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AND THE EUROPEAN PARLIAMENT

THE SINGLE MARKET IN 1994

The First through the Seventh Reports (1986-1992) were published as *Report of the Commission ... concerning the implementation of the White Paper on completing the Internal Market*. The title of the 1993 report is *The Community Internal Market*. The 1994 and 1995 reports are titled *The Single Market*. The annexes to the 1994 and 1995 reports were published as *State of Community law concerning the internal market* and are on AEI-EU as separate documents. The series ends with the 1995 report.

NOTE

References in the body of the report to Council or Commission legislation and to Treaty articles are followed by an asterisk* without a footnote. Full titles and references of legislation and the text of Treaty articles are given in Annex 2 to the report.

Annexes to the 1993 Report have been replaced by an independent publication "*State of Community law concerning the Internal Market*", which is updated twice yearly and which is available from DG XV.

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Introduction

For our citizens and European business the completion of the single market and the steady improvement of its operating effectiveness are crucial to the competitiveness and political credibility of the Union. The single market remains at the heart of our efforts to safeguard the competitiveness of our industry, to create jobs and to stimulate economic growth. Its creation and consolidation is a continual and dynamic process which constitutes a cornerstone of the achievement of the convergent economic environment essential to the creation of EMU.

The key message from the Commission in this, its second Annual Report on the Community Single Market, is that, taken as a whole, the single market is working, but there are still problems in several areas. It is therefore necessary to improve and reinforce the legal and administrative framework both at Community and at national level in the interests of citizens and business. The removal of border controls on the movement of goods is being reflected in greater efficiency and lower costs for European business, capital is moving freely between Member States, service providers are operating in new markets and more firms are competing for public contracts. Individuals, too, are availing themselves of the opportunities offered by the single market for working in other Member States. Where barriers persist, administrative machinery is being developed to resolve problems quickly without the need for infringement proceedings.

The central importance of the single market has been reflected in repeated political endorsements from successive European Councils. However, such expressions of political commitment now need to be matched by action. During 1994, little progress was made in adopting the few (but important) legislative measures needed; in particular, no progress was made on the elimination of border controls on people. In some areas, adopted measures are not being implemented in national legislation in accordance with the agreed timetables; a further crucial issue is how the measures which have already been transposed are actually applied. Business and consumer interests have confirmed that, for a number of key sectors, delays in implementation and the inadequate enforcement of Community law remain the greatest threat to the single market.

Consolidation of the internal market requires the Commission and the Member States to ensure strict observance of the existing rules. This should involve stricter monitoring of Community regulations to ensure that national implementing legislation is fully effective and that citizens have the necessary means of action to assert their rights. The completion of the internal market can be pursued, on the one hand, by ensuring that the principle of mutual recognition is applied as broadly as possible, and, on the other hand, by adopting measures, in keeping with the principle of proportionality, designed to eliminate any obstacles that prevent citizens from fully benefiting from the new economic and legal environment.

The single market is one of the most important achievements of the Community, which has led individuals and businesses to expect tangible benefits from Community action. The necessary political effort of the past needs to be renewed to reap the economic and political rewards. Faster and more substantial progress in making the single market work is needed to match expectations.

The Commission continues to work to ensure that the rules of the game are not only in place but also applied in practice. It is pressing on with the Strategic Programme "Making the Most of the Internal Market" (1), which it adopted in December 1993 and which was endorsed by the Council. In particular, the Commission has been vigorously pursuing legal proceedings against any Member State which has fallen behind in implementing single market legislation. A lot of progress has been made in identifying and tackling outstanding trade barriers by the development of contact-point networks between the Member State administrations and the Commission for the rapid solution of practical problems as they arise.

The European Council decided at its Brussels meeting in 1993 that the Annual Report on the Internal Market should be considered as part of the follow-up to the action plan for employment. A summary report was therefore forwarded to the European Council for its Essen meeting in December 1994. In its conclusions the presidency of the European Council stressed the importance of the internal market and the need for uniform and effective application of the rules.

The Commission intends this Annual Report to be an increasingly useful tool for individuals and businesses. It is intended not only to keep them informed of legislative and other developments designed to enhance the operation of the single market, but to provide a basis for discussion and debate on its practical advantages and remaining problems. This was a particular concern of the European Parliament and of the Economic and Social Committee in their reactions to the 1993 report. The Commission has included more concrete information on outstanding problems, although it has not been possible to respond in full to these requests. Representative organizations have also been encouraged to contribute their views on the operation of the single market in the course of the preparation of this report, and contributions from interested parties will continue to be welcome for future reports. The Commission intends to incorporate more economic analysis of the single market in future reports, as the instruments which will facilitate such analysis are developed and data from the major study to be published in 1996 become available (see paras 39 to 42).

The analysis of the state of the single market in this report shows that much still remains to be done to make a really open area in which persons, goods, services and capital move freely and effectively. Existing Community rules must be enforced, the application of the principle of mutual recognition of national legislation must be strengthened, the adoption of the relatively limited number of legislative measures still required must be speeded up.

Among the key issues where progress will have to be made over the next few years, as mentioned in the Commission's annual programme for 1995, are the following:

- completing the single market for citizens, so that they will see the advantages of European integration in their daily lives;
- achieving full freedom of movement of people, through the elimination of border controls within the Union;
- further harmonising tax legislation;
- promoting a more effective single market for business, in particular in the field of company law and intellectual property rights;
- ensuring equivalent enforcement of Community law, including access to justice and effective penalties in the case of infringements;
- preparing the appropriate basic regulatory framework for services relating to the information society;
- liberalizing public utilities;
- assisting the Central and Eastern European countries to adapt to single market requirements, giving priority to the preparation of the White Paper on the subject.

(1) COM(93) 632 final of 22 December 1993.

PART ONE

General Review

Section 1 - Overall assessment of the operation of the single market

1. The Commission has drawn on various sources for this second assessment of the operation of the single market.

It increased its own information-gathering activity during 1994. It commissioned enquiries among small and medium-sized enterprises in cooperation with a number of Euro Info Centres in February and November, and a public opinion survey in each Member State in October. During the second half of the year it organized "Internal Market Weeks" in every Member State, in which teams of Commission officials presented policy to audiences in various locations and invited comments, complaints and questions; in most countries widely-advertised telephone hot-lines or radio programmes also provided an opportunity for comment from a wider public. Public hearings were also organized on such subjects as the future development of the value added tax system or intellectual and industrial property protection. The Commission also received a substantial number of formal complaints from national authorities and individual businesses or citizens.

Other institutions and organizations have also helped to shape the Commission's assessment of how the single market is working. The Economic and Social Committee, for example, organized its own hearing on the operation of the internal market in June 1994, for which over forty organizations prepared written submissions. Some fifty organizations responded to the Commission's invitation to contribute their own assessments in time for the drafting of this report. In addition some national administrations have commissioned studies on particular subjects relating to the single market, such as the Danish Ministry of Industry survey on technical barriers to trade and the report of the Spanish Ministry of Commerce and Tourism on problems experienced by Spanish business, or have submitted reports from the departments which have particular responsibility for dealing with complaints concerning the operation of the internal market. The Advisory Committee for coordination on internal market affairs has also provided a forum for regular assessment of the operation of the market.

Although these information flows are incomplete they provide a useful basis for a provisional evaluation of the state of the single market. A more complete view will be obtained from the studies which the Commission is currently launching as part of its preparation of a report on the effectiveness and impact of single market legislation to be sent to the Council in 1996, in accordance with Council resolution 92/1218/EEC* of 7 December 1992 on making the internal market work.

2. There is now clear evidence that many benefits of the 1992 legislative programme are already being widely felt as the practical effects of legislative measures feed through to the marketplace, although surveys tend to focus on remaining problems rather than on benefits already being enjoyed.

For example:

- the elimination of border controls for goods has considerably improved the efficiency of transport services and reduced costs and delivery times for the distribution of goods within the Community. The Euro Info Centre surveys of small and medium-sized companies (2) and the report of the Committee of Enquiry on road freight transport (3), for example, offer plentiful evidence of significant savings in international journey times and greater flexibility in distribution as a result of these measures. This view receives wide support from business sources;
- as regards the opening-up of public procurement, many companies are winning new contracts following the entry into force of the Community legislation but delays in transposition and inadequate enforcement of the legislation by the Member States are still causing major difficulties in some cases;
- the removal of tax barriers: most companies trading across frontiers find the current system for value added tax has brought them considerable savings in terms of reduction of transport costs, abolition of the pre-payment of VAT on intra-Community imports and elimination of charges related to the accomplishment of customs formalities. Smaller firms in particular, however, have found that the system imposed extra accounting costs when it was introduced, and other implementation problems have also arisen (see paras.226 to 230);
- the operation of mutual recognition in the field of the professions: the number of official complaints to the authorities is low, although experience of direct contacts with the interests concerned reveals that some individual problems can be difficult to resolve.

3. In other areas there is a consensus that much more has to be done before the single market can be said to be a reality.

First, there are the serious problems that stem from the Member States' *failure to implement existing Community law on time or to implement it correctly*, or from *difficulties in obtaining redress quickly* when a problem is encountered. Among the subjects which have aroused greatest concern in the past year are:

- the uncertainty in law which results from any significant delays in national transposition of Community rules and from differences of interpretation of those rules at national level. In some cases, over-bureaucratic implementation of Community rules at national level can appear to maintain the barriers that Community legislation was intended to remove. Significant differences in the severity of application of the law and of sanctions are also widely perceived to be a problem. Among the areas where there are significant delays in transposition are public procurement, intellectual property and new technologies and services. The fact that the General Product Safety Directive also falls into this category shows that individual citizens, as well as businesses, are potentially affected;
- the apparent persistence of technical barriers to trade, in particular those which result from the lack of implementation of the principle of mutual recognition of legislation by national authorities in areas which have not been the subject of harmonized legislation. Many traders and manufacturers are concerned that mutual recognition, a central principle of the internal market much publicized before 1992, is proving to be difficult to apply in practice. Problems have been noted in particular with regard to road vehicles, foodstuffs and pharmaceuticals. Further, the adoption of excessive or unnecessary legislation by Member States serves to aggravate this problem. Delay in the preparation of *European standards* to make existing Community rules work effectively has also been cited as a problem for business in the single market;

(2) 1994. Copies available from European Commission, Directorate-General for the Internal Market and Financial Services, rue de la Loi 200, B-1049 Brussels.

(3) July 1994. Copies available from European Commission, Directorate-General for Transport, rue de la Loi, 200, B-1049 Brussels.

- the difficulty in resolving problems which have been brought to the attention of national authorities or the Commission. The informal means of redress, through relevant national authorities, are not sufficiently well known in many cases; only a few Member States have instituted a central point for enquiries and complaints on single market issues. Formal procedures for redress are apparently not often used by potential complainants because they are seen as cumbersome and ineffective.

A second category of problems derives from *gaps in Community law* which inhibit the development of a truly single market. These include:

- the failure to complete the single market by adopting the measures necessary to remove border controls on people;
- the absence of tax harmonization in some fields, particularly in the tax treatment of businesses operating in more than one Member State;
- delays in adapting company law to single market requirements;
- insufficient liberalization of certain sectors, particularly energy and telecommunications, which are perceived as serious distortions of competition and a barrier to European and international competitiveness. The European Council at Corfu emphasized the importance of these two sectors, but while progress has been made in setting a timetable for liberalization in the area of telecommunications, progress in the Council on gas and electricity liberalization has been minimal;
- consumers believe that further action is called for if they are to reap the full benefits of the single market. These include the question of access to justice and guarantees and after-sales service;
- business surveys also continue to show that the absence of European monetary union is perceived as a significant limitation on the benefits of a single market, particularly for smaller businesses;
- difficulties of gaining access to the market, particularly for SMEs.

4. Thus while a few areas of the internal market programme can already be said to have yielded their fruit and others have made important progress, in most a considerable amount of work remains to be done before the impact of already-agreed rules is widely perceived in the market. We do not yet have a European market within which business can operate in the same conditions as within a national market, as UNICE has rightly commented. This must remain our goal. Hence the Commission's insistence on the need to follow a clear and widely publicized programme of work to ensure that implementation of the internal market becomes a reality. The 1993 Strategic Programme (4) forms a basis for action: additional elements may be needed to meet the challenge.

Section 2 - Progress in implementing the Strategic Programme

5. The Strategic Programme presented by the Commission in December 1993 identified four main priorities for action to ensure the success of the internal market, namely:

- completion of the basic legal framework
- managing the single market
- developing the single market and
- a dynamic and open external policy.

Detailed targets, with an indicative timetable, were proposed under each of these headings.

(4) COM(93) 632 final of 22 December 1993.

§ 1 - Completion of the basic legal framework

6. Overall, progress during 1994 has been disappointing, despite the Commission's call in the Strategic Programme for the Council to make a particular effort to complete the outstanding proposals from the 1985 White Paper (5). In fact, only two of the remaining proposals were adopted, namely the Seventh VAT Directive on secondhand goods, antiques and works of art (94/5/EC*) and Regulation (EC) No 2100/94* on plant variety rights. Eleven proposals from the original White Paper remain on the Council table.

Little or no progress was made in key areas such as free movement of people, company law and company taxation.

The main features of 1994 are summarized below.

A. Free movement of people and Union citizenship

7. The failure to remove border controls on persons means that a major component of the single market (as defined in Article 3* of the EC Treaty) is missing. The Commission followed up its two 1993 proposals – on controls at the external frontier and the list of countries whose citizens require a visa (6) – with a proposal in July 1994 for a uniform model of visa (7). These proposals form part of a coherent approach, outlined in the 1993 Annual Report on the Internal Market (8), designed to bring about freedom of movement for people, as required under Article 7a* of the Treaty. All remain under discussion in the Council, although Parliament has given a favourable opinion, subject to some amendments.

In 1993 the European Parliament brought an action before the Court of Justice under Article 175* of the EC Treaty against the Commission for alleged failure to act to eliminate controls on persons at internal frontiers. The Court will probably deliver its judgment in the course of 1995.

Progress has nevertheless been achieved within the context of the Schengen Agreement; the Executive Committee of the Schengen group decided on 22 December 1994 to apply the Schengen Convention irreversibly as from 26 March 1995 for seven of the nine signatory countries which meet all the preconditions.

8. In the report on citizenship of the Union which it published in December 1993 (9), the Commission stressed the role played in European integration by Article 8b* of the EC Treaty, which confers on citizens of the Union the right to vote and to stand as candidates in municipal and European elections in the Member State where they live.

An initial Directive (93/109/EEC*), on the right to vote and stand as a candidate in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals, has been implemented and enabled Community nationals living in another Member State to take part in elections to the European Parliament for the first time in June 1994.

Participation by non-nationals in their Member State of residence varied between 2% and 24% of the non-national electorate. A single non-national candidate was elected in her Member State of residence. There appear to be a number of reasons for the low turnout by non-national voters in comparison with national voters: these include the fact that the right to vote was a fairly recent innovation, that insufficient information was provided on the topic and that many voters preferred to vote for candidates in their Member State of origin rather than for candi-

(5) COM(85) 310 final of 14 June 1985.

(6) COM(93) 684 final of 10 December 1993 (OJ C 11, 15.1.1994).

(7) COM(94) 287 final of 13 July 1994 (OJ C 238, 26.8.1994).

(8) COM(94) 55 final of 14 March 1994.

(9) COM(93) 702 final of 21 December 1993.

