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COMMUNICATION FROM THE COMMISSION TO THE COUNCIL
AND THE EUROPEAN PARLIAMENT

REINFORCING THE EFFECTIVENESS OF THE INTERNAL MARKET

WORKING DOCUMENT OF THE COMMISSION

**ON A STRATEGIC PROGRAMME
ON THE INTERNAL MARKET**

Communication from the Commission to the Council and the Parliament

REINFORCING THE EFFECTIVENESS OF THE INTERNAL MARKET

INTRODUCTION

1. Article 8a of the Treaty has defined the Community's internal market as a space without internal frontiers where the free circulation of goods, services, capital and persons is assured. In June 1985, the Commission submitted to the Milan Council its White Paper on the completion of the Internal market; it thus launched a process of European integration which has fundamentally influenced Community policy in the course of the last 8 years. This result was able to be attained thanks to the Single Act, the White Paper and the deadline of 31 December 1992. It constitutes the basis of economic and monetary union and a European citizenship whose success resides in the Treaty on European Union. In this respect the single market is the pedestal for the building of the community, its dynamism will underpin the dynamism of the economic and political integration of the Community.

2. The legislative programme established in 1985 has now been more than 95% completed; as a result of this, the legislative work of the Community will decrease in future years. This programme in itself constituted one of the mobilising elements for economic operators and it has profoundly modified the environment within which they must henceforth operate. It is now possible for goods, services and capital to move freely across the entire community. Formalities for crossing frontiers have been removed, one system of certification has replaced the 12 systems that previously were obligatory; companies have gained the right to bid for public procurement contracts in other Member States. Citizens also, even if they have not benefited entirely from the freedom to cross borders without controls, have the right to stay for private reasons in another Member State and can have their diplomas recognised so that they can exercise their profession.

It is true that the domain of the free movement of persons, on the other hand, is one which has experienced significant delay, in that controls on identity still carried out at internal frontiers are a constant reminder of their existence.

3. If the assessment of the legislative activity for the last eight years can therefore be considered positive, the Commission is not underestimating certain retarding factors in the expected effects of the internal market:

- in several sectors, the new community regulation envisages transitional periods and, once in force, will only produce their economic effects after a certain period of time has elapsed;
- uncertainties concerning a rigorous and homogenous application of community legislation by all the Member States seem to compromise its effectiveness in terms of the protection afforded to citizens and in guaranteeing competition;

- the adoption of a legislative programme which is so vast, in such a short space of time, may create the impression of bureaucratic interference in the conduct of affairs at national level.

For these diverse reasons, the establishment of the internal market should be pursued, explained and motivated still more, so that it becomes a reality on the economic front and can be widely accepted on a political level.

4. This process must develop in a context encompassing three major difficulties to which the Community must propose a response:

- the maintaining of controls at the frontiers on the identity of persons unquestionably marks a delay with respect to the objectives set out in the Single Act and, in particular Article 8a. This delay sustains the impression that the building of the community is done exclusively for the benefit of enterprises and business circles, even if the citizen, as a consumer or a professional, also benefits from the free movement of persons. The Commission, with the support of the European Parliament, will endeavour, within the limits of its competence, to obtain the complete application of Article 8a before the end of this year.
- the entering into force of the measures envisaged in the White paper programme is developing against a background of a substantial slowing-up of economic growth, monetary instability and the difficulties encountered in the process of the ratification of the Maastricht Treaty. The process of job creation, which got underway in anticipation of the creation of the Internal Market has been reversed. The view is heard that the Internal Market itself contributes to the growing tensions in Community markets, particularly the job market, instead of contributing to the improvement of the economic and social lives of the citizens and the competitiveness of enterprises. Without a new momentum, defensive reflexes risk damaging the unity of the market.
- the increasingly world-wide nature of trade and the enhanced competition introducing new economic and social phenomena which call for a response, taking into account the Community's own economic interests, and the imperatives of development and growth in the developing countries.

5. The Commission considers that it is now incumbent upon the political authorities of the Community to respond, on the one hand to the fears and uncertainties of the citizens and European enterprises, as to the real effects of the decisions already taken in the context of the internal market, and to offer on the other hand, perspectives for the future development of this market. The simple management of the *acquis* cannot impart the dynamism and impulse necessary for the political credibility of this action for integration. The Commission has therefore taken on board the suggestion of the European Parliament for the elaboration of a strategic programme which would not only be oriented towards the management of regulations but which would equally maintain a dynamic for the development and deepening of the Internal Market.

COLLECTIVELY DEFINING A STRATEGIC PROGRAMME

6. It is true that the internal market is part of a global Community policy and in this respect cannot be appreciated independently of the other Community policies which allow the community space to function without internal frontiers:

- the free movement of persons is closely linked to the development of the concept of European citizenship and to the co-operation on internal and judicial affairs which is found at the heart of the Treaty on European Union, but also to the putting into effect the social charter;
- the free movement of goods, services and capital are not only linked to the development of economic and social cohesion and to the putting into effect of competition policy instruments but also to the establishment of economic and monetary union;
- the internal dimension of the internal market is itself closely linked to the strengthening of the external personality of the Community and its capacities for negotiation.

7. It is this global nature of the approach to the work undertaken since 1985 which gives it a political dimension far beyond the technical specifics of each of the sectors. It is the maintenance of this global aspect which gives the management of the internal market its political dimension; it is also this global dimension which will put all the available instruments at the service of management. The Commission proposes the establishment of a strategic programme for the internal market to preserve this global approach, to ensure transparency in its action and to associate the all the operators.

8. This communication represents a first step towards the definition of such a programme. Its purpose is to launch a debate which will not be limited to the community institutions but which will also encompass economic and social circles. The working document accompanying this communication, which takes up in detail the different elements of a strategic approach to the management and development of the internal market, will be widely circulated in order to give rise to reactions as to its content. In the light of these reactions, as well as those from the Community institutions, the Commission will prepare a strategic programme which will orient the Community's actions in future years.

9. The Commission has chosen this procedure because it reflects the necessity to engage all parties concerned in the definition of the objectives and the methods to achieve them. To ensure for the Community economy the effects of the measures adopted in the framework of the White paper legislative programme, there must be organised:

- on the one hand, a partnership between the Commission and the Member States in the application and the effective management of the rules;
- on the other, the mobilisation of the economic operators to contribute to action for the development of the internal market.

This presumes as wide as possible a consensus on the priorities, without however allowing that the search for this consensus should affect the launching of the most urgent initiatives concerning particularly transparency in the functioning of the internal market.

THE CONTENTS OF THE PROGRAMME

1) Objectives

10. The objective of the Community remains, obviously, the improvement of the living conditions of its citizens; the functioning of the internal market can only be approached from this perspective. A coherent and global strategy for the management and development of the single market should therefore ensure that the legislative framework of the Community becomes an integral and favourable part of the environment for the citizens, the economic operators and the administrations.

First objective : to respond to the expectations of the citizen

11. The Internal market should bring advantages for citizens as well as for enterprises, supporting job creation and economic growth. The citizen needs to be assured that the opening of the markets will lead to an improved level of social protection and of working conditions as well as of his health, his safety, his economic interests and his environment. He should be assured, particularly through credible information, that the abolition of frontier controls is not going to expose him to new risks.

Second objective: to ensure a competitive environment for enterprise

12. The community must guarantee free movement and the functioning of the single market, however its legislative interventions must be limited to those domains in which mutual recognition cannot guarantee the protection of the essential requirements; it must ensure a surveillance on the operation of these rules and their adequacy to respond to the objectives.

Third objective: to ensure in the single market the dynamic for economic and social development.

13. The Community must not only ensure the coherence of the legislative acquis in the face of national initiatives which could have the effect of re fragmentation of the market, but it must also bring an added value to that acquis in acting upon the factors for dynamism in the market, such as the tax environment for enterprise, industrial quality and trans-European networks; the objective of this should be the improvement of social conditions in the Community.

2) The instruments

14. These three objectives are presented in the working document attached to this communication, together with precise lines of action for an effective application of the regulations and a dynamic development of the internal market.

a) For an effective application

(i) **Better adapted controls:** The instruments of control with respect to community obligations are found in the Treaty and the acts in application; they will be fully utilised and indeed reinforced to offer the appropriate means for the prevention of barriers.

The Commission must also take on assisting measures which will allow a convergent application of the regulations. These assisting measures will principally rely on the transparency of transposing acts at national level, the common interpretation of regulations, exchanges of information between the administrations and information activities.

The national courts should have a greater capacity for ensuring the respect of community obligations; this is why actions for the education and training for judges and the legal professions and the improvement of access to justice constitute the most appropriate lines of action.

(ii) Overseeing the functioning of the regulations : the Member States must be assured that surveillance of the functioning of the regulations is carried out. In this regard, the Commission must equip itself with the means to evaluate the effectiveness of the regulations; in effect the legislative framework must respond at once to the objectives of free movement and the respect of the essential requirements, but also to the objectives of economic and social development.

(iii) The organisation of partnership with the Member States: initiatives are envisaged in the domain of administrative co-operation between the Member States, and between the Member States and the Commission, in order to ensure the effective application of community law. This concerns better definition of the methods of co-operation by sector and to identify the measures of support necessary at Community level.

The extension of scientific and technical co-operation should equally be reinforced. Training actions and the exchange of national civil servants are an indispensable element for integrating the community dimension in the functioning of the national administrations.

(iv) Transparency of community actions : the Commission proposes to increase the transparency of existing legislation (notably through consolidation) and has taken steps to ensure a better internal co-ordination in order to improve information on the development of its policies (the annual report on the functioning of the internal market). It has also adopted means for a better transparency in the preparation of legislative proposals.

b) For dynamic development

15. The dynamic development of the internal market must be placed in the context of many community initiatives, in particular the initiatives for growth and for jobs, and policies relating to cohesion between the regions. This development also relies on the pursuit of certain current actions : the Commission intends for example to continue the work underway in the domain of intellectual property and data

protection, to develop a much greater use of voluntary European standardisation in industrial circles as well as to orient support programmes for SME's towards an improvement of their participation in the opening up of markets.

16. In parallel, new initiatives are envisaged by the Commission, and in particular:
- an improvement in the tax environment for enterprises so as to eliminate obstacles to co-operation and cross-border activities;
 - the promotion of quality products within European industry;
 - the external aspect of the internal market;
 - an integrated approach to the development of trans-European networks in order to promote private financing and instruments of interoperability.

Conclusion

17. The Commission therefore informs the Council, the European Parliament and the Economic and Social Committee of the orientations contained in this communication. It invites the economic and social circles, as well as the Member States to make contributions towards the definition of the strategic programme on the basis of the working paper attached to this communication. It is in the light of these contributions that the Commission will establish, for the month of October 1993, the strategic programme.

WORKING DOCUMENT OF THE COMMISSION

**TOWARDS A STRATEGIC PROGRAMME
FOR THE INTERNAL MARKET**

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INTRODUCTION

1. The completion of the Internal Market, i.e., the effective application of the four freedoms of movement set out in the Treaty, has made a fundamental impression on Community policy over the past eight years. Never has the Community decision-making process reached such a level of dynamism; never has Community integration so attracted the attention of political and economic leaders.

2. The environment constituted by the Community is one of open markets and thus of free competition. The abolition of all customs, fiscal, veterinary, phytosanitary and statistical formalities on crossing borders, the substitution of one system of certification for the 12 systems which were previously obligatory, the right to participate in public procurement in other Member States, the right to stay for private reasons in another Member State, and, finally, the recognition of qualifications permitting the exercise of the right of establishment, gives firms, workers, and, in a general way, citizens, a new area of freedom. The strengthening of competition rules strengthens the protection of SMEs, in particular, against the consequences of agreements and mergers on the operation of the market. The abolition of discriminatory national measures and the placing of national systems in competition with one another have resulted in a self-discipline against the abuse of the rules.

3. The Commission has its role to play, firstly because certain proposals must still be made or certain proposals are still pending before the Council, and then, above all, because it is the Commission that must promote confidence between the national administrations. The priority for the Commission is to ensure that the Internal Market works and the conditions for its operation are achieved by means of full implementation of the rules, a set of measures designed to develop the Internal Market and, finally, a set of trans-European networks giving the rules the support of infrastructures adapted to their implementation. A "wait-and-see" policy will not do; simple administrative management of what has already been achieved cannot give the dynamism and impetus which the credibility of the action demands. Balance in the operation of the Internal Market can only be found in movement; this movement is what the preparation of the strategic programme seeks to ensure.

4. This strategic programme would indicate the wish of the Commission to improve the present framework rather than to develop the legislative activity of the Community. This strategic programme would also indicate the wish of the Commission to participate in an active partnership with the national administrations and economic operators for the management of the Internal Market; this is why the publication of the present document can represent only a first step intended to gather all reactions, observations and contributions. It is on this basis that the strategic programme defining the priorities and the means of action will be drawn up in the second half of this year.

5. The principal aim of the approach proposed is to situate the actions related to the operation and development of the Internal Market in an overall context, giving these actions a political, an economic, a social, and an industrial dimension:

- from a political point of view, it is important to make it be apparent that the Internal Market is a whole; an overall approach is the only one capable of responding to the diversity of the problems and of the sectoral interests and to offer a balanced treatment of all of these problems;
 - from an economic point of view, experience with the White Paper has shown that an action on the market can only have a macroeconomic effect if it mobilises all sectors;
 - from a social point of view, it is important to ensure, on the one hand, the social rights of workers following the 1989 social charter and the the Commission's programme of social action, and, on the other, the development of a Community strategy for employment;
 - from an industrial point of view, it must be possible to put into operation horizontal instruments from which all sectors and professional categories will benefit.
6. The objective of this document is to seek the observations and the contributions of all agents and all private and public bodies on the priorities for action to administer and to develop the Internal Market so as to make it an instrument of economic and social development to the benefit of citizens and firms. On the basis of these contributions, the Commission will draw up, for October 1993, a strategic programme on the Internal Market with which all the partners will be called on to associate themselves.

SECTION A: ADMINISTRATION OF THE COMMUNITY AREA

I. ACHIEVEMENT OF THE SINGLE MARKET

7. The process of achieving the single market, as provided for in the White Paper, has been completed. Even though new aspects have been added to the programme set out in the White Paper, in particular in the energy field, the Community's activity has, over the last eight years, not once deviated from the programme, more than 95% of which has been implemented. Admittedly, considerable slippage has occurred as regards freedom of movement for individuals, since, although tax controls have been abolished and the right of establishment and residence recognised, police controls at frontiers remain a fact of life for the general public. However, firms can now operate in an environment that allows them to trade in products and services and fosters closer integration of co-operation and hence of the industrial fabric.

8. Implementation of the White Paper programme has been carried out progressively:

- Harmonisation of technical rules as provided for in the White Paper has now been completed; initially confined to specific limited areas, it was extended to cover entire sectors such as agricultural and food products, pharmaceutical products and motor vehicles. Harmonisation of essential product safety requirements, backed up by a policy of certification, and the general provisions on product safety and liability for defective products mean that all manufactured products marketed in the Community are now covered.
- The measures have been adopted to permit public contracts to be open to competition from firms in other Member States, irrespective of whether such contracts are awarded by public authorities or public services and are intended for the purchase of supplies, the purchase of services or the carrying-out of work. The relevant directives include provisions on appeal procedures allowing national courts to review matters.
- Freedom to provide services will soon become a reality, where this is not the case already, with the gradual entry into force of the directives and regulations adopted on transport, financial services, telecommunications, recognition of diplomas, and the equivalence of professional qualifications. Although final decisions have yet to be taken on road cabotage because of the link with the taxation of transport, cabotage has become a practical reality on the basis of the annual quotas allocated by the Commission.
- Since it is not enough simply to provide for freedom of movement and since firms must also be in a position to derive full benefit from it through corporate restructuring and the restructuring of their business strategies, the proposals on company law, company taxation, and industrial and intellectual property formed an integral part of the programme. The relevant objectives have been only partially achieved since, although most of the harmonisation measures relating to industrial and intellectual property have been adopted and although certain forms of double taxation have been eliminated, the key proposals are still before the Council, i.e. those relating to the European company statute, the establishment of a trade marks office and the complete elimination of taxation at

source on interest and royalty payments and taking into account of losses suffered abroad.

- Such measures relating to the opening-up of markets to flows of products, services and capital from other Member States have been made irreversible by the elimination of all administrative checks at intra-Community frontiers. The abolition on 1 January 1993 of the single administrative document in intra-Community trade and the entry into force of a series of provisions reorganising tax, veterinary, plant-health, health, safety and statistical controls have made it possible to do away with checks at frontiers.
 - Freedom of movement for individuals properly speaking has not yet become a reality. Individuals also benefit from the dismantling of customs and tax controls at internal frontiers, and Community nationals may now work in any other Member State thanks to recognition of their diplomas or qualifications and may reside in any other Member State regardless of any economic activity. Despite this, checks on persons are still carried out at internal borders although these have already been lightened. The Commission has frequently deplored this situation, particularly to the European Parliament. The Commission hopes that substantial progress will be made in 1993, under the Schengen agreement, perhaps in such a way as to spur on the other Member States, so as to avoid these delays which are particularly noticeable to the general public and which tend to overshadow the considerable achievements which have been made in other fields.
9. However, the legislative process cannot be allowed to come to a halt with the completion of the White Paper programme since the programme carries within itself a momentum for integration that goes beyond the present framework.
- Firstly, it is for the Commission or the Council to implement the provisions that have been adopted. This is particularly so with regard to technical rules, for which "framework" provisions have been adopted while the Commission or the Council have been unable to adopt the implementation measures; this is the case in the of foodstuffs, veterinary, and phytosanitary areas and in the area of construction. Thus, in the veterinary field, although all the measures set out in the White Paper - and therefore essential for the completion of the Internal Market - have been adopted (apart from pets travelling with their owners) a number of important implementing measures still have to be adopted by the Council or the Commission.
 - The removal of frontier checks justifies taking action either in order to organise trade within the Community without affecting national arrangements or in order to harmonise such national arrangements. The most urgent measures have been adopted with regard to cultural goods, explosives and conformity checks at external frontiers; other proposals are awaiting decisions in the following areas:
 - (i) Checks on the export of dual use goods (goods or technologies with military and civilian uses): in spite of the commitment made by the Council in December 1992 to try to reach agreement before 31 March 1993, political and technical problems have blocked progress on this dossier.
 - (ii) The measures taken on indirect taxation need to be completed by the adoption of proposals on the taxation of transport of passengers. However, the most important proposal, whose adoption is a matter of urgency, is that on VAT arrangements applying to second-hand goods, works of art,

antiques and collectors' items.

The removal of frontier checks requires particular vigilance on the part of the Commission and the Member States, with regard to some goods that are not subject to harmonisation requirements, in order to ensure that differences in rules and regulations do not result in fraud or in difficulties for consumers. It is, for example for this reason also, the Commission has stated that it will draw up a proposal on the certification of precious metals and that in the customs area a proposal has been presented to combat fraud in the area of commercial and agricultural trade.

- (iii) With regard to transport, since the main priorities have been covered, measures should be introduced on freedom to provide special transport services such as the transport of dangerous and perishable goods, taxi services, transport carried out by security firms, transport by ambulance, own-account transport and car hire. The Commission's attention has also been drawn to the administrative complications involved in the transport of bodies; measures should be taken to relieve families of the burden of formalities to be completed in such circumstances.
- (iv) The environment is a key element in the achievement of the internal market; the adoption of high environmental standards at Community level and their uniform application will strengthen the process of convergence and cohesion and remove the fears of many countries against products of other Member States, allegedly produced under lax environmental conditions. It may also allay different fears of the less environmentally spoiled Member States that they may be invaded by the pressures of industrialisation and commercialisation; we should also emphasise the use of environmental regulations as very subtle means of foiling the internal market, purportedly on very praiseworthy grounds. This is a phenomenon that can particularly be observed with regard to waste and packaging in its broadest sense.

There are solutions and various important options in connection with these matters. One would be harmonisation of "environmental " national legislation. Another one would be the application of the principle of "conditional equivalence" which means that the various national systems should be made equivalent from the economic point of view.

- The development of cross-frontier activities, the need for firms to be able to take advantage of all the management flexibility afforded them by the Community dimension, and the need to preserve the public interest from the effects of disorganised competition have prompted the Commission to extend the rules on the operation of the single market to other spheres not initially covered in the White Paper, notably telecommunications services, postal services and energy.
 - (i) With regard to telecommunications services, and alongside its action on the mutual recognition of the approval of telecommunications terminals, the opening-up of public contracts and European standardisation, the Commission is pressing ahead with its work on the opening-up of the markets for services by proposing, in parallel with the implementation of the ONP (Open Network Provisions) framework Directive, that markets be completely opened up by 1 January 1998. The Commission's proposal here has been drawn up following wide-ranging consultations with all the parties concerned based on the report presented by the Commission in 1992, as provided for in Council Directive 90/387/EEC (ONP) and Commission

Directive 90/388/EEC (services other than voice telephony).

- (ii) With regard to postal services, following its Green Paper published in May 1992, the Commission has drawn preliminary conclusions from the wide-ranging consultation process under way.
- (iii) With regard to energy, the Commission, while applying the Treaty in the normal way to deal with rules and regulations that are incompatible with it and inappropriate conduct on the part of enterprises in the energy sector, has developed a step-by-step approach on electricity, natural gas and hydrocarbons. For instance, it has put forward a proposal on the harmonisation of the conditions for access to exploration for, and extraction of, hydrocarbons. In the case of gas and electricity, the Commission's approach is geared to three objectives: freedom of movement and freedom of establishment; industrial competitiveness; and security of supply. In order to achieve these three objectives, an initial set of measures was adopted on transit and price transparency; a second set of measures on the opening-up of markets for large consumers is still before the Council and Parliament with the objective of abolishing remaining obstacles to strengthen competition, effectiveness and transparency in the Community's energy markets.

II. MANAGING COMMUNITY RULES

10. The management of Community rules breaks down into three areas: transposition and application of these rules, monitoring compliance with them by businesses or administrations, imposing sanctions. In each case the Commission will be concerned, in exercising its own responsibilities, to:

- provide the Member States with such assistance as they might need in order to take account of their own particular difficulties and organise exchanges of experiences in specialised committees on a regular basis;
- ensure transparency of the transposition legislation in the Member States and of application methods so as to prevent difficulties which businesses could encounter, and in particular to ensure mutual confidence between national administrations, through improved knowledge of the diversity of national systems.

(a) Monitoring transposition

11. The Commission has laid great stress on the urgency and importance of transposition. Since 1989, in the fields covered by the White Paper, it has carried out systematic follow-up of the technical and political situation in bilateral and multilateral bodies. This has produced clear results since almost half the directives which required transposition have been transposed in all the Member States and, in May 1993, more than 85% of transposition measures have been taken. Considerable efforts were required on the part of national parliaments and administrations to achieve this result; in a number of sectors, in particular financial services, telecommunications and transport, major structural changes were necessary. The monitoring of transposition is often hindered by the complexity of the systems of transposition and by the lack of consolidation of the national texts.

12. Until 1989 transposition was monitored on a strictly bilateral basis, except for certain aspects of information at the reasoned opinion stage, but since that date (information in the Official Journal) each Member State has been able to ascertain its position relative to the others and realise that, as soon as a directive has been transposed in most Member States, the arguments it presents for postponing transposition become irrelevant. Each Member State can also obtain copies of the national transposition legislation on the basis of published references. However, this element of transparency can be improved by making the legislation itself available. This operation would be easy if there were no language constraint. That is why the Commission will evaluate, on the basis of the interest expressed by users of Community rules, the possibility of proceeding in two stages:

- as a first step, it would publish all the transposition legislation by specific sector, obviously taking account of the potential usefulness of such publication; the narrower the margin of discretion allowed by the directives, the less useful publication of transposition legislation will be;
- subsequently it would be willing to consider any proposal for co-operation presented by private-sector publishers with the aim of publishing these collections of legislation in the different Community languages. In the context of such an initiative, it could encourage the establishment of a European Economic Interest Grouping to enable analysis, translation and publication facilities to be pooled.

13. The Commission is also responsible for monitoring the conformity of transposition measures. The heavy workload borne by national administrations in formulating transposition measures is shifting to Commission departments. In the fields covered by the White Paper, more than 2 000 pieces of legislation in the nine official languages of the Community have to be checked. In addition, transposition measures are contained in a succession of texts of different legal hierarchy, sometimes issued by different authorities on the basis of their level of responsibility, as is the case, for example, in the transposition of the Directive on mutual recognition of diplomas or the veterinary Directives. Nor can monitoring of compliance be restricted to a simple comparison of texts, but must also take account of the overall legal system, such as for company law, or of the administrative framework, in the veterinary sector. In addition, monitoring of transposition is frequently hampered by the complexity of the methods of transposition and the lack of consolidated national texts. The complex nature of monitoring compliance explains the diversity of the methods used:

- in most areas, the Commission has the draft transposition measures analysed by its services in order to prevent infringement situations and especially to ensure a convergence of interpretation;
- in a number of highly technical areas, the Commission reacts to complaints from operators and the Member States to establish that the transposition measures are inadequate. This is generally the case in the field of products and veterinary and plant health rules, where in any case the frequency of committee meetings in the fields of veterinary and zootechnical legislation, and legislation on vegetable product and animal feedingstuffs ensures permanent follow-up of the operation of the rules and therefore of the quality of transposition;
- in other fields, the Commission entrusts the analysis of transposition measures to experts and, where necessary, initiates the resulting infringement

proceedings;

- in a limited number of fields, detailed, and in certain cases public, reports on the transposition and implementation of directives have been made where the information obtained highlights particular problems. In such cases, the Commission launches investigations, as it did recently into the application of the Directives on hormones, artificial insemination, transport of livestock, veterinary fees, etc.;
- in other areas, Community legislation itself has set up committees with the task of assisting the Commission to monitor transposition (e.g. the VAT Committee, the Committee on Excise Duties, the Standing Committee of Heads of National Revenue Departments). This method was particularly effective for the follow-up to the transposition of the Directives on VAT and excise duties which guaranteed that, despite a number of delays in transposition, it was possible to take the administrative measures to ensure the effective entry into force of the new arrangements on 1 January 1993, even in relation to the simplification measures adopted as late as the end of December;

14. This does not, however, enable the Commission to guarantee a systematic monitoring of the conformity of transposition measures to give all the Member States and businesses a guarantee that a product or service from another Member State complies with Community legislation. It would be useful to undertake such checking of the conformity of the transposition measures sector by sector, in the framework of bilateral meetings with the Member States, but the development of this approach will depend on the resources devoted to this action.

15. The current difficulties of monitoring the transposition of directives raises questions about the approach to be taken in future. Of course, the previous proposals for improving transparency of transposition measures will allow mutual supervision of the quality of the measures taken. However, as the Commission has pointed out on a number of occasions, the use in certain circumstances of a regulation in place of a directive should be facilitated. The Commission, while favouring directives, considers, in fact, that regulations could contribute to transparency and the sound application of the rules, without adversely affecting the specific features of national legal or administrative systems, in two cases:

- first, as proposed by the Sutherland report, when the work of harmonisation has been completed in a particular area and the situation regarding application by the Member States is convergent, directives could be consolidated in the form of a regulation. This could apply to the strictly technical provisions in the areas of tractors, motor vehicles and pharmaceutical products;
- second, national transposition procedures could be simplified if the implementation measures for directives could take the form of regulations. In these cases, the national systems have been adapted as part of the transposition of the basic directive, the implementing legislation laying down only the procedures for intervention. Where the basic texts allow it, this approach could prove particularly useful in fields requiring many implementing measures such as veterinary and plant health rules.

16. This streamlining of transposition procedures would be all the more easy since only a limited number of cases pose genuine problems. Without giving an exhaustive list, a few examples are the Directives on the mutual recognition of diplomas, on the

opening-up of public procurement, and on the provision of broadcast television services.

17. The entry into force of the Treaty on European Union will enable the Commission, on the basis of Article 171, to have fines imposed on Member States which do not comply with the judgements of the Court of Justice. The criteria on which the Commission will set the level of fines to be proposed to the Court have yet to be determined.

18. The operation of the Internal Market depends, not only on Community law, but also on the inter-governmental conventions which, by facilitating judicial co-operation and by organising administrative co-operation, should also facilitate free movement within the Community. Worrying delays, often attributable to ratification procedures, are evident in the implementation of these instruments. Of the 21 inter-governmental conventions concluded at Community level, only two are effectively in force, and still only between ten Member States. The entry into force of the Treaty on European union, Title IV of which organises co-operation between the Member States in the areas of justice and internal affairs, should give the Commission the possibility to play a role by providing an impetus in this matter, if necessary by using its right of initiative where this has been granted to it.

(b) Monitoring application

19. In addition to the transposition of rules there is the question of monitoring their application both by government departments and businesses which must comply with the obligations laid down by these rules. Monitoring methods are essentially a matter for the Member States even if, in exceptional cases, the Commission has been entrusted with carrying out individual on-the-spot inspections and checks.

(i) Monitoring by the Commission

20. Under Article 155 of the EEC Treaty, the Commission has a general responsibility for monitoring compliance with the obligations created by Community law and, under Article 5, the Member States must give it any assistance necessary. To make it more effective in this role, it can make on-the-spot inspections in a number of fields.

- **Organisation of controls in the Member States:** under a series of Council Directives, there are specific obligations on the Commission to carry out inspections in a wide range of sectors, for example, fresh meat, meat based products, poultrymeat, dairy produce, fish products etc.....in order to ensure that the public health requirements and the rules on animal health are observed. Corresponding obligations apply in the phytosanitary sector. These obligations are linked to the functioning of the Internal Market and take account of the change in approach towards a system based on controls on production and marketing requirements carried out at the place of origin or, in the case of goods imported from third countries, at the external border. In 1992, these new rules led to the setting-up within the Directorate-General for agriculture of the Office of Veterinary and Phytosanitary Inspections and Control. The capacity of the

Commission to discharge its responsibilities in these sectors is a matter of concern. The Member States have been given recently a full account of the problems facing the Office in the light of changing animal and public health requirements, and of the limitations within the Commission on the recruitment of personnel. The major sectors where little progress can be made in the foreseeable future have been indicated: these include fish products, poultrymeat, meat based products and animal welfare. The resources available to the Office are not consistent with the responsibilities devolved on the Commission for managing these aspects of the Internal Market. The Commission is considering how this problem could be overcome.

It has to be stressed that, as far as its activities within the Community are concerned, the inspection function of the Office does not substitute for controls carried out by the Member States; the objective is to ensure that controls are functioning correctly and that confidence is thereby maintained in the single market. On the other hand, the Commission's inspection function in third countries is intended to subsume the role of Member States, which; in the new situation of the single market, cannot maintain different approaches to trade with third countries. But in dealing with third countries, the approach will be to make more responsible veterinary and phytosanitary services in the third countries concerned, with the emphasis on reciprocity and equivalence rather than on maintaining the more traditional intensive approach to inspection of individual premises.

This is why the option chosen in a draft directive in the process of being adopted by the Council in the area of foodstuffs was to provide for the nomination and mandating of officials to cooperate with the competent authorities of the Member States for the purpose of monitoring the evaluation of equivalence and efficacy of official control systems applied by these authorities. It is therefore a power of audit or evaluation of the operation of the control systems that will be put in place.

An intermediate solution could be the establishment of a body of inspectors in each Member State which could be involved in inspections organised in another specific Member State under arrangements yet to be determined. This method was introduced in the administrative agreement concluded with Switzerland on the arrangements for road traffic and would allow the results of the inspections to be published and ensure mutual confidence in their effectiveness.

- **Handling of complaints:** the Commission receives a large number of complaints which is tending to increase with the development of Community legislation and its transposition and with the awareness of firms and the integration of their activities. These complaints mainly concern the free movement of goods (Article 30 of the EEC Treaty), but those relating to public procurement are now on the increase. The growing number of complaints and the difficulties experienced by Commission departments in investigating cases have led to the Commission to advise complainants to raise the matter with the national authorities in the first instance, particularly when the complaint refers to measures taken on the spot. In addition in some areas the Commission uses the powers of discretion granted to it under Article 169 of the EEC Treaty to act in the interest of the law.

The Commission has always aimed to strengthen co-operation between its services and national administrations in order to ensure and improve the enforcement of the fundamental principles governing free movement. The

Commission will follow this approach, particularly by continuing to organise regular meetings with Member States to try to seek consensual solutions to problems that arise. This is intended to make sure that problems are dealt with effectively and to foster a climate of confidence.

In the same spirit, with the Member States, it has set up, since 1 January 1993, within the Advisory Committee for Co-ordination in the Internal Market Field, rapid procedures for processing cases connected with the abolition of frontier controls. It would be desirable if these working methods could develop in the context of mutual assistance between administrations, as has long been the case in the veterinary and zootechnical fields.

These problems are usually brought to the Commission's attention on an informal basis, either by businesses themselves or by Commission networks, in particular the Euro Info Centres, even if a more systematic analysis would sometimes be desirable.

(ii) Monitoring by national administrations

21. Except in cases such as those of company law and competition law, where the application of the rules is placed under the direct control of the courts, it is the national administrations that usually carry out inspections and take action against infringements of Community rules; it is for them to organise themselves with reference to their constitutional or administrative system. This decentralisation of checks must remain the central element of the Community system, but it clearly has a drawback - the risk of divergences in the exercise of these responsibilities. The question therefore arises of how and under what conditions this system of checks can operate without leading to risks of distortion, and especially without compromising mutual confidence between administrations and businesses. A certain homogeneity or equivalence of the control structures put in place by the Member States is an essential condition to avoid risks of distortion and to promote mutual confidence between administrations and between economic operators and to create confidence on the part of consumers in the product made available to him. The Sutherland report proposes a framework for inspections, but more informal methods are also possible.

- **Assistance to the Member States:** the Commission must provide the Member States with the assistance they need to ensure consistent application of the rules. This assistance may take different forms such as joint interpretation of the rules or a co-operation network between inspection authorities.
 - (a) To guarantee convergent application of the rules, every administration must be provided with a similar interpretation of them. Of course, interpretative documents cannot replace the legal instrument itself, which alone can guarantee legal certainty for businesses and citizens, even though the Court of Justice has recently relied on an interpretative document to reject an action against incorrect transposition. A series of precautions should be taken so that interpretative communications and documents can have the desired effects:
 - they must be prepared in close liaison with the Member States and both sides of industry so that the diversity of national situations is taken into account;

- they must be made public to enable everyone to make use of them;
- they must be updated regularly with reference to developments in national legislation, the jurisprudence of the Court, administrative organisation and experience.

For a long time the Commission has published guidelines for controls on pharmaceutical products, drawn up in close co-operation with the industry and the Member States. In 1993 it will publish a guide to applying the new approach, and one on public procurement. In the customs field, a number of interpretative communications and other instruments and guides have been prepared to facilitate uniform application of the legislation. There are also plans to publish the decisions and opinions of the Customs Committees. In the field of recognition of diplomas, a guide will be prepared in 1993 for administrations, contact points and the beneficiaries of the system of recognition.

- (b) As is already the case in the areas of customs and indirect taxation, the Commission must organise the functioning of networks of information exchange and co-operation to deal with the inspection problems arising from freedom of movement. These networks must also support administrative co-operation. As a result of the free movement of goods, services, capital and persons, every control administration will be faced with new situations in which the normal control function will be impossible without the information held by the home country administration. In the absence of this information, there is a risk of either subjecting businesses to disproportionate checks or rendering checks ineffective.

The Commission is facing a new situation since it is now dealing with different parties in the Member States. Whereas to date those parties were the departments of central administrations which issue regulations, from now on they will be mainly in inspection or implementation departments which have had only sporadic contact with Community institutions and which are often decentralised.

- **Control framework:**

- (a) A number of methods of providing a framework for controls have been tested, from simply identifying the control authorities to laying down principles governing these controls:
- Identification of the control authorities is the approach adopted in the Directives on public procurement, firearms, television and recognition of diplomas. It is accompanied by the obligation to report on the application of the Directives to enable the Commission to compare the different national measures, assess the effectiveness of the Directives and identify any special initiatives needed.
 - In the field of foodstuffs, monitoring departments in the Member States must be identified and notified, the monitoring arrangements must comply with the joint principles such as monitoring at the production stage and not only on the market, and the organisation of co-ordinated monitoring programmes. These various arrangements are currently being improved, in particular by the establishment of quality standards in official control laboratories, the unification of general criteria for methods of analysis and the fields of training of national inspectors.

- In the field of transport, there are rules on the level of controls to be carried out on compliance with technical rules and working hours legislation on the roads. These provisions supplement the rules for harmonising controls on the conformity of vehicles, ensuring compliance with the most important technical rules.
 - In the banking sector, the Member States have established, in application of a Commission recommendation, an ombudsman responsible for facilitating the settlement of disputes arising from cross-border transfers.
- (b) The need for mutual confidence between the Member States justifies the establishment of control arrangements suited to the specific nature of each field, based on the following guidelines:
- unification of a number of principles of control and arrangements for control where this proves necessary to ensure uniform and effective application;
 - use of audits of national control systems to provide better evaluation of the problems and clearer identification of the need for approximation and ways of achieving it.
- (c) In the field of public procurement, the proposal set out by the Sutherland report is to appoint a mediator who, under strict confidentiality, would make representations to the awarding authority to correct procedural errors and would also suggest possible remedies in such a case. He should provide complete guarantees of independence and should adhere strictly to the rules of confidentiality. Establishing such a system will require an assessment of national systems to avoid creating an additional layer of bureaucracy and interfering with existing means of redress. The Commission will therefore have to proceed cautiously with such an approach, and will as a first step call on the Member States to designate a contact point in the national administration who would be responsible for informing and advising businesses.

(iii) Access to justice

22. It is the domestic courts who have to decide at first instance whether a particular enactment or conduct is in accordance with Community law. They have a crucial role to play in ensuring that due regard is had to Community law in litigation and that Community law is applied in an increasingly consistent manner. The subject deserves a cohesive work programme all to itself covering the wide range of other measures aimed at ensuring that Community law is widely known, clearly set out and properly understood. Such a programme would have to be concerned with more than just the single market since the problems referred to in this paper are equally relevant in such areas as social affairs, customs and the environment. Consideration of this issue should be situated within the wider framework which will be opened by the entry into force of the Treaty on European Union, Title VI of which fully associates the Commission with the judicial co-operation of the Member States, and opens to it a right of initiative in civil matters. Nevertheless, and without prejudice to more general developments which will arise in this context, the requirements for the management and development of the Internal Market enable some avenues of

reflection to be opened up. Private individuals can have difficulty in enforcing maintenance orders or obtaining damages. Businesses, particularly SMEs, may encounter problems in securing timely payment for sales in other Member States and such situations are likely to arise more often given the greater mobility of people and free movement of goods and services.

- (a) A primary area for consideration is that of the means of redress open to injured parties, the effectiveness of the remedies open to them and the information about them which is available:
- The only case in which the Community has taken the view that specific remedies were needed to ensure compliance with Community obligations is that of public procurement;
 - There are other areas in which the Community rules expressly provide for judicial review. The Customs Code, for example, entitles any person to appeal against a customs decision which concerns him directly and individually. Similar provision has been made with regard to the mutual recognition of qualifications, where decisions must contain a statement of reasons and may be challenged in the courts; such an approach has also been adopted in the area of cultural goods and financial services;
 - In most other areas no special provision appears to be needed, given the ordinary legal remedies which exist in all the Member States. But, as Community rules are concerned with the operation of the market, it ought to be possible for consumers and firms to bring actions before the courts if those rules are to be properly enforced. This may be difficult where, for example, the court has no power to award costs to the successful party or consumer associations cannot act in their own right or on behalf of their members. The Commission will accordingly be examining the entire question in a green paper on access to justice for consumers which it will be publishing in the course of 1993.
- (b) The transparency and consolidation of, and information on, the rules of the single market, together the networks for the dissemination of this information, will help to ensure sound interpretation and application of those rules by the national courts. In December 1992 the Commission adopted a communication on co-operation between the Commission and national courts in applying Articles 85 and 86 of the EEC Treaty; the communication is shortly to be supplemented by an explanatory booklet outlining the procedural rules for the application of these provisions by the courts in the Member States. A vital role will be played here by the measures taken to improve the Celex database following the European Council in Edinburgh and by measures to improve access to Community databases in general. These measures have become even more important with the judgement of the Court of Justice in the Francovich case, the implications of which have been highlighted in the Sutherland report and elsewhere: the Court accepted, within certain limits, that an injured party was entitled to compensation for non-transposition of Community law.. Quite independently of the penalties which the Treaty on European Union provides for in the event that a Member State fails to fulfil its obligations, it is important that persons subject to the law should be able to take advantage of the existing possibilities which the Court of Justice has

opened up here; the Commission is awaiting the outcome of two other applications for preliminary rulings currently before the Court of Justice and will then draw up a notice on the interpretation of Francovich, working in co-operation with the Member States in order to take account of the specific features of each legal system.

- (c) Penalties are an integral part of a system of enforcement. There would be no point in bringing the enforcement mechanisms more closely into line if the penalties imposed were inconsistent. The measures taken are very vague in this respect; obviously, they require the department responsible for supervision to take appropriate measures when a product is not in conformity with a directive; in a few isolated cases, notably veterinary policy, insider dealing and money laundering, Member States are required to establish appropriate systems of penalties. But, as consumer associations and the European Parliament have pointed out, there are areas where divergent penalties may damage the collective interest of the Community, examples being the ban on hormones, insider dealing and company law; fines for infringement of the rules on the export of dual-use goods range from no more than ECU 16 000 to an unlimited amount and with terms of imprisonment ranging from 2 to 7 or even 15 years. Generally speaking, the Commission does not propose to try to harmonise penalties as this would involve looking at the specific features of civil and criminal proceedings and the scale of offences and penalties in each Member State. But the flow of information between Member States needs to be made more transparent, and they should be asked to specify the penalties they have provided for when they notify measures to implement Community law. If it proves necessary in the light of that information, the question of systems of penalties could be discussed at a later stage.
- (d) Once judgements have been delivered they must be enforced. This point is likewise fundamental to any consideration of the question of access to justice because, in an open market, it will more and more frequently happen that infringements committed or damage caused by a firm or individual based in one Member State are registered and prosecuted in another, even though it may be impossible to find in the latter a responsible person against whom the judgement can be enforced. There are numerous intergovernmental conventions on the subject, but they are not working as well as they should. Because they are intergovernmental conventions, the Commission has no right of initiative, at least until the Treaty on European Union enters into force; it can only monitor and encourage the work of ratification and play a part in the relevant working parties:
- The Convention on Jurisdiction and the Enforcement of Judgements in Civil and Commercial Matters is the principal instrument for the recognition of judgements; its extension to Spain and Portugal awaits ratification in Belgium, Denmark, Germany and Ireland. Its operation has been judged effective in the intergovernmental framework; the Commission plans to seek the views of business here, with particular reference to the rapidity of procedures for the transmission of judgements and to the scope of the Convention. The possibility of extending the Convention to include marriage and family law in general will also be examined in order to take account of the new situations created by the mobility of people, which has been facilitated and in

some cases encouraged by Community legislation.

- The Rome Convention on Contractual Obligations will have an increasingly important role to play as economic integration and freedom to provide services make cross-border contracts a normal feature of commercial life, giving rise to the problem of which law is applicable. The Convention applies throughout the Community, with the exception of Spain and Portugal due to delays in ratification in all Member States except the Netherlands. Its effectiveness will likewise be analysed, as will the usefulness of extending it to other areas of civil and commercial law.

The entry into force of the Treaty of European Union, particularly Title VI, should be the opportunity for the Member States to strengthen their judicial co-operation and to give a new impetus to work in this area. The Commission will play its full part in these new developments and, in this context, will see to it that the internal market is extended where necessary by taking, if the case arises, the necessary initiatives.

Once the Treaty of European Union is in force, this co-operation, whatever form it takes, will be organised within a framework of common action adopted by the Council in compliance with the terms of title VI of the Treaty, which the Commission will be able to initiate taking inspiration from the experience gained from the various initiatives currently in existence.

- (e) Lastly, the legal professions must not be excluded from the current or planned measures aimed at improving co-operation between national civil services. Co-operation here could pursue two objectives, namely making Community rules themselves better known and facilitating knowledge and understanding of the Member States' different legal and judicial systems. Several methods might be envisaged:
- the organisation of exchanges between training establishments, on the model of the Erasmus or FORCE programmes;
 - encouraging the organisation of training courses for judges and law officers in the Member States; measures of this kind have been taken for these professions in France and Spain, subject to budgetary limits; if further budgetary resources were to be made available, the Commission could encourage such initiatives in suitable establishments (such as the College of Europe in Bruges, the European Institute of Public Administration in Maastricht, and the Universities of Trier and Oxford).
 - the organisation of exchanges of judges and law officers by bringing them into the existing programme for the exchange of officials, which covers departments responsible for implementing Community legislation on the single market (KAROLUS programme);

III. SUPERVISING THE OPERATION OF THE SINGLE MARKET

(a) Preventing obstacles to trade

23. The Commission has a range of tools at its disposal for ensuring that national rules comply with the Treaty and for promoting mutual recognition and to eliminate barriers justified by the Treaty by legislative action. If the single market is to work properly, it is vital that the Commission should go on performing this preventive function, which it exercises in the first instance by applying the provisions of the Treaty, because there is a natural tendency in all Member States to introduce new rules and regulations, for quite legitimate reasons, without necessarily considering their impact on trade and because supervision of national rules and regulations enables the Commission to identify any areas where additional Community legislation is needed. Competition policy plays a central role in the prevention of obstacles to trade by preventing some markets from being distorted by cartels, abuses of dominant position, state aids or exclusive rights.

(i) Goods

24. Directive 83/189/EEC, which has applied to all goods since 1988, requires Member States to notify the Commission and the other Member States of any planned rules or regulations. It has become a useful instrument for preventing obstacles to trade. Notification initiates the vetting process, and the transparency it establishes launches a process of dialogue and co-operation between the Member States and the Commission. Gaps have been identified in the coverage of the Directive and in the procedures which it sets up. A proposal aimed at overcoming these is currently before the Council and Parliament.

25. There is another measure which could make for greater transparency of mutual recognition procedures. Mutual recognition is not automatic; the natural tendency is for the national department responsible to check that a product entering the domestic market complies with its own rules, unless it can be shown that it complies with the rules of another Member State providing equivalent protection. It has to be shown in every case that there is equivalent protection, and the situation may change as the rules themselves change. It should be possible to ask Member States to declare all refusals to recognise the rules of other Member States. The Commission would then be able publicly to announce the cases where rules were not recognised by one or more Member States. This multilateral method of assessing equivalence would draw attention to any instance in which one Member State challenged national rules that were recognised by all the others. The Commission will be making an appropriate proposal shortly.

26. Finally, particular attention must be given to problems in the veterinary and phytosanitary sectors, where the risk of national measures affecting trade in animals and animal products is ever present. Since January 1993, we have been witnessing a very unfavourable evolution of the animal health situation in the Community. This has given rise to tensions amongst the Member States and has prompted the adoption of unilateral national measures with the declared intention of preventing the

spread of serious diseases from other Member States and third countries. The Commission has succeeded in applying the necessary Community measures, compatible with the abolition of border controls; it should however be noted that the Member States have had a tendency to apply unilateral national measures. To guarantee maximum security from a health point of view there is a pressing need to provide resources and procedures which will allow the Community to react rapidly to disease outbreaks and to support disease eradication programmes effectively in the interest of achieving and maintaining the highest possible health standards. Without this, the single market in animals, and in animal and plant products, will not develop and prosper.

(ii) Services

27. The prevention of obstacles to trade in services is less well organised. Since 1962 there has admittedly been a prior examination and consultation procedure for measures which Member States are planning to adopt in the field of transport. But a procedure of this kind is an exception in the services sector, and the Commission could envisage, outside the harmonised sectors, extending to the services sector the procedure followed for technical rules and regulations.

28. More than the free movement of goods, the growing freedom to supply services places tax and social security systems in competition with one another. This is fully in line with the principles governing the single market, under which the law applicable is to be that of the country from which the service is supplied. The Commission must, though, seek to ensure that differences between social security and tax arrangements do not lead to situations which would be legally or politically unacceptable. To prevent the supply of services from becoming a means of sidestepping the social security requirements of the country in which the service is supplied, the Commission, acting in accordance with the Social Charter, has put forward a proposal on the posting of workers, which defines the conditions under which the law of the country in which the service is supplied is to apply. In the tax sphere the Court itself has drawn the Commission's attention to the need for Community action. The Commission is currently studying the question.

(b) Evaluating the effectiveness of Community rules

29. The Commission is sensitive to the concerns expressed by some Member States and industries are concerned about the availability of statistical information on intra-Community trade. The former method of collection based on customs declarations has given way to a new system based on direct declarations made each month by firms. The first results obtained from certain Member States lend support to the view that the difficulties inherent in the launching of this system are transitory in nature and that the statistics provided will be of a kind and quality comparable with those which existed up to 1993. The Commission will therefore be in a position to carry out, in similar conditions, the monitoring of the evolution of intra-Community trade flows required to accompany any necessary policy decisions in the trade area.

30. The effect of the single market on business, industries and the economy in

general has been described in the Cecchini report and other academic studies. The next step will be to verify the analyses made in these publications, but that can be done when all the measures called for have entered into force. The bulk of the measures on the manufacture of goods are now in place and border controls have indeed disappeared, but a manufacturing firm remains dependent on the range of services it buys in order to organise the production and marketing of its products. Most of the measures concerning services particularly in the insurance, telecommunications, energy and transport fields, will enter into force only gradually. In its resolution of 7 December, therefore, the Council asked that such an assessment be carried out by 1996.

31. The assessment of the economic and social impact of the single market has to overcome three types of difficulty:

- In the first place, there will have to be information available that will make it possible to gauge the effects of the dismantling of frontier controls on the activities of firms and hence on the structures of their markets and their strategies: the "observatoire des entreprises" could provide information in this regard. Large firms provide clear illustrations of such changing markets and strategies, but it is more difficult to assemble information on business services and especially SMEs;
- An assessment will also have to be made of the effects of the conduct of businesses, public administrations, consumers and workers, who themselves react to the effects of the single market and influence the level of knowledge and the conduct of firms, either amplifying or attenuating the consequences the single market would otherwise have had;
- The study will also have to take proper account of the time it takes to respond to Community rules.

Assessing the impact of the internal market is thus a long-term task. But it can be started at once, and the Commission proposes to launch this work at the beginning of 1994, subject to the budgetary resources available, on the basis of the preparatory work already under way; the exercise should last about three years.

32. It is also necessary to ensure that the operation of the single market matches the needs and expectations of business and of the general public. But proper supervision is difficult because there is no general yardstick against which the working of the single market can be measured. A large number of committees have been set up to carry out assessments of this kind often on the basis of reports which the Commission is obliged to present to the Council and the Parliament. These committees can be a useful channel for establishing whether the rules in force are what are needed. However, it is difficult to assess the economic, social and industrial impact of rules from the vantage point of a single sector because the environment of firms is determined by the totality of rules which determine the competitiveness of this environment. The question arises as to how the Member States and economic operators concerned could organise themselves to monitor and assess the overall impact of the rules.

33. It is not enough to assess the economic consequences of the single market as such; it must also be verified whether each of the rules adopted meets the

expectations of businesses, consumers and the general public. The Commission has at its disposal for this purpose the various working parties and committees bringing together government representatives, business people, consumers or representatives of those working in the field, one example being the veterinary and foodstuffs advisory committees, made up of representatives of the occupational categories involved and of consumers. For broader supervision of the operation of the single market, the Commission turns to the Advisory Committee on Co-ordination in the Internal Market Field to pass on any information, studies or observations on the working of the market; if necessary, therefore, this committee will be able to make up any shortcomings in communication between the Commission and Member States. As regards contacts with the economic and social groups concerned, the Commission, in line with Parliament's resolution of 18 December 1993, is prepared to work through the Economic and Social Committee, which consists of representatives of all of these groups and thus combines technical knowledge with the political sensitivity needed for an assessment of this kind.

IV. ORGANISATION OF PARTNERSHIP WITH THE MEMBER STATES

(a) Scope of partnership

(i) Freedom of movement for persons

34. Freedom of movement for persons is governed by its own rules, which will change with the entry into force of the Treaty on European Union. But it is accepted that the Community has jurisdiction over capital or sensitive goods such as drugs destined for the licit market (medical and pharmaceutical), privately held weapons and capital. It is important in these areas that the Commission should preserve the contacts that exist between the Member States. It is likewise important that the Commission should provide a channel for the exchange of information in areas which are not regulated at Community level, such as psychotropic substances or the protection of public morals; it was in this context, and to this end, that the Council of 8 February 1993 adopted a regulation to set up the European observatory on drugs and drug addiction. Leaving aside the question of co-operation between administrative departments in the application of Community rules, an exchange of information and experience is needed in order to build confidence between national administrations. The Commission will accordingly arrange regular seminars to facilitate convergence of national systems, without necessarily having recourse to Community legislation or international conventions in order to forestall any difficulties and to lead to the laying down of guidelines by the Council.

(ii) Protection of essential requirements

35. Solidarity between Member States in the management of the single market demands co-operation between administrations in order to ensure that consumers are protected against dangerous products or ones not in compliance with the rules

moving from one Member State to another. It also means that the Commission must be able to secure changes in Community rules in order to respond to new needs and must therefore have the necessary scientific information at its disposal. Lastly, solidarity in the fight against fraud is needed.

- a) **Early-warning systems for dangerous or non-conforming goods and services:** taking into account the several instruments establishing particular early-warning networks in specific directives and the entry into force in 1994 of the general product safety directive all consumer goods moving within the Community are covered.

The first question is whether these different existing systems can work effectively and, if so, how. Experience to date shows that they are poorly understood by national administrations and applied inconsistently in the different Member States. The challenge facing the Commission and the Member States is to ensure that these emergency systems can operate on a routine basis. But with a large number of networks and contacts even inside the Commission, there is a danger that the system will not be transparent and will be rendered ineffective. A series of measures could be envisaged to improve the situation:

- acceleration of the speed of transmission of information
- stricter limitation of the use of the procedure to truly urgent cases;
- at least in certain sectors, more precision regarding the information to be supplied by national authorities;
- a more equal use by the Member States of the emergency systems;
- greater transparency regarding the reaction of the national authorities to the cases notified;
- greater Community co-ordination regarding the treatment of information (confidentiality/ publicity);
- more systematic organisation of the discussions at Community level regarding the treatment of the cases notified.

The second question is whether such systems would be useful in the field of services, something which should be looked at together with the Member States. Such systems are devised on a pragmatic basis for the professions in cases where serious and specific situations arise which may have consequences for the practice of the profession. These methods are however still an exception in the case of services; but the growth of cabotage in the various forms of transport, for example, might justify informing all Member States of measures taken against a firm which might have consequences in the other Member States. The Commission will therefore be considering the usefulness of establishing early-warning networks for services too.

- b) **Adapting regulations to new risks:** the Commission must also have the means of ensuring that rules can respond effectively and rapidly to new demands. This flexibility must come into play not only when rules are drawn up or amended but also when they are applied in the Member States. These two levels are closely bound up with one another and interact, but the tasks and functions involved are different.

- The drafting and amendment of regulations requires a capacity for technical or scientific evaluation and the establishment of legislative processes which are sufficiently streamlined to meet any needs that arise. It goes without saying that problems crop up with degrees of urgency that vary from one industry to another and from one type of risk to another. The more critical the risk, the greater are the demands placed on the Community machinery and the more structured co-operation between the Member States and the Commission has to be. This is the case with the different scientific committees in the veterinary, plant-health and food sectors, on which the leading independent European experts sit. The objective of these committees is to supply the Community with scientific analyses which are as incontestable as possible so that they can serve as a basis for drafting and amending Community legislation. Similar needs exist in other areas such as car safety, the safety of chemicals and consumer product safety.
- The performance of the Community machinery should be considered overall, taking in the entire decision-making process, which can last from three to five years depending on the type of legislation and the procedure to be followed. Such long periods may be incompatible with the seriousness of the danger and may justify considering the implementation in the meantime of national legislation which has the effect of fragmenting the market once again. The Commission thus needs procedures that are adapted to the Community's requirements and will enable it to take emergency measures in emergency situations; such a procedure is provided for under certain conditions in the directive on general product safety.

Generally speaking, the Commission does not itself possess the technical and scientific capacity needed to evaluate the need for regulation. New working methods will therefore have to be devised under which particular tasks would be entrusted to groups of experts or laboratories designated by the Commission in agreement with the Member States. There is wide experience of such an arrangement in the pharmaceutical sector.

(b) Partnership instruments

(i) Administrative co-operation

36. Administrative co-operation, in application of the principle of subsidiarity, is also justified for a diversity of reasons: to ensure a comparable level of protection of health and safety, to ensure mutual confidence and to guarantee competition. The abolition of administrative checks at the Community's internal borders highlights the additional risk of fraud where Community rules allow different national arrangements to coexist and make the crossing of borders subject to special procedures or conditions. There may also be a risk of fraud if controls are not carried out to the same level, as was shown by the Commission report on hormones. In such cases the intervention of authorities will have implications on the territory of other Member States. Owing to the abolition of customs checks, various authorities may be involved in the same case.

37. Combating fraud is a well-known problem in relation to the Community budget. Fraud against the Community rules has always existed but each Member State has

claimed up to now to be able to keep it under control through its administrative procedures. Administrative co-operation instruments now need to be introduced in order to meet this threat. The development of informal initiatives gives rise to fears of a lack of transparency in the exchange of information and of an unequal treatment of cases. There would therefore be a number of advantages in introducing formal control machinery, in accordance with the proposals in the Sutherland report. It is in the interests of consumers and the public at large for mutual assistance between national authorities to be as efficient as that which exists within Member States.

38. Co-operation between authorities may also be aimed simply at administering Community acts, which often requires information gathered in another Member State. This is the case with the majority of directives and is generally the function of committees at the Commission and of networks of responsible authorities. It is generally departments in the Member States administering internal rules which take part in the network but it may also be departments set up especially to administer directives, as in the case of the system for the general recognition of diplomas.

39. The arrangements for co-operation may take various forms:

- (a) In certain fields the arrangements for mutual assistance are governed by detailed procedures managed by committees: this is the case, for example, in the foodstuffs, pharmaceutical and veterinary fields. The abolition of tax frontiers has led to the setting-up of bodies for co-operation between authorities within the Standing Committee for Administrative Co-operation and by the designation of liaison offices in each Member State; this structure will permit mutual assistance in carrying out checks in one Member State on behalf of another; the procedures for this mutual assistance are laid down in Regulation 218/92 on administrative co-operation particularly in relation to VAT; besides this, there exist provisions regarding mutual assistance in Directive 77/799/EEC which have been extended to the field of excise. In the area of foodstuffs, co-operation procedures establishing a contact point in each Member State and an obligation to cooperate are in the process of adoption in the context of a draft directive completing the directive on official control. Furthermore, a directive establishing scientific co-operation between the Member States and the Commission has been adopted.
- (b) In most other fields, Community texts restrict themselves to obliging Member States to ensure implementation without indicating the missions entrusted to the responsible authorities.

40. Experience to date suggests an approach based on the following lines which will be developed in a specific communication:

- (a) notification by Member States of implementing measures in respect of Community acts, i.e. not just transposition measures which are generally notified once and for all, but also administrative implementing rules;
- (b) definition before the end of the year of objectives and procedures for administrative co-operation at the implementation stage for each area of Community legislation; these matters will be considered in each relevant group and committee; the aim will be to identify clearly the authorities responsible for implementing the legislation, to determine the objectives, needs and procedures

for administrative co-operation, assess the effectiveness of existing procedures in fields in which administrative co-operation has been introduced and, finally, identify ways in which the Commission can usefully contribute;

- (c) drawing up of guidelines for administrative co-operation possibly on the basis of a Commission proposal; the aim of this proposal would be, in fields where no specific provision exists, to introduce the basic elements of co-operation between authorities in a bid to avoid bureaucracy and duplication of bodies and to introduce a sufficiently flexible structure which can be adapted to the needs and specific nature of each field;
 - (d) preparation by the Commission of a support programme for administrative co-operation;
 - (e) a report to the Council and Parliament in early 1994 on the position with regard to co-operation between authorities, accompanied by supplementary proposals as required.
- (ii) The adaptation of authorities to the rules for the operation of the single market.

41. In order for co-operation between authorities to work and, more generally, for the rules to be fully observed in the interests of the security of both transactions and consumers, administrative structures must be brought into line with the commitments entered into. In order for the appropriate information to flow between authorities and for dialogue between the various bodies to be possible, national authorities at all levels need to have integrated the Community dimension into their operational rules and their organisation. The efficiency of administration is just as much a determining factor for the business environment as the content of regulation.

- (a) Changing the administrative infrastructure: freedom of movement within the Community has shown the importance of the control structure at its external borders. It is in the interests of the whole Community that the police, customs and health authorities have available at border posts the equipment they need for their task, because they are acting on behalf of the whole Community. Furthermore, the Commission has launched a survey among the Member States on the management of checks on persons at external borders.

A comparable situation exists within the Community: authorisations for placement on the market and checks carried out on the market are made for the benefit of all consumers. This is particularly true in fields covered by the harmonisation of essential requirements for products, which requires laboratories and efficient testing departments. The Commission is currently carrying out a study on all testing, inspection and certification departments in the Community in order to assess the situation and, in the light of the findings, draw up a programme to strengthen these infrastructures in co-operation with the Member States. The credibility of certification bodies and mutual trust between national control systems inevitably presuppose a levelling-up of the skills of testing and certification bodies; it also entails the introduction of networks of mutual accreditation agreements with the full support of national and Community public authorities.

There may well be scope, in particular under the Prisma programme, in force until 31/12/93, for the Community to give financial support to the establishment

of infrastructures of test and calibration laboratories and testing and certification bodies.

- (b) Training of national authorities: national authorities are faced with new rules which they must administer in the light of the Community dimension. When carrying out checks on the market they must be able to understand the meaning of product markings and accompanying documentation in order to react in a manner consistent with Community rules. Similarly, in order to carry out an efficient and appropriate check on the load of a lorry from another Member State the police have to know which special documents the driver must produce. The problem of training, which has been highlighted with regard to access to justice, concerns all national authorities and particularly those involved in implementation. While measures have been taken to promote greater awareness of the Community dimension on the part of national authorities, these remain insufficient in relation to the needs.
- exchanges of officials constitute an essential instrument for co-operation and mutual trust between authorities. The scope for exchanges in relation to the administration of the internal market remains limited, but is expanding progressively. Exchanges have been undertaken in the veterinary field since 1991, and are now possible in all fields governed by internal Community rules, under the Karolus programme, which has been in operation since 1 January 1993. Over five years the programme is intended to permit exchanges by 1 900 officials in fields to be determined annually in the light of experience. The scope for exchanges already exists in the customs area and has been extended on an experimental basis to the area of taxation which will be covered by a specific programme (MATTHAEUS-TAX) which is under discussion in the Council.
 - While these exchange programmes are accompanied by training schemes for participants, there is no systematic programme of training for national officials. Only in the veterinary field is there provision for courses of further training for veterinary inspectors; in the customs and tax areas the exchanges will be complemented by a significant programme of training seminars and by the development of common training programmes. It would be beneficial, as proposed in the field of training for judges, to promote exchanges of students and instructors in establishments for the training of officials.
 - Finally, the Commission is studying the feasibility of a documentary and contact periodical aimed at national administrations.
- (c) Data-transmission networks between Member States: co-operation between authorities can work effectively only if it is based on data-transmission infrastructures. These needs were identified in 1991 by the Commission in various fields as a result of freedom of movement within the Community. Since then, besides the initiatives related to the management of the external borders (SID, TARIC), for the management of the Internal Market itself several initiatives have been taken in order to set up networks covering indirect taxation (Vies), veterinary control (Animo and Shift), plant health (Physan) drugs and drug abuse (REITOX) and intra-Community trade (Comedi); the reason for setting up these networks was the abolition of border checks. Other needs are now evident for example with regard the administration of export controls on dual use goods, Community type approval for cars, the opening up of public procurement, the

dissemination of job offers and requests, social security, the administration of authorisations for the marketing of pharmaceutical products and controls on the marketing of foodstuffs. As new directives enter into force new needs will arise.

In order to avoid a scattering of initiatives, the Commission has presented to the Council the TNA-IDA programme, which aims to suggest guideline programmes for computer networks which would govern all transnational network projects, even those not involving Community funding, and introduces an instrument for funding network feasibility and implementation studies.

Initial studies show that needs centre on three types of network: electronic mail networks, data file transfer networks and networks for consulting and updating databases. Each of these networks must operate in accordance with security and reliability requirements. All data-transmission networks require a consistent and integrated approach, both at institutional and national level, which must not be limited to the Community but must also cover the systems relating to the other pillars of the Treaty on European Union. In order to carry out a consistent and planned expansion of these networks over the next few years, a programme will be launched to draw up rules for a common architecture for an electronic mail service between the Community institutions and Member States, on the one hand, and between the Community institutions and Member States, on the other. This service will initially permit the exchange of documents relating, for example, to the conduct of meetings; in a subsequent phase, applications specific to particular fields will be added to the electronic mail service.

- (d) The Commission intends to pilot the operation of computer networks between authorities with the assistance of two bodies: the Advisory Committee for Co-ordination within the Internal Market Field should be in a position to identify needs and priorities and assess the effectiveness of networks; the Telematics for Administrations Group (TAG) should permit management of the setting-up of the networks, including any technical, organisational and financial problems involved, while respecting the remits of sectoral committees.

V. TRANSPARENCY OF COMMUNITY MEASURES

42. The transparency of measures has become a major challenge for the Community for its image both internally and externally. This explains the emphasis which the European Council, at its Edinburgh meeting, placed on legislative consolidation, by requesting the establishment of an accelerated working method acceptable to all the Community institutions, to adopt proposals on legislative consolidation quickly and effectively. Transparency is not just a requirement for the political and social acceptability of rules adopted; it is also a requirement for their proper implementation in the Member States. Member States of course clearly have their part to play, though their effectiveness will depend on their ability to optimise their initiatives within the framework of joint measures undertaken with the Commission and other Member States. But the prerequisite for all communication and information activity lies in the transparency of Community legislation. These two themes have been the subject of Commission communications, two on transparency, of 2 December 1992 and 2 June 1992, and another on access to information, of 5 May 1993.

(a) Transparency of Community legislation

43. As announced in its communication of 2 December 1992 on the follow-up to the Sutherland report, the Commission will publish codification requirements in the light of the current position with regard to legislation and likely developments. Already, the 1993 legislative programme provides for codification of a large number of acts in the internal market area. At the same time, it will make legislation available to the public in consolidated form on the Info 92 database; legislation on pharmaceuticals, foodstuffs and company law is currently available. This project will be progressively extended to cover all legislation. It should perhaps be stressed that these consolidated texts are available in the nine Community languages. Furthermore, informal consolidation will be developed thanks to the programme established by the Office of Publications from 1 January 1993.

44. Concurrently the Commission will publish, also in the nine languages, compilations of legal texts by subject matter. The first publication of this type will be on foodstuffs and will include all legislation relating directly or indirectly to that field. A further one will be on pharmaceuticals.

45. As stated earlier, the Commission is prepared to undertake joint publication which would enable not only Community legislation but also implementing legislation to be made available to specialists. Proposals to this effect are currently being examined at the Commission, but in order for the initiatives to meet the needs arising in each of the Community languages it is prepared to promote the establishment of a European economic interest grouping with publishers covering the nine languages and pooling their translation, research and publishing resources.

(b) Communication and information measures

(i) Annual report on the internal market

46. The Commission has announced the publication of an annual report on the internal market. This report, without duplicating the Commission's general reports or the report to Parliament on the implementation of Community law, should permit policy-makers in the Community to determine priorities and businesses to obtain information on the current operation of the internal market. The purpose of the report will not be merely to give information on the stage reached in the decision-making process which are already given in the annual report, nor to examine the problems of transposition and implementation of legislation, which are dealt with in the report on the implementation of Community law, but to describe all aspects of the administration of the single market as set out in this paper. Consequently, the report will have to be drawn up in co-operation with Member States so that it can include information on the implementation of legislation there. Consideration could also be given to subsuming in this report all the other reports which the Commission has to make in compliance with specific directives, together with the reports which Member States have to draw up.

(ii) Communication and information initiatives

47. The Commission has adopted an approach to strengthen and reinforce information and communication actions for the single market which is in line with the conclusions of the Sutherland Report. In this context, the Commission, is establishing an inventory of its current activities by means of an interservice working group. This group will also make the necessary complementary proposals. Furthermore the group will make constructive recommendations in order to improve co-ordination between the services and with outside organisations and relays. This will permit clearer messages with greater impact to be passed to the general public and specific audiences. Some of the guidelines will include:
- (a) use of more modern and more high-powered communication media;
 - (b) organisation of partnership with the Member States, Community institutions, and outside organisations and relays ;
 - (c) review of publications and exploration of new opportunities
 - (d) improvement of the dissemination of the INFO. 92 data base which will be available on a European general public network and which provides basic information on the operational rules of the Internal Market; it constitutes the basic instrument of Community information actions.
 - (e) better targeting of actions

SECTION B: DEVELOPING THE SINGLE MARKET

I. A BARRIER-FREE ENVIRONMENT

48. Assuming that all the measures taken are correctly transposed and enforced by the Member States, we must ensure that they are in line with what is necessary for the operation of the single market. With the completion of the legislative programme set out in the White Paper, the basic structure of the Community legislation on which operation of the single market is based has been put in place. This does not mean that new needs will not continue to arise, in connection with the protection of health, safety, the environment or consumers, which will require either existing rules to be adapted or new rules to be prepared. While Article 8a confers on the Community clear and exclusive responsibilities for ensuring that the single market functions satisfactorily, this does not prevent the Community institutions from seeing to it that the principle of proportionality is complied with in a context of greater transparency. The fact that the principle of subsidiarity has been enshrined in the Treaty on European Union creates an even stronger obligation to ensure transparency as regards both the grounds for any initiative and the ways in which subsidiarity is to apply. In order to achieve such transparency, a methodology and an analytical framework must be established and used during the preparatory work, and there must be an information and consultation procedure which is open to all the parties concerned.

49. The development of a methodology and an analytical framework makes it necessary first and foremost to define the criteria to be applied in assessing any new need for legislation, in terms of both the need for legislation itself and the choice of solutions that will achieve the greatest possible practical impact (effectiveness) while exerting the smallest possible constraint in relation to the objective pursued (proportionality). These criteria should serve several purposes: identifying the Community objectives at stake (removal of barriers to free movement or of distortions of competition, social objectives, technological harmonisation objectives, etc.), spelling them out with due regard notably to the way in which they interact (this will throw light in particular on the choice of legal basis), and defining the needs for action to fulfil these Community objectives. They should also relate to the method of assessing the economic importance of the legislative need and the cost of the future rules. Lastly, they should make it possible to define the type and content of the measure in the light of the needs and objectives identified, in particular by presenting a range of possible solutions suggested by experience in the Community.

50. In applying this method of assessment and analysis when drafting its proposals, the Commission will be aiming for maximum coherence in the Community's legislative policy and for consistency between certain types of measure that pursue different Community objectives. Such consistency must be sought in the Commission's internal co-ordination, in the other Community institutions and even within national administrations. The transparency of the process of preparing Commission proposals should provide a tool for ensuring such co-ordination. As a first step, transparency has been improved through sounder preparation of

explanatory memoranda, through publication of the Commission's legislative programme and through the use of white and green papers; several green papers are currently being prepared by the Commission services on, for example, business communication or access for consumers to judicial review. Elsewhere, discussion is underway on the basis of green papers concerning media concentration and pluralism, as well as on the single-market for postal services.

- by giving notice in the Official Journal of the intention to prepare fresh proposals. The Commission will thus have to take a decision on the desirability of a measure in advance of any discussion on a specific proposal;
- wherever appropriate, by framing an overall policy which should make it possible to ensure maximum consistency between certain types of measure pursuing particular objectives. Green papers are such general policy statements, and their publication can constitute an essential counterpart to any initiative to promote the transparency and consistency of the Community's legislative action.

51. The results achieved to date leave some obstacles to trade that the Community must try to eliminate following the working methods described earlier and according to the priorities identified in the present document. Open consultation will enable the relevance of these priorities to be established.

a) Improvement of the regulatory environment for businesses and citizens

(i) Rules on the protection of intellectual property

52. On the basis of the White Paper, many disparities between national rules which affected the free movement of goods or services have been eliminated. This action must continue with the aim of promoting innovation within the limits of the competition rules:

- the free movement of goods must be encouraged through harmonisation of the rules on the protection of biotechnological inventions and new plant varieties (for which a proposal is before the Council) and industrial designs;
- the freedom to provide services and the free circulation of goods should be facilitated by harmonisation of the rules on broadcasting by satellite and retransmission by cable, on the length of copyright protection and neighbouring rights and on the legal protection of data bases.

53. However, in addition to the rules on harmonisation, new facilities should be introduced for enterprises offering them arrangements for protecting patents, trademarks, new plant varieties and industrial designs that are based on a single registration procedure and a Community system of protection. Proposals on trademarks and new plant varieties are already before the Council; a convention on the Community patent is on the point of being ratified; and a proposal on industrial designs will shortly be put forward by the Commission.

(ii) Protection of personal data

54. A series of proposals is currently before the Council, including a proposal for a directive (modified in October 1992 following the opinion of the European Parliament) concerning the protection of individuals in relation to the processing of personal data and the free circulation of data. Flows of personal data (within and between firms, in the context of mutual assistance between administrations, between research centres, notably in the medical and epidemiological fields) are on the increase as integration and free movement proceed. The protection of citizens requires that their private lives be safeguarded from uses which might be made of data concerning them.

(iii) Company law

55. Adoption of the statute for a European company would provide an extra legal option for businesses wishing to take it up. It would also overcome a difficulty that has no place in the Community today: businesses based in different Member States cannot always merge without having to set up complex, costly legal arrangements. The situation is all the more anomalous in that the tax treatment of such mergers was dealt with by a Council Directive adopted in July 1990. The European company would thus be an extra option and would simplify matters for businesses. It would also be a strong symbol. Adoption of the statute would furthermore break the deadlock on other measures, such as the European cooperative statute and the tenth Directive on cross-border mergers on which the Parliament has suspended its opinion in order to attempt to find a solution to worker participation.

(iv) Simplifying cross-border payment facilities

56. Consumers and businesses are still baffled by the cost of cross-border payments, which can be disproportionate and non-transparent, particularly where small amounts are being transferred. While large firms generally find ways round the problem, for SMEs it is one of the factors penalising cross-border business most heavily.

57. The Commission focused on this question among others in a communication dated March 1992, urging banks to take voluntary action aimed chiefly at improving the efficiency of the transfer systems and their interconnection, but also, for example, at making the cost of cross-border payments more transparent for their customers, thereby allowing comparisons to be made between financial institutions and stimulating competition between them.

58. The Commission stated in that communication that it would review the situation in the first half of 1993 and that, if no progress had been made, it would draw the necessary conclusions, where appropriate in terms of legislative action; Parliament supports the approach of the Commission, whilst wishing to see more restrictive measures in some respects.

59. The hoped-for progress will, however, take time, time that will vary according to the complexity of the different problems to be overcome. The banks often argue that the amounts of cross-border payments are too small to justify automating the system, which is the only way to cut costs. The number of complaints remains high, and Parliament has enthusiastically taken up the problem. According to the Parliament, a new initiative, backed up by the threat of sanctions and, where necessary, including legislative action, should lay down an obligation to achieve results.

(b) Ongoing approximation of tax regimes and the creation of a favourable tax environment for businesses

(i) Indirect taxation

60. The abolition of tax frontiers and the introduction of minimum rates for VAT and excise duties throughout the Community from 1 January 1993 has laid the foundations for the new developments that are expected in the internal market over the next few years. These developments involve the changeover to the payment of VAT in the country of origin, which is planned to take place on 1 January 1997. The opening-up of frontiers and market forces are pushing VAT rates closer together: this approximation has been tangible in recent years and must continue in the interests of consumers and economic growth.

61. The minimum Community rates of excise duties on alcoholic drinks, tobacco and petroleum products can be revised every two years, and for the first time on 1 January 1995, in order to pursue public health and environmental protection objectives in particular.

62. As regards preparations for the changeover to the payment of VAT in the country of origin, a precise timetable was set by Directive 91/680/EEC (OJ No L 376 of 31 December 1991). In line with this timetable, the Commission will present by the end of 1994 a report and proposals on which the Council is to act by the end of 1995 so that the definitive VAT system can enter into force as planned on 1 January 1997. The aim of the definitive system is to do away with any difference in tax treatment for VAT purposes between transactions carried out at purely domestic level and transactions involving two or more Member States.

(ii) Direct taxation

63. Strengthening of the internal market makes it necessary to create a tax environment conducive to business initiative. On direct company taxation, the Commission spelt out its approach in a communication it published in June 1992 in response to the report by the independent expert group chaired by Mr Ruding. These policy guidelines now have to be actively implemented in close co-operation with the Member States. Continuing regular meetings of the heads of the direct taxation administrations would be an appropriate tool for co-operation and could also be used to set in motion genuine co-ordination of national tax policies. Co-ordination in the direct taxation field is seen as all the more desirable when it is borne in mind that taxation is becoming a means of aiding businesses that is detrimental to the

conditions of competition.

64. From a general standpoint, if the internal market is to work smoothly and effectively for businesses in the tax field, three aims must be fulfilled: The first objective is the elimination of double taxation on cross-border income flows. The second is the improvement of the tax environment for small and medium-sized enterprises (SMEs). The third has to be seen against the background of competition in the world economy; as far as at all possible, the overall tax burden on firms has to be lightened, and one way of doing this is to provide appropriate tax incentives.

Eliminating double taxation of cross-border flows In July 1990 the Council adopted two directives, one on mergers and one on the abolition of withholding taxes on dividends paid by a subsidiary to its parent company in another Member State, along with a convention on transfer pricing; the Commission has since submitted two further proposals whose adoption is eagerly awaited by industry and is urgently needed in order to complete the single market.

- The first of the two new proposals is aimed at abolishing withholding taxes on interest and royalty payments made by a subsidiary to its parent company in another Member State.
- The second concerns the possibility for firms to take into account losses incurred by their permanent establishments and subsidiaries in other Member States.

Other measures to underpin the single market are envisaged in the short term. Some are more especially concerned with SMEs (see below). Two others which are worth mentioning here follow on from the Ruding report: one would broaden the scope of the Mergers Directive and the Parent and Subsidiaries Directive in order further to reduce certain remaining cases of double taxation, and the other would simplify the procedures for the application of clauses in bilateral taxation agreements which provide for the reduction or elimination of withholding taxes.

Tax environment of small and medium-sized enterprises : After the Ruding report, the Commission took the policy decision that firms which are not in limited liability form should be entitled to opt for taxation as companies. This would offer firms tax neutrality, regardless of their legal form. In most Member States company tax rates are lower than the marginal rate of personal income tax so that this option would facilitate the growth of self-financing capacity in all SMEs which do not have company status. The Commission is drawing up a proposal to this effect.

The Commission is currently exploring two further avenues in the field of taxation and SMEs.

The first is the tax treatment of transfers of undertakings, with particular reference to cross-border aspects. At a time when a generation of businessmen is due to retire and when the restructuring of firms is gathering pace, the transfer of firms is beset by serious tax obstacles which may result in the firm simply going under.

Another avenue to be explored is the abolition of tax obstacles to the development of venture capital. In most Member States, venture capital funds are obliged to resort to complex arrangements (or to seek establishment outside the Community) in order to avoid double taxation of the income generated (i.e. at the level of the fund and then in the hands of the investor himself). The difficulties are even greater in the case of transnational fund operations.

- Tax incentives : The problems of tax incentives are not straightforward. Since tax incentives are measures derogating from ordinary law, it is necessary to impose a set of access conditions which are restrictive enough to avoid abuses but not too difficult to apply. Lastly, it is often very difficult to assess the actual economic impact of a system of tax incentives, e.g. incentives for promoting investment. On the other hand, the large size of the overall tax burden on firms (i.e. taxes plus social security contributions) in certain Member States and, on average, in the Community, compared with most other countries in the world, is sufficient justification to examine possible incentives, especially those linked to job creation. Three areas in particular are being looked at by the Commission in the context of tax incentives: the creation and expansion of SMEs, which are the main source of new jobs, research and environmental protection.

65. The taxation of persons residing in a Member State other than that in which they work, and in particular the tax status of frontier workers, has long posed problems. The opening-up of frontiers and the increasing mobility of workers are making discrimination in the income tax field, which bilateral tax conventions are not managing to eliminate, increasingly intolerable to citizens. Such discrimination, which currently affects several hundred thousand people, is a direct impediment to the freedom of movement. Discriminatory tax treatments can affect both employed persons and the professions. The Commission will endeavour, by appropriate means, to do away with existing discrimination and avoid the risk of new ones arising.

II. AN ACTIVE POLICY ON STANDARDISATION

66. European standardisation has been one of the cornerstones of work to build a single market in industrial products and a strong incentive for businesses to take part in the exercise.

67. There is now a broad consensus on the importance of developing and strengthening this activity, both in the interests of the effective implementation of Community legislation (directives making reference to standards, and public procurement directives) and with a view to promoting an integrated technical environment to foster industrial activity.

68. Nevertheless, despite this political consensus (confirmed by the Council resolution of June 1992, which was in response to the Green Paper on European standardisation) and although considerable progress has been made over the last

eight years, the fact remains that it is still too slow for the magnitude of the task and for the number of standards necessary if the single market is to function satisfactorily.

69. In the Green Paper, the Commission already voiced the fear that the standardisation process might not prove able to deliver all the results expected of it within the time scales imposed by the completion and operation of the internal market. It stressed in particular the importance of strengthening the European standards bodies so that they could programme their resources on a multiannual basis, streamline their procedures for preparing and adopting standards, and benefit from the involvement and direct support of industry at European level under the impetus of those businesses which have already adapted their strategies to the single market dimension.

70. Without reopening the discussion that followed publication of the Green Paper, notably on the practical scope for readjusting the balance between structures at national and European level, it is important to look into the political impact that could be achieved by Commission action aimed at:

- ensuring that the European standards bodies are financed in a way that is commensurate with the scale of their task, without being over dependent on the Community budget or the contributions they receive from their national member bodies, one route to explore would be to base the financing on the sale of European standards,
- examining, as the Council has requested, the possibility of making greater use of standardisation in Community legislative work;
- making sure that the work programmes of the European standards bodies are more closely attuned to the needs and priorities of the single market, in terms of both the demand for standards for legislation and the general activities of businesses;
- promoting gradual approximation of the quality-oriented policies pursued on the different domestic markets, by assigning an increasing role to European standardisation and certification structures and enhancing their impact on the behaviour of operators on the supply and the demand side alike.

III. A POLICY IN THE AREA OF QUALITY

71. For more than ten years the Commission, in parallel with the carrying out of its policy on standardisation, has been pursuing the implementation of a policy on the evaluation of conformity, in order to develop at Community level the use of instruments of quality (certification of products, certification of manufacturing processes, tests, metrological checks, accreditation systems for certification and testing authorities, etc.) both in the regulated and the voluntary areas. Standardisation policy and quality policy are, in fact, inseparable, since they both participate in the establishment of conditions which should facilitate the proper and effective functioning of the Internal Market and the promotion of industrial competitiveness. The idea of "quality" should be taken here in its widest sense covering the whole of the characteristics and performance of a product, a service or a

production system, fulfilling requirements which may be regulatory and voluntary in nature.

72. The strengthening of instruments of quality at Community level, the promotion of their use by firms and the dissemination of techniques of quality control throughout the whole of the Community's industrial production, therefore represent priorities which should find their expression in the definition of a concrete action programme to be drawn up in co-operation with the economic partners and the competent European authorities.

73. Without pre-judging what the content of this programme should be, it appears that it should revolve around the following objectives:

- the achievement of a greater coherence between Community legislative policy, including the operation of the systems for the reciprocal recognition of national regulations, and the procedures and instruments for the control of conformity which have been defined and put in place at Community level;
- the promotion of convergence on national markets towards high quality objectives, to reduce the existing divergences which can result in difficulties of access of products originating in other Member States and which can be an obstacle to a consumer policy;
- the reconciliation and rationalisation, within the competent European bodies, on a voluntary basis of the systems of branding, certification, labels etc; which are found side-by-side on the Community market, with meanings and scopes which are often difficult to compare, thereby creating an element of distortion both of competition and of the state of consumer information;
- the development of a culture of quality on the Community market both on the supply and on the demand sides, as a factor of economic integration and of internal and external industrial competitiveness.

IV. MEASURES TO ASSIST SMEs

74. Completion of the internal market has meant that enterprises have had to adjust to a new legal environment and increased competition. We should not underestimate the effort which the large majority of enterprises have been required to make, an effort which brings a cost to bear before any benefit can be drawn. This cost is all the greater in a period of declining economic activity. Thus, while the opportunities created by the single market are often stressed, SMEs, and in particular the very smallest of them, have remained a too far behind the European integration process. The complexity of this process has not allowed them to adapt their production facilities to the new requirements determined by competition or laid down by rules, because of financial restrictions or inadequacies of management.

75. Restoring the confidence of SMEs in their ability to adjust to the single market should also form an integral part of the management and development of the internal market, and the Community must develop the instruments established in particular in the area of information, of co-operation and assistance to companies. It is moreover essential to emphasise the sound basis for the integration of SME policy in the framework of the Community growth initiative decided at the European Council in Edinburgh on 11 and 12 December. Since then, the Industry Council of 4 May 1993

has approved the content of the proposals presented by the Commission, intended in particular to strengthen the priority axis of the Community enterprise policy, whilst ensuring its continuity and its consolidation. This new programme has to enter into force from 1 July 1993 and thus to allow not only the achievement of an objective of support for the recovery of economic activity as well as all its positive effects on employment, but also to be an important contribution in terms of bringing to fruition the Internal Market. The totality of the measures foreseen in this programme will serve to strengthen the role of SMEs in the Internal Market. Without wishing to go into detail on them in this document, it is appropriate to emphasise that, within this programme, complementary measures can be developed to accompany certain lines of action mentioned above. But the Community does not have sole competence in this regard: it must, by its own initiatives, make full use of the Member States' measures, but it cannot and should not take their place. Thus for example, SMEs, generally partnerships, need to be protected from the risks, largely influenced by the relevant tax regime, involved in transfer of businesses; this situation would justify a Commission analysis with regard to taxation of the treatment of transfers of businesses including the cross-border aspects.

(a) Creating information packages for SMEs

76. Managers of SMEs still find it difficult to obtain information on the changes brought about by the single market and to adjust their strategy accordingly. This being the case, the new SME programme foresees a priority action for the EICs aiming to put at their disposal information adapted to their needs. Information products could be developed to cover in particular:

- standards, tests, certification and CE conformity marking,
- innovation and intellectual property,
- participation in public-procurement procedures,
- trade practices and competition law.

(b) Helping SMEs to adapt to standardisation and certification procedures

77. The requirements of Community directives and the European standards on which they are based make certification procedures particularly cumbersome for SMEs, sometimes even when they merely wish to remain on the national market. To help SMEs integrate effectively into the single market and to make it easier for them to take account of European standards, the following measures might be envisaged, some of which should be discussed with the standardisation bodies:

- the guarantee, at the European level, that SMEs are represented in working parties responsible for drawing up standards within CEN/CENELEC/ETSI;
- the improvement of information provided to SMEs on European standardisation policy, in particular by granting assistance to chambers of commerce, trade organisations and the Euro Info Centres;

(c) The opening-up of public procurement to SMEs

78. As the Commission highlighted in its 1992 communication on SME participation in public procurement, SMEs are not on an equal footing with large enterprises when it comes to access to public procurement. It must be possible using existing procedures to make the Euro Info Centres and BC-Net play a role in identifying the difficulties specifically affecting SMEs. It should be possible for these structures, as is already sometimes the case, to report on cases notified to them where difficulties have been experienced in taking part in these procedures. Such reporting would allow account to be taken of the specific problems of SMEs when adapting Community rules, as is currently being done with the problems of calculating time-limits. Wider availability of the TED database would give SMEs new facilities.

79. On a more basic level, SMEs find it difficult to devote time to training and, consequently, to reply to calls for tender, which often require skilled staff capable of analysing and understanding them. The Commission might consider launching a pilot project to encourage the development in the Member States of training courses for SME managers.

V. A DYNAMIC AND OPEN EXTERNAL POLICY

80. An important part of the external effects of the internal market, those favourable to the expansion of world trade, is being discussed in the Uruguay Round. A reasonable balance must be maintained between the constituent parts of the Internal Market and the exercise of the Community's external competencies. This is particularly true in some areas, such as services and more particularly transport or that of direct taxation.

(a) Strengthening the Community's external competence

81. The incompleteness of the commercial policy, as far as goods and services are concerned, whether as regards the elimination of quantitative restrictions or the limitation of bilateral agreements concluded by the Member States in the area of the recognition of certificates and the provision of services, could create difficulties for the functioning of the internal market. A solution can be found in strengthening the common commercial policy and in the area competition policy, in the case of States having such rules.. In this regard the Commission is trying, in bilateral and multilateral (OECD, GATT) fora to strengthen the approach known as "positive comity". This approach, which seeks to overcome obstacles raised by private enterprise to trade with third countries, allows those countries whose exporters are the victims of anti-competitive practices in a third country to request that the latter properly enforce their own competition rules to re-establish a level playing field. In this regard, the widespread development of effective systems of competition policy must be encouraged by all bilateral and multilateral means.

82. The Community should therefore establish a genuine policy in these areas which is more coherent and effective. This policy will essentially be based on article 113. Without prejudice to the discussion on the scope of article 113, it is evident that

the negotiation of all these external agreements falls exclusively within the competence of the Community. This implies, in the implementation of the common commercial policy, a close co-operation between the Commission and the Member States, as foreseen in the Treaty of Rome, in these very special cases, even a partnership. In the areas not covered by the common commercial policy, but for which the Community has acquired an external competence by virtue of the jurisprudence AETR, an identical route has to be chosen.

- (i) **The exercise of the Community's negotiating powers.** All the legislation adopted in the areas of certification of product conformity and the freedom to provide financial or transport services or services in the area of public procurement give the Community new powers intended to safeguard the internal "acquis" and the homogeneous functioning of the internal market.

The need to open this market up must lead the Commission to enter into negotiations with the Community's main external partners with a view to guaranteeing equality of access. This is a particular problem in the area of product certification and transport.

In its negotiations concerning the Single Market or in other negotiations, the Community has to maintain a coherent strategy according to its industrial, commercial and geographical objectives. The Commission has already proposed some guidelines for such a policy.

- (ii) **Representation of the Community in international bodies.** Many Community rules are the result of negotiations conducted within the context of international organisations. The Commission already represents the Community in a number of bodies (European Pharmacopoeia, FAO, OMS-WHO, Codes, OIE, IPPO, etc...); in other international circles the proper functioning of the Single Market requires a more active participation by the Commission, which co-operates in them often on the sidelines and in co-operation with the Member States. Following the entry into force of the banking and insurance directives the Commission must exercise its responsibilities within the competent international bodies.
- (iii) **The management of bilateral and multilateral agreements.** The Community, as signatory of certain agreements, has a responsibility in its own right to manage these agreements. In this respect, the entry into force of the Agreement on the European Economic Area will require a constant process of negotiation on the integration and management of the Community's internal rules in the EEA context; this Agreement alone is a challenge for the Commission since, in managing it, the Commission will have to ensure that the Community's internal functioning is not affected. Apart from this specific example, the cases in which the Commission is responsible for the management of agreements are limited, but may in certain areas be significant: for example, the Commission has sole responsibility for determining the health conditions which meat and animal products must meet to enter the Community. The draft agreement with the United States on public procurement will give rise to a considerable workload for the Commission in monitoring implementation of the agreement and conducting negotiations for its extension.

(b) Improved trade-policy instruments

83. In a period of economic difficulty, Europe is not spared the temptation of protectionism: this spiral must be avoided at all costs. However, these recurrent urges are all the more easily overcome if the Community is ensuring the introduction for its enterprises of effective mechanisms for monitoring the fairness of trade. Such mechanisms also reinforce the rigorous competition policy pursued by the Community, and their main objective is a corresponding opening-up of third-country markets wherever unjustified barriers are maintained.

84. The Community is facing a real problem as far as putting in place its trade-defence mechanisms is concerned: the general expectation is that it should fight with weapons equivalent to those of its main competitors.

85. Firms complain of the burdens and delays imposed by anti-dumping procedures and under the new trade-policy instrument. They wonder about the consistency between a strong competition policy within the single market and what they perceive as a weak mechanism vis-à-vis dumping and unfair trade practices by third countries. It is essential that the Community's position be clarified in this area despite the dogmatic divisions which weigh down the debate in the Council..

86. The various proposals currently being discussed within the Council form a balanced "package": a radical opening-up to the outside world through the abolition of several thousands of quantitative restrictions following the opening of the single market, and a reform of the decision-making procedure in the area of trade-defence measures to make it more effective (time-limits, decision-making mechanism). Given the present blockage in the Council the risk of refragmentation exists through the re-emergence of applications for national quotas submitted on the basis of Article 115 EEC).

87. In short, above all, we must restore effectiveness to the Community instruments of commercial policy.

(c) Convergence of legal rules and economic systems

88. The Community has an interest in promoting developments in third countries which parallel the single market. For the Community authorities, the benefits which will flow from the single market will be all the greater if there is a convergence between Community rules and those applied in third countries. The Community is already actively pursuing this convergence in the context of its contacts with the countries of North America, Japan, and with other Asian countries (e.g. China). The present approach, consisting of the creation of a convergence zone grouping the countries which are geographically proximate to the Community would be a particularly worthwhile investment in the long term to multiply the initiatives and links between the Community's and the Member States' institutions to promote our legal and economic standards in these countries.

(d) Management of the Community's external frontier

89. Management of the Community's external frontier should be based on common instruments and permanent co-operation between the competent administrations, primarily the police and customs.

(i) Ensuring the external security of the internal market

90. The abolition of internal borders was accompanied by a strengthening of the efficiency of controls at the external borders of the Community. Provisions have thus been made by the Community and its Member States so that the Single Market is an area efficiently protected against fraud and international trafficking (drugs, terrorism...). This action, which is foreign to any idea of protectionism, has been given shape in particular by the adoption of a single customs code for the whole Community.

91. The development of administrative co-operation between the Member States' customs authorities and with the Commission has led to the setting up of a new computerised network for information exchange, the Customs Information System (CIS). This system which has been operational since 1992 ensures close contacts, in the due time scale, by a computerised network between different customs offices in the ports and airports of the Community and at the external land borders. These direct links facilitate greatly the customs actions in the fight against fraud. In 1993, the CIS system will be the subject of further developments: a significant increase in the number of terminals linked to the system, the setting up of common data bases to be added to the accessible base in each Member State.

92. Several other instruments in the management of the external border have been established for the application of quantitative restrictions in the areas of plant and animal health, dangerous and non-conforming products, drug precursors and drugs, and the export of cultural goods. Other measures will have to be developed with regard to the export of dual-purpose products. All these measures complete the customs rules which have recently been consolidated by the Council. Checks on persons will also be governed by common rules concerning asylum, visas and identity on the basis of the asylum convention and the convention on the external frontiers, once they have been signed and ratified.

93. All of these rules relating to the management of the external frontier require the adaptation of control infrastructures and the training of officials.

- In the area of infrastructures, besides the assistance that has been given under the INTERREG programme to improve telecommunications networks in external border regions the Commission has established a whole range of computerised instruments, e.g.
 - the TARIC system giving up-to-date information on customs duties and agricultural levies,
 - the "Binding tariff notice" system concerning goods-classification decisions,
 - the QUOTA system on ceilings and quotas

- the SIGL system (Integrated System for Centralised Management of Licences) to ensure an efficient monitoring of Community import restrictions and in particular the quantitative restrictions agreed in the framework of the textiles agreements; this system should be operational in the second half of 1993.

- In the area of training, the MATTHAEUS programme allows exchanges to take place between customs officials. This programme, in place since 1991, will, by the end of this year, have enabled more than 1 200 such exchanges to be organised. It also enables training seminars to be held at which experience and know-how can be pooled with a view to greater convergence between customs practices. Finally, joint training programmes have been organised since 1991 in national training centres. The creation of a joint training centre, intended to ensure co-ordination between the activities of customs colleges, is currently being examined.

(ii) Prevention of infringements

94. Prevention of infringements is now becoming a fundamental aspect of customs policy; it must be based on close contacts between Member States' competent national administrations, the professional organisations and with the main trading partners.

- The Commission intends to strengthen the effectiveness of fraud prevention, in particular through a widening of mutual assistance. A proposal is currently before the Council.
- Proper organisation of fraud prevention presupposes that co-operation is not obstructed by discussions on the limits of Community powers. Consequently, the Commission and the Member States have established mechanisms within the Mutual Assistance Group to combat drug trafficking based primarily on the Council Regulation introducing a compulsory export authorisation system for the list of substances drawn up in the G7 context. This co-operation has enabled data on the application of Community and other rules to be integrated into a single computerised system (SID). Some 130 terminals are currently in service in the Member States.
- The efficiency of the fight against fraud calls for action vis-a-vis third countries. Such is the aim of the customs co-operation agreements concluded with the Community's main trading partners. Such agreements have been concluded in the framework of the European Economic Agreement and with the countries of Central and Eastern Europe. In 1993 negotiations are going to start in particular with the United States, Canada, Japan, Korea and Hong Kong.
- There is now a need to improve Community arrangements concerning measures taken at borders to prevent infringements of intellectual property rights, such as trademarks, patents, and copyright (including designs and models). To do this, the Commission will propose an amendment to the regulation on combatting counterfeiting to strengthen its effectiveness. It should also be established how the Member States punish the production of counterfeit goods to ensure convergence of penalties in this area.
- The Commission intends to strengthen the fight against fraud in the field of

imports of textiles subject to restriction. In the framework of a programme (TAFI: Anti-Fraud Initiative) of co-ordinated measures with the Member States and with the European textile industry, the Commission intends to undertake anti-fraud inquiries in six geographical zones where a strong presumption of fraud exists.

- In the context of GATT, the Community must ensure the existence of general measures to combat counterfeiting.

SECTION C: TRANS-EUROPEAN NETWORKS

I. OBJECTIVES OF TRANS-EUROPEAN NETWORKS:

95. The concept of trans-european networks in the fields of energy, transport and telecommunications is central to a number of key Community policies: the single market, economic and industrial growth, cohesion and integration of the European area.

- The creation of trans-european networks is intimately connected to the completion of the single market. It is not surprising, therefore, that such a concept should have evolved from work done at the Council meetings on the internal market, for what would be the point public procurement rules if their enforcement was prevented by technical incompatibility? Or of creating a frontier-free area if obstacles are put in the way of the circulation of trains because of interoperability problems, as is currently the case with high-speed trains? In this sense, the networks are a logical development of the Single Market: having removed barriers from between Member States; the aim must be to build new links or improve existing ones as well as allowing for their extension to other European countries.
- The setting-up of such co-ordinated networks is also of vital importance to competitiveness: by reducing inefficiency, by minimising transport times and overheads, by making business dealings faster and easier and by maximising the capacity of infrastructures, the networks will make an important contribution to industrial competitiveness. Moreover, by providing data banks and making services available on compatible databases, they will also make a contribution to common Community tasks without undermining subsidiarity.
- The networks will also serve Community cohesion and regional policy. Helping to improve communications between remote or insular regions and the rest of the Community is probably the best way of reducing geographical disadvantages.
- Establishing such co-ordinated networks will also mean taking on board certain planning options for the Community which will determine developments for decades to come. Environmental concerns will also constitute a key parameter here.

II. FRAMEWORK FOR THE WORK TO BE CARRIED OUT

96. The need to develop a trans-European network policy emerged from the Council's discussions on the internal market, in so far as it was felt that the setting up of the networks should be complementary to the introduction of rules on the operation of the single market. The importance of the networks was underscored at the European Council meetings held in Strasbourg (1989) and Dublin (1990)¹.

¹ Council Resolution of 22 January 1990, OJ No 27, 6.2.1990.

Accordingly, in December 1990, the Commission put forward an action programme² accompanied by a draft Resolution on trans-European networks.

97. The preparatory work done by the Council (internal market) failed to bring about its adoption, however, difficulties with regard to the financing of the infrastructure by the Community having proved a stumbling block. None the less, decisive progress was made at the European Council meetings in Maastricht and Edinburgh with the inclusion, in the Treaty on European Union, of a title (Title XII) dealing with trans-European networks, the enhancement of the value of the networks in the Delors II package (Cohesion) in the context of the structural measures, and the underpinning of the Community's industrial competitiveness in the context of internal policies. The networks were also central to the Community component of the initiative for growth which was also adopted at Edinburgh.

98. The construction of trans-European networks should henceforth form part of the process of European union. The draft Treaty on European Union provides the legal instruments for setting up the networks, whereas the new financial prospects provide the necessary financial instruments.

99. Such objectives can be achieved only gradually, in terms of a medium and long-term outlook. Accordingly following the signing of the Maastricht Treaty, the internal market Council, on 31 March 1992 adopted conclusions inviting:

- "the Member States and the Commission to co-ordinate such actions as may have a significant impact on the establishment and development of trans-European networks;
- the Commission to submit to the Council guidelines concerning trans-European networks which can serve as a reference point for preparing, as soon as possible, the implementation of Title XII of the Treaty on Union
- the Commission to submit regularly to the Internal Market Council a progress report which the Council undertakes to examine".

100. This Communication is in response to the Council's wishes. Its purpose is to take stock of the situation as regards the work carried out and to underline the links that exist between the building of the trans-European networks and the operation of the single market and those that exist between the building of those networks and the economic growth strategy.

III. PROGRESS REPORT

101. As early as 1992, in line with the Council's wishes³ and Parliament's resolution,⁴

² See previous discussion papers on the trans-European networks (doc. SEC(89)1670, doc. COM(89)643 final and doc. COM(90)310 of 19.7.1990) and the Communication from the Commission to the Council and the European Parliament "Towards Trans-European Networks - For a Community Action Programme" (doc. COM(90)585 final).

³ Conclusions of the Council meeting on the internal market held on 31 March 1992.

⁴ OJ No C 125, 18.5.1992, p. 87.

the Commission presented a first series of proposals on trans-European networks.

102. The application of the network concept is already being discussed by the Community's Transport Ministers, on the basis of the proposed master plans for the high-speed train, road transport, combined transport and inland-waterway transport. It has also been discussed at informal meetings of the ministers responsible for regional development. Proposals were recently put forward regarding data-transmission networks between administrations and a declaration of European interest.

(a) Network plans

103. Guidelines produced in close co-operation with the Member States, Parliament and the economic operators concerned are a key element in helping to ensure the cohesion and transparency of Community action. Identifying investment projects geared towards trans-European networks is the clearest possible expression of the common interest. The mobilisation of firms in the sector concerned, of network operators and of equipment suppliers is a precondition for the revival of economic activity.

- (i) **Transport infrastructure:** on 10 June 1992, the Commission adopted master plans in three fields: roads, inland waterways and combined transport (see doc. COM(92) 231 final and doc. COM(92) 230 final), supplementing the existing network plan on high-speed trains. On 15 March 1993, the Council meeting on transport emphasised the importance of the network plans and expressed a favourable view of the work already done in the combined-transport, road-transport and inland-waterways fields. Work is proceeding on the drawing-up of master plans for air transport infrastructure, maritime infrastructure and conventional rail infrastructure.

The network plans are accompanied by a proposal for a Regulation on the financing of transport infrastructure. In essence, it provides for an extension for the period 1993/94 of the validity of Regulation (EEC) No 3359/90, which expired at the end of 1992 and which is expected to be replaced when the Treaty on European Union enters into force.

- (ii) **Energy infrastructure:** the Commission adopted a communication on infrastructures for electricity and natural gas (COM(91) 548 final), which was used as a basis for discussions with the Member States and the various interests concerned. The draft proposal on the Commission guidelines concerned is being finalised and could well be presented to the Commission before the summer. The purpose of the guidelines is to ensure that the growth of the networks is orderly, so as to contribute to the completion of the single market, underpin economic and social cohesion and strengthen the security of the Community's energy supplies.
- (iii) **Telecommunications infrastructures:** in the field of telecommunications, the primary objective of the Community's policy is to set up trans-European networks of general application and of basic services. In a system of open and
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- the temporary loan mechanism for 1993–94, which totals ECU 5 billion; of this amount, ECU 2.2 billion has already been committed since the beginning of the programme;
- the European Investment Fund, which has a total of ECU 2 billion, and whose purpose is to provide loan guarantees on a commercial basis.

107. To a lesser extent, ECSC loans can be used to finance infrastructure in which steel is used, viz. in the case of the Rhine–Main–Danube canal, the "TGV Atlantique", natural gas in Greece, etc.

(iii) Internal policies

108. There are already numerous instances in which aid from the Community budget is allocated to trans–European networks by way of feasibility studies and pilot projects, interest rate subsidies and loan guarantees (European Investment Fund) under "network" budget headings (ECU 221.5 million in 1993). This applies mainly to the multiannual programme covering transport infrastructure and data communications networks between administrations.

(iv) Other sources of financing

109. Quite apart from those instruments, which relate to transport, the Agreement on the European Economic Area provides for financial assistance to promote cohesion (EEA Financial Mechanism), i.e. ECU 1.5 billion in loans with a 2% interest rate subsidy and ECU 500 million in subsidies financed by the contracting parties to the Agreement and implemented by the EIB.

110. The Community also helps to finance individual network projects via EIB loans to central and eastern Europe (ECU 1 700 million in 1993) and the Action plan for co-ordinated aid to Poland and Hungary (ECU 20 million in 1993).

(v) Declaration of European interest

111. Moreover, on 16 April 1993, in order to attract private investment, the Commission adopted a draft amendment to the proposal for a Regulation introducing a declaration of European interest to facilitate the establishment of trans–European networks in the transport, energy and telecommunications domains. The proposed amendment establishes among other things a link between the granting of the declaration of European interest and the possibility of financing from the Community.

IV. THE NEED FOR CO-ORDINATION

112. The setting–up of the trans–European networks depends largely on the adoption of the network plans by the Council and on their being put in place within a reasonable time scale, making these plans the equivalent of a medium–term infrastructure programme. The adoption of these plans is the strongest signal that

can be given to economic operators and the financial markets.

113. However, each network is set up along its own lines and in its own time frame – a compartmentalised approach which provides no guarantee that the different initiatives are sufficiently politicised or integrated into a global strategy under the heading of the maximum development of the European area, the functioning of the Internal Market and the development of economic activity. An attempt to develop the networks should respect the particularities of the three sectors as well as the decisional structures governing them; in this way the global strategy should complement new initiatives that have been agreed or will shortly be so.

114. The approach followed hitherto has favoured network interconnection. However, there are limits to this approach, as the plans are not specific enough to guarantee efficient and effective communication systems, environmental and consumer protection throughout the network, or a legal framework for the development of co-operation between the undertakings involved in building and operating the network.

115. Development of the trans-European networks presupposes an integrated approach extending both to the different sectors concerned and to the instruments used.

- (i) There is a need not only for interconnection but also for interoperability, this being achieved by harmonisation of the technical standards for equipment and systems, which in turn will ensure operating efficiency and reduce equipment costs.

For example, it has been estimated that the Paris/Brussels/Cologne/Amsterdam high-speed rail network, which is having to be designed to accommodate several different types of power supply and control-command systems and to comply with different rules on safety, noise, electromagnetic compatibility and so on, has involved an increase of 60% per seat over the standard high-speed train running on the French network.

In parallel to a harmonisation programme underway in certain sectors (TGV and air traffic equipment), a global strategy must therefore be implemented and new efforts made to overcome all the technical, regulatory and operational constraints impeding network interoperability and standing in the way of the development of a genuine internal market in services.

- (ii) There is also a need for co-operation between the undertakings involved in building, financing and managing the networks; co-operation between private enterprise and public authorities is vital in view of the scale of the investment to be agreed and the uncertainty linked to the materialisation of this sort of operation. Examples of such co-operation include:
- the development of combined transport based on equitable tariff agreements providing stability conducive to operator investment;⁵
 - the Community-wide operation of mobile telephone networks based on the existence of cross-frontier operator agreements making possible network

⁵ It is in this spirit that the Commission made financial undertakings towards pilot projects for combined transport drawn up and developed by the private sector in many Member States. Cf Commission Decision 93/45 of 22.12.1992 (JO L 16/55 of 25.1.1993)

interconnection, the sharing of the proceeds from subscriptions and a coherent system for invoicing the services provided in cross-frontier communications;

- the development of electronic data-transmission networks requiring inter alia the implementation of compatible administrative methodology and machinery, the formulation of common technical specifications and the harmonisation of standards.

Co-operation of this nature will clearly be facilitated if Community rules, and in particular the procedures for implementing them in the Member States, are made more transparent, thus providing economic operators with a guarantee that Community law is being properly applied.

Moreover, the adoption by the Council of various proposals on matters such as the European company statute, Community trade marks and patents, and the elimination of double taxation on business co-operation, may well have a positive mobilising effect. However, only a global approach covering interconnection, interoperability and market access will create the conditions conducive to emergence of the trans-European networks.

(iii) A medium-term approach must be followed, for there are numerous obstacles to the emergence of Community-wide networks. The difficulties can be summed up under five headings:

- difficulties involved in establishing priorities and determining projects of common interest as a result of divergent national interests and priorities and the absence of an all-embracing vision for the future);
- time-consuming and complex decision-making and implementation procedures, due to the large number of parties concerned and the legal problems involved (regional planning policy, local particularities, expropriation, planning permission, litigation, and so on);
- financing problems resulting from attempts to achieve short-term profitability, a frequently negative rate of financial return, constraints on public finance, end-goals too remote to motivate political commitment, difficulty in mobilising private capital on a large scale because of the high degree of uncertainty, the clarity of the regulatory environment as a factor in investment security;
- short and uneven supply of financial and human resources at Member-State level as a result of differences in the respective situations and of the obstacles to cross-border co-operation; all this compounded by the absence of an overall vision for setting up the necessary Community instruments;
- absence of cross-border interoperability, due to differing standards and to the multiplicity and diversity of administrative structures and management rules, resulting in market fragmentation.

116. Such are the difficulties that there is quite clearly a need to promote co-ordinated action. If the trans-European network initiative is to make a contribution to economic growth transcending projects themselves and having an endogenous effect on industrial growth and competitiveness, a strategy must be adopted which supplements short-term macroeconomic incentives.

V. THE MEANS TO ACHIEVE THE END

117. With regard to financing, there is an incompatibility between the long-term recoupment of investments in this infrastructure and attempts to achieve short term profitability, a factor which does not generally promote the creation of networks. Initial sector by sector estimates, based on the network plans proposed or under way, put investment costs at ECU 20 billion a year. In order to encourage such investment, it will certainly be necessary to ensure, on projects of common interest, the co-ordination of national, community and private financing. It will also be necessary to develop the tools, as set out in article 129, of title XII of the Treaty of Union; with respect to feasibility studies, interest payments and loan guarantees as the Community is currently doing with the European Investment Fund.

118. At the same time, the drawing up of standards for the transport and telecommunications sectors has been seriously delayed, impeding network interoperability. For example the growth of air-traffic, together with the liberalisation in that sector, has come up against a lack of compatibility of air traffic control systems. Moreover, proposals on the achievement of a single market in the field of energy and transport are at a standstill at various stages in the procedure. For example the growth of air-traffic, together with the liberalisation in that sector, has come up against a lack of compatibility of air traffic control systems.

119. Hence the need for the adoption of a new strategy geared not only to providing the instruments to carry out the projects but also to creating a climate of confidence among all the parties involved, public authorities, industrialists, bankers and network operators alike:

- in the initial stage, there must be an approach putting the "sectoral" initiatives into perspective and making it possible to incorporate the investments in the network plans, thereby providing a greater degree of security; a presentation of these plans in their entirety will maximise their contribution to a regional planning policy. A political commitment on the part of the European Council in respect of the network plans in the various sectors would provide a clear signal to investors and the financial markets, possibly followed by the formal adoption of the different plans by the Council in its different compositions by a given date (say, the end of the year). In accordance with article 129 of the Treaty, and taking account of the particular importance of the master plans for regional development, the requisite actions will be taken following consultation with the Committee of Regions.
- A second stage, which should be spread over a longer period, should consist of the creation of:
 - (i) better conditions for the development of international cooperation between project promoters, network operators, investors and other economic operators concerned, with a view to the setting up, the financing, and the management of trans-European projects;
 - (ii) the most effective conditions to ensure the inter-operability of the networks.