

# COMMISSION OF THE EUROPEAN COMMUNITIES

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REPORT FROM THE COMMISSION TO THE COUNCIL  
ON THE IMPLEMENTATION OF THE INDUSTRIAL  
POLICY PROGRAMME (Resolution of 17 December 1973)

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I. Removal of technical barriers to trade in foodstuffs and industrial products

A. Foodstuffs

Results in this field so far have been meagre. Only three, out of 23, directives which should have been adopted by the Council up to 1 January 1976, under the Resolution on industrial policy have been agreed.

The delay is due chiefly to the fact that, since the enlargement of the Communities and in view of the need to adapt methods of harmonization in respect of these products, the last two years have been spent on preparatory work at Commission level, also involving governmental experts, which will not begin show results until 1976 onwards. Furthermore, the Commission felt it better not to submit modified first proposals too quickly and in isolation. It attaches importance to proposals being consistent with each other as part of an overall approach.

B. Industrial products

Here the Programme provided for 30 directives to be adopted in 1974 and the same number in 1975. It also called for some 45 proposals to be sent to the Council by the Commission over the same period. The Council has adopted 25 directives in the past two years, although the Commission has sent it 49 proposals (see Annex I).

The first point that must be made is that the difference between the rate at which proposals are sent to the Council and the rate at which they are adopted is disquieting. By the end of 1975 a total of 66 proposals for directives had been sent to the Council but not yet adopted; given that the Council has so far.

adopted directives at a rate of 12 or 13 a year, this would produce an average lag of five years between the Council receiving and adopting a proposal, which is too long in view of the speed of technological advance; for proposals from the Commission are not uncommonly overtaken by events by the time they come before the Council for examination.

In an attempt to remedy this several changes are possible in the manner in which the business of Council and Commission is organized.

As far as Council business is concerned, the delegations should not get lost in the maze of technical detail in proposals when they approve the principle. Since not all directives are equally beneficial to all Member States, it would appear advisable that when the Working Party on economic questions has completed its examination of a number of drafts on which only one or two delegations have expressed reservations, the Council should adopt "bundles" of directives, as it is currently attempting to do while Luxembourg is in the chair. In this way it will be easier to balance the advantages accruing to each Member State as the programme advances.

With such approach it should be possible to make substantial inroads into the number of proposals now awaiting adoption.

With regard to the Commission's objectives, it would seem less than sensible to continue sending to the Council, at the rate required by the industrial policy programme, proposals which would then be held up for several years pending examination.

In these circumstances it is possible to envisage several solutions which are moreover, not mutually exclusive.

The first solution would consist in the Commission - while retaining its freedom to send to the Council when appropriate the proposals needed to remove the most blatant technical barriers to trade - **adapting** its rate of working in new sectors and concentrating on the following points :

- a) adaptation of directives to technical progress. Over the past two years three Commission directives have been adopted for this purpose and efforts along these lines are to be stepped up to avoid Community legislation being left behind by technological progress.
- b) Monitoring of the Member States' implementation of Council directives. The Commission has had no hesitation in using the procedure laid down in the Treaty to require laggardly Member States to come into line with Council decisions. It will take the same attitude wherever necessary.

Although with this method fewer proposals and directives will be held up pending examination by the Council, it is clearly not fully satisfactory from the practical angle because it amounts to a slowdown in progress on the removal of technical barriers to trade.

Another possibility was put forward by the European Parliament<sup>1</sup>, which proposed that the removal of technical barriers to trade could be speeded up by use of action programmes of legally binding form with outline directives for each sector and implementing provisions brought in by the Commission under Article 155 of the Treaty.

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<sup>1</sup> Mr Mitterdorfer's report, 16 June 1975, Doc. 135/75 (PR 30 005/def., p. 7).

This method would have the advantage of relieving the European Parliament and - subject to clear requirements - the Council of the burden of examining what in the Member States are usually matters for regulatory, if not administrative, action.

Another advantage would be a considerable speeding-up of business by obviating the two fold examination of the same text both by the Commission and the Council. Thus a large number of urgent decisions (several proposals for the removal of technical barriers to trade also fell within the Council programme for environmental protection and the consumer protection programme) can be adopted in considerably shorter times than are now necessary.

The Commission received this suggestion from the European Parliament with interest and is studying its legal and practical implications.

II. Gradual and effective liberalization of public contracts

In 1974 and 1975 the Council bodies concerned continued their examination of the draft directive of 15 March 1971 concerning the coordination of procedures for the award of public supply contracts.

The Council is expected to decide on the draft directive by mid-1976.

III. Abolition of tax barriers to closer relations between undertakings

1. The Council was to have voted - before 1 January 1975, if possible - on the proposal for a directive on the common system of taxation applicable to parent companies and their subsidiaries based in different Member States. But examination of this proposal - which dates from January 1969 - has not been resumed since the industrial policy programme was approved and the date of 1 January 1975 was not met. The Commission is still of the opinion that work should be resumed in order to secure a decision without delay.

2. The Council was to have voted before 1 January 1976 on the proposal for a directive on the common system of taxation applicable in the case of mergers, divisions and contributions of assets taking place between companies of different Member States. It did not meet the time-limit either.

- Examination of this matter should be resumed so that the matter of the European Company can be advanced, since a merger is one of the three ways in which such a company can be formed. Discussions with tax experts should therefore be resumed as soon as possible, more especially since discussion of the common system of taxation applicable to mergers was suspended some years ago - more precisely : during the period prior to the accession of the three new Member States. Consequently it is not yet possible to forecast the date of a decision on this matter.

IV. Removal of legal barriers to closer relations between undertakings.

1. The European Parliament delivered its opinion on the proposal for a Regulation on the Statute for European companies on 11 July 1974. In the light of the opinions delivered by the European Parliament and the ESC, the Commission sent a revised proposal to the Council on 13 May 1975. In the second half of 1975 this was given its first examination by an ad hoc working party briefed to identify the chief political problems flowing from the proposals.

The working party's findings are now under review in the Permanent Representatives Committee.

2. The European Parliament has not yet delivered its opinion on the proposal for a directive on the structure of sociétés anonymes. On 11 November 1975 the Commission published a Green Paper on employee participation and company structures as a stimulus to general discussion of these subjects, especially in the European Parliament.

A proposal from the Commission revised in the light of the opinions of the European Parliament and ESC cannot be sent to the Council before 1977.

3. The proposal for a directive concerning the formation and the capital of sociétés anonymes was not adopted by the Council, that is to say the time-limit set by the Resolution was not met.

It might be adopted before the end of 1976, however.

4. The Commission sent to the Council on 8 December 1975 the second proposal for amending the directive concerning internal mergers of sociétés anonymes. Examination of this proposal by the Council is not contemplated until the business mentioned in the previous paragraph is completed.

5. In late 1974 the Council began its examination of the proposal for a directive concerning the annual accounts of sociétés de capitaux in the Member States. It might be adopted in late 1976/early 1977.
6. On 21 December 1973 the Commission sent to the Council a proposal for a regulation instituting a European Cooperation Group. The ESC delivered its opinion on 27 February 1975 ; the opinion of the European Parliament is still awaited.

The situation regarding the commitments of the Representatives of the Governments of the Member States on Community Conventions is as follows :

1. Work on adapting the draft convention on transnational mergers subsequent to the enlargement of the Communities is actively in hand.
2. Work on the convention on the effects of bankruptcies could be completed by late 1977.
3. The Convention for the European Patent for the Common Market was signed at Luxembourg on 15 December 1975. The European Patent Office will commence to function in 1977.



V. European-scale promotion of competitive advanced technology undertakings

1. The Council should have acted by 1 July 1974 on the draft Regulations on the setting-up of joint undertakings within the field of application of the EEC Treaty and on the implementation of Community industrial development contracts which were submitted by the Commission on 17 September 1971 and 24 July 1972 respectively.

This result has not been achieved owing to the lack of cooperation on the part of some Member States, and there has been no progress for several months. Discussions in the Council will only be resumed if there is some sign of a softening of present attitudes.

2. As regards the aircraft industry the Resolution forwarded by the Commission in July 1972 was adopted by the Council on 4 March 1975. On this basis the Commission presented to the Council on 3 October 1975 an Action Programme for the European aircraft and aeroengine industry which calls for the introduction of a common policy in the civil aircraft sector and envisages the establishment of a European Agency for the purchase of military aircraft and the opening of talks with the United States on armaments sales and cooperation. Discussions on this programme in the Council should be held as soon as possible so as not to hold back the practical arrangements for its implementation.

3. As regards the data-processing sector, the original timetable has been adhered to, and on 15 July 1974 the Council approved the Resolution which had been forwarded by the Commission. The initial proposals for implementing this Resolution concerning the various application of data-processing should be approved by the Council in the near future.

Other more general proposals were put to the Council on 22 September 1975 and it is hoped that a swift decision will be taken.

#### VI. Conversion and modernization of certain industries

1. The Council should have acted by 1 July 1974 on the proposals contained in the Communication on shipyards which the Commission submitted in October 1973. No agreement on these proposals has been reached and the Council, having extended the previous system of State aid until 30 June 1975, adopted a new Directive on 10 July setting out the conditions under which aid and intervention measures can be considered compatible with the common market; the Directive also provides for the Commission to be notified, when appropriate, of decisions taken by the Member States concerning the granting of investment aid to shipyards and of any urgent measures taken in support of ailing shipyards. This Directive is valid until 31 December 1977.
2. On 1 April 1974 the Commission forwarded to the Council the promised Communication on the paper industry, on which the Council had undertaken to act within nine months. This time limit was not adhered to, since the European Parliament and the Economic and Social Committee did not deliver their opinion until October 1974 and January 1975 respectively.

3. On 3 October 1975 the Permanent Representatives Committee endorsed the Commission survey of this sector but failed to agree on what specific measures should be taken.

VII. Preparation of measures to guarantee that mergers affecting Community firms are in keeping with the Community's economic and social objectives, and the maintenance of fair competition both in the Common Market and on outside markets in accordance with the provisions of the Treaties.

1. The Council should have acted by 1 January 1975 on the proposal for a merger control Regulation. After the European Parliament voted the Resolution on 12 February 1974 and the Economic and Social Committee delivered its opinion on 28 February 1974, the Working Party on Economic Questions met on the following dates : 14 June and 25 July 1974, 18 February, 25 June, 23 September and 10-11 November 1975. Basic issues were discussed, mainly concerning the scope of the rules, the determination of the criteria for intervention and the collaboration of Member States in the decision-making process.
2. The debate which the Council had undertaken to hold before 1 May 1974 on the Communication forwarded by the Commission on 8 November 1973 concerning multinational companies did not take place. The Economic and Social Committee and the European Parliament delivered their opinions on this Communication on 27 June and 12 December 1974 respectively.

VIII. Measures concerning exports and, in particular, credit insurance.

The Council Resolution stipulated that, as several proposals for Regulations and Directives submitted by the Commission relating to both the commercial and industrial policies of the Community were still under consideration, the Council would, by 1 July 1974, draw up a list of priorities and a timetable for decisions. To date, the Council has not adopted the proposals placed before. In the meantime the Commission decided on 23 April 1975 to withdraw the proposals on the common principles underlying exchange rate guarantees and guarantees against increases in the costs of exports to non-member countries. The Commission also decided on 22 December 1975 to put a proposal to the Council containing a draft recommendation authorizing the Commission to negotiate an international "gentlemen's agreement" on export credits. On 17 February 1976 it also forwarded to the Council a proposal concerning the setting-up of a European Export Bank.

The problems raised by the harmonization of export credits and credit insurance are still under consideration in the Community institutions.

IX. Supplies of raw materials, particularly of non-ferrous metals

The Commission undertook to place proposals before the Council in the first six months of 1974 concerning Community supplies of raw materials, and in particular of non-ferrous metals. It soon became clear, however, it was perhaps not so much in the field of non ferrous metals that the major problems arose ; this has set the Commission back in the presentation of its proposals.

It was not until 5 February 1975 in fact that a Communication was forwarded to the Council dealing with both mineral, vegetable and animal products.

In view of the urgency of certain problems raised at international level (Seventh Session of the UN, Fourth Session of UNCTAD, CIEC), the Council devoted most of its attention during 1975 to the external policy of the Community and has not been able to deliver an opinion on the Commission Communication.

REMOVAL OF TECHNICAL BARRIERS TO TRADEINDUSTRIAL PRODUCTS

- (a) Proposals for Directives forwarded by the Commission for adoption by the Council by 1 July 1974 (Annex 2 (a) of Council Resolution of 17 December 1973 concerning industrial policy).

Motor vehicles

- interior fittings (1 proposal) : adopted
- safety glass : under consideration by the Council
- electrical connections for trailers : held ~~over~~ until a later date which depends on work being carried out elsewhere.

Measuring instruments

- clinical thermometers : under consideration by the Council
- precision weights : adopted
- making-up of certain pre-packed liquids : adopted
- cylinders used as measuring containers : adopted

Electrical equipment

- interference caused by hand tools : under consideration by the Council
- interference caused by fluorescent lighting : under consideration by the Council
- electrical equipment used in explosive atmospheres : adopted

Fertilizers : adopted

Cosmetic products : under consideration by the Council

Wheeled agricultural and forestry tractors

- specifications and components already dealt with in proposals, particularly rearview mirrors and steering systems : adopted.

Reinforced plastic tanks intended for the carriage of dangerous substances

held over until a later date, which depends on the work being done elsewhere.

Aerosols : adopted

- (b) Proposals for Directives forwarded by the Commission for adoption by the Council before 1 January 1975 (Annex 2 (b) of the Resolution).

Motor vehicles

- interior fittings (strength of seats and of their anchorages) : adopted

Mopeds

- outline Directive : under consideration by the Council

Measuring instruments

- electricity meters : under consideration by the Council
- water meters : adopted
- weighing machines of the continuously integrated type : adopted
- prepackaging of certain solids and liquids : adopted

Electrical equipment

- interference from radio and television receivers : under consideration by the Council.

Pressure vessels

- outline Directive : under consideration by the Council
- Seamlers cylinders : under consideration by the Council

(c) Proposals for a Directive to be forwarded by the Commission by 1 January 1974 for adoption by the Council by 1 January 1975 (Annex 2 (c) of the Resolution).

Motor vehicles

- lighting (systems - first special Directives) (including the Directive on direction indicators on which agreement in principle has already been reached) : under consideration by the Council
- reflex reflectors : under consideration by the Council
- fog lamps : under consideration by the Council
- external projections : adopted

Fuels

- maximum lead content of motor fuels : under consideration by the Council
- maximum sulphur content of domestic fuel oils : adopted

(d) Proposals for Directives to be forwarded by the Commission by 1 January 1975 for adoption by the Council by 1 January 1976 ( Annex 2 (d) of the Resolution).

Motor vehicles

- safety belts : forwarded by the Commission to the Council
- anchorages for safety belts : forwarded by the Commission to the Council
- head restraints : forwarded by the Commission to the Council
- reverse gears, speedometers and statutory markings : adopted.



- tyres : not yet sent forward.

Tractors

- braking : forwarded by the Commission to the Council
- lighting : forwarded by the Commission to the Council
- type approval of tractors with a maximum speed exceeding 25 km/h : not yet forwarded
- driver-perceived noise level : forwarded by the Commission to the Council

Mopeds

- permissible noise level : not yet forwarded
- engine : not yet forwarded

Motorcycles

- permissible noise level : not yet forwarded
- type approval : forwarded by the Commission to the Council
- permissible noise level : forwarded by the Commission to the Council

Civil engineering plant and equipment

- type approval : forwarded by the Commission to the Council
- permissible noise level : forwarded by the Commission to the Council

Detergents

- toxicity : cancelled

Measuring instruments

- alcoholometry and alcoholmeters : forwarded by the Commission to the Council
- road and rail tankers : forwarded by the Commission to the Council

Dangerous substances and preparations

- pesticides : forwarded by the Commission to the Council
- paints and varnishes : forwarded by the Commission to the Council
- restriction on the use of certain dangerous substances and preparations : forwarded by the Commission to the Council

Pressure vessels

- aluminium cylinders : forwarded by the Commission to the Council
- welded cylinders : forwarded by the Commission to the Council

Non-electrical equipment for cooking, heating and hot-water production

- outline Directive : forwarded by the Commission to the Council
- special Directive : forwarded by the Commission to the Council

Lifting equipment

- lifts and hoists : forwarded by the Commission to the Council.

Tableware and kitchen utensils

- maximum lead and cadmium content of tableware : forwarded by the Commission to the Council

Electrical equipment

- interference caused by scientific equipment : not yet forwarded
- electrical medical and radiological equipment : forwarded by the Commission to the Council.

Fertilizers

- ammonium nitrate : forwarded by the Commission to the Council.