of the United States of America, for a programme of R&D on Reversed Field Pinches, under the auspices of the IEA, pursuant to the provisions of the Treaty establishing the European Atomic Energy Community.

Amendment to the Directives on nurses responsible for general care

The Council adopted an amendment to the Directive on nurses responsible for general care.

The main purpose of the amendment is to determine that proportion of the total minimum length of instruction (3 years or 4 600 hours) which must be devoted to clinical instruction (at least half) and to theoretical instruction (at least one-third). Member States may allocate the remaining one-sixth as they see fit.

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Brussels, 11 October 1989

NOTE BIO (89) 289 AUX BUREAUX NATIONAUX  
CC: AUX MEMBRES DU SERVICE PORTE-PAROLE

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INTERNAL MARKET COUNCIL - Luxembourg, 10 October 1989 (M.F. Berendt)  
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### Mergers Regulation

The Council concluded just after midnight, having marked substantial progress on the mergers regulation, but with the fundamental question of future revision of the threshold still outstanding. This will be dealt with at the Council meeting of November 23, together with the question of Commission powers below the 5,000mecu threshold. In the Council conclusions Ministers were able to agree to a large number of issues which have blocked progress until now. The conclusions noted that a "large majority" were able to agree on the thresholds, on a downward revision of the thresholds in the future and of decisions by qualified majority vote. The United Kingdom, Luxembourg and Germany reserved their positions on these points.

Agreement was reached on the criteria to be applied by the Commission in assessing mergers above 5,000mecu. The formula agreed would reflect the main elements of Article 85 (3) of the Treaty of Rome, based clearly on competition policy considerations while taking into account technical and economic progress provided this was to the consumers' benefit and did not impede competition in the product concerned. This approach satisfied those who were determined that only competition criteria should be used and those who wanted a wider definition.

The Council also agreed a working text which would allow the Commission to authorise member states to examine large mergers in certain specific circumstances where competition was affected on a local or national market. This was satisfactory for Germany, which had demanded the right for a member state to intervene in specific circumstances after a positive decision by the Commission. The proposal for a reciprocity article in the regulation was dropped. It was agreed that Coreper would consider how the Community could seek better access for Community undertakings on international takeover markets.

There remains a difference of view as to how far the Commission could intervene at the request of a member state or on its own initiative for mergers below the threshold. Some member states, including the UK and Germany, are reluctant to agree such a possibility on the Commission's own initiative, whereas others, such as Italy, the Netherlands and Belgium, insist on the need for such a provision.

### Right of Residence

Substantial political agreement was reached on an approach for allowing the right of residence for students, those on independent

Incomes and pensioners. Coreper will now thresh out detailed texts on the basis of the principles agreed in the Council. As far as students are concerned, most delegations accepted that formal proof of income would not be required provided the student could indicate that he or she had the means to live in the host country (Germany, for example, would be quite happy with a letter from a rich uncle). The question of reimbursement from the home country in the event of the student having resort to the host country social security system was not resolved but will be dealt with by Coreper.

As far as pensioners and independent residents were concerned, the Council agreed that they should have documentation indicating that they had sufficient income to live in the host country. For pensioners settling in a more expensive Community country, this might require both a basic state pension from the home country and additional income.

Regards,

B. Dethomas