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**REPORT FROM THE COMMISSION TO THE COUNCIL, THE EUROPEAN
PARLIAMENT AND THE ECONOMIC AND SOCIAL COMMITTEE**

**Second biennial Report on the Application of the Principle of Mutual Recognition in the
Single Market**

SUMMARY OF THE REPORT

The importance of mutual recognition for the proper operation of the single market should not be underestimated: the economic value of intra-Community trade in products covered by mutual recognition is estimated at approximately €430 billion.

- The specific assessments of how mutual recognition operates, carried out between 1999 and 2001, confirm that mutual recognition operates well for products which pose few safety problems, such as bicycles, tanks and containers.
- In contrast, the application of mutual recognition for technically complex products (e.g. buses, lorries, construction products and precious metals) or products which can pose safety or health problems (such as food supplements and fortified products) seems to operate less well because a number of economic operators and national administrations are unfamiliar with the principle (lack of information, absence or refusal of dialogue or administrative cooperation).
- In order to facilitate the application of mutual recognition for products between economic operators and national administrations, the Commission will adopt guidelines on this subject in a communication to the Member States and economic operators. The communication will explain the rights and obligations of the parties concerned in cases where the principle of mutual recognition needs to be applied. In addition, it will ensure that the best possible use is made of existing instruments in order to root the proper application of the principle of mutual recognition in national legislation and administrative practice. Practical guides by sector or group of sectors and seminars will probably remain effective tools for increasing familiarity with and improving the operation of the principle, not only in the Member States but also in the candidate countries. These tools are particularly important for the bodies which are involved and cooperate in conformity checking.
- In the specific sectors in which national rules provide for such different levels of protection that the principle of mutual recognition cannot properly fulfil its role (as in the field of fortified foodstuffs and construction products), harmonisation will continue to be the most suitable solution, on condition that it covers all the problems for which mutual recognition cannot provide an effective solution. Harmonisation is also an important tool, particularly in relation to the protection of health, the environment and the consumer.

In the field of **services**, the Commission **has just defined a new strategy** based partly on the application of mutual recognition as a means of eliminating the redundant (and often contradictory) superposition of regulations which constitute barriers to cross-border trade and stifle innovation. Mutual recognition will continue to play a very important role in the field of **financial services**.

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(Text with EEA relevance)

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1. INTRODUCTION

1.1. Context of the report

In accordance with the principle of mutual recognition as it emerges from the case law of the Court of Justice concerning the application of Articles 28 to 30 of the EC Treaty, a Member State cannot, in principle, prohibit the sale on its territory of goods which are lawfully produced and marketed in another Member State, even if those goods are produced to technical or qualitative specifications that differ from those required of its own goods. The Member States may depart from this principle and take measures prohibiting or restricting access by such goods to the national market only under very strict conditions¹, since such measures must be necessary and proportionate in relation to overriding requirements to protect, for example, public health, consumers or the environment. Where such requirements are involved, mutual recognition is not automatically applicable: the host Member State retains the possibility of requiring that the degree of protection afforded by a product from another Member State is equivalent to that provided for in its national regulations².

¹ As long ago as 1980, the Commission set out a number of guidelines on the application of the principle of mutual recognition resulting from the case law of the Court - see the Communication from the Commission concerning the consequences of the judgment given by the Court of Justice on 20 February 1979 in Case 120/78 (Cassis de Dijon), OJ C 256 of 3 October 1980, "Cassis de Dijon" Judgment, ECR 1979, p. 649.

² With regard to consumer protection, the Court of Justice stated in one of its judgments that "*no consideration relating to the protection of the national consumer militates in favour of a rule preventing such consumer from trying (a product which is manufactured) according to a different tradition in another Member State*" ("De Kikvorsch" judgment of 17 March 1983, ECR 1983, p. 947). The Court held that such protection can be achieved by other means which are less of a barrier to trade, such as "*suitable information for the consumer*" in the form of "*appropriate labelling*".

With regard to the protection of health or safety, the Court has stated that "*(...) it is for the national authorities to demonstrate in each case that their rules are necessary to give effective protection to the interests referred to in Article 36 (now Article 30) of the Treaty and, in particular, to show that the marketing of the product in question creates a serious risk to public health*" ("van Bennekom" judgment of 30 November 1983, ECR 1983, p. 3883). The Court stated in its judgment in the case of the Commission v. Germany (regulation on beer) of 12 March 1987, ECR 1987, p. 1227, that "*by virtue of the principle of proportionality, traders must also be able to apply, under a procedure which is easily accessible to them and can be concluded within a reasonable time, for the use of specific additives to be authorised by a measure of general application*". The Court stated in this connection "*that it must be open to traders to challenge before the courts an unjustified failure to grant authorisation*".

In its judgment of 22 January 2002 (Canal Satélite Digital SL, Case C-390/99), the Court of Justice confirmed that a prior authorisation procedure restricts both the free movement of goods and the freedom to provide services. Therefore, in order to be justified with regard to those fundamental freedoms, such legislation must pursue a public-interest objective recognised by Community law and comply with the principle of proportionality; that is to say, it must be appropriate to ensure achievement of the aim pursued and not go beyond what is necessary in order to achieve it. In the same judgment, the Court of Justice stated the principles with which such an authorisation procedure must comply for it to be proportionate. See, in particular, points 4.1 and 5.1 of the First Biennial Report on the Application of the Principle of Mutual Recognition in Product and Service Markets - SEC(1999)1106 of 13 July 1999.

The principle of mutual recognition applies *mutatis mutandis* to the freedom to provide services in the single market. This implies that a provider lawfully established in a Member State must be able to provide his services in all the other EU Member States, which must normally allow him to do so without imposing any further restrictions on him. The only admissible barriers are those which are non-discriminatory, justified by overriding reasons of general interest, likely to achieve the objective in question and, in any event, proportionate.

It should be pointed out that the principle of mutual recognition does not apply in cases where the **rules** for marketing goods and services have been fully harmonised by specific directives.

1.2. Aims of the report

In its Communication to the Council and to the European Parliament³, the Commission proposed a number of initiatives to improve the application of the principle of mutual recognition. Some of these initiatives were intended for economic operators and others for the Member States. In the communication, the Commission undertook to draw up an evaluation report at two-yearly intervals, which would be forwarded to the Council and the European Parliament.

The First Biennial Report on the Application of the Principle of Mutual Recognition in Product and Service Markets⁴ led to a preliminary diagnosis of how this principle operates in the single market, on the basis of the data available to the Commission in 1999⁵.

The present report is the Second Biennial Report, the main purpose of which is to assess the progress made in the application of mutual recognition in the single market⁶ since 1999 and to highlight the fields in which mutual recognition continues to pose problems⁷.

³ Communication COM(1999)299 final to the Council and to the European Parliament of 16 June 1999 on mutual recognition in the context of the follow-up to the Action Plan for the Single Market.

⁴ SEC(1999)1106 of 13 July 1999.

⁵ The Communication and the First Biennial Report were the subject of a Council Resolution of 28 October 1999 (OJ C 141, 19.05.2000, pp. 5-6) and of an own-initiative opinion of the Economic and Social Committee of 29 November 2000 (ECS 1402-2000; OJ C 116, 20.04.2001, pp. 14-19). The Council Resolution was incorporated into the agreement on the European Economic Area by virtue of Decision No 15/2002 of the EEA Joint Committee of 1 March 2002 (OJ L 110, 25.04.2002, pp. 9-10).

⁶ It should be emphasised that this report does not concern the application of the principle of mutual recognition in fields other than the free movement of goods and services, e.g. the Community's external trade policy, or joint action in the field of judicial cooperation.

⁷ The economic importance of the proper operation of mutual recognition for products should not be underestimated: the economic value of intra-Community trade in products covered by mutual recognition is estimated at approximately €430 billion. See, in this connection, Communication COM(2001)736 of 7 December 2001 on economic reform and the operation of Community product and capital **markets**.

2. SPECIFIC MEASURES TO IMPROVE THE WAY MUTUAL RECOGNITION OPERATES

The measures defined by the 1999 Communication on mutual recognition are based on three main pillars: a) improving information and developing training; b) taking advantage of the instruments for preventing and for amicably and effectively settling problems of free movement and c) exploiting the possibilities afforded by Community law to eliminate existing barriers.

*With regard to **products**, sectoral round tables organised by the Commission have revealed that there is a great deal of uncertainty on the part of the players concerned as to how to apply mutual recognition in everyday practice. This uncertainty is often reflected in widely differing interpretations, not only by national administrations but also by economic operators. In some national administrations, the concept of "equivalence" seems to give rise to a number of misunderstandings.*

It is essential that mutual recognition should operate effectively, particularly in view of the fact that the Commission has noted a new wave of "re-regulation". This new wave is mainly due to technological progress and to the desire to step up health checks (particularly on food). Thanks to the procedure put in place by Directive 98/34/EC, which obliges the Member States to notify any drafts of technical rules, it is possible for the Commission to take action to ensure that the Member States include the principle of mutual recognition in the drafts of national technical rules. This preventive action is followed up, if necessary, by the procedures for infringement of Articles 28 to 30 of the EC Treaty, instituted by the Commission under Article 226 of the EC Treaty, to ensure that the principle is also incorporated into existing national legislation.

About 95% of cases involving infringements of mutual recognition for products are settled through dialogue with the Member States and before the matter has even been brought before the Court of Justice, which confirms the special benefits of cooperation between the Commission and the Member States. In the field of administrative cooperation in networks, the network of contact points for citizens and businesses has not produced very positive results in this sector. A more successful mechanism exists for the mutual recognition of professional qualifications.

2.1. Training and information

2.1.1. Conferences, seminars and round tables

Since 1999, the Commission has organised 15 specific seminars on mutual recognition in the single market. These seminars have been held on the occasion of "package meetings". The main participants were the national administrations, which welcomed them and seemed to be in favour of holding such seminars more regularly.

The Commission has also organised round tables intended for administrations and businesses.

The first round tables were held on 30 November 2000 on mutual recognition in the food sector⁸. One of the conclusions to emerge is that, although the composition, packaging and labelling of foodstuffs and the name under which a product is sold are already largely harmonised, the fact that this harmonisation is incomplete and/or optional leaves the way open, according to the economic operators, to restrictions on the movement of foodstuffs. Mutual recognition will thus continue to play an essential role in this field. The round tables confirmed that there still seem to be a number of barriers to the free movement of enriched foodstuffs and food supplements due to the Member States' different assessments of the scientific uncertainties as to the harmlessness of the long-term consumption of these products⁹. These differences underlie the widely differing national legislations and procedures for gaining access to national markets. It is for that reason, in particular, that the Commission, in its White Paper on Food Safety¹⁰, proposed a programme of legislative reforms covering all aspects of food products "from the farm to the table". In this context, the Commission has presented a proposal for a Directive on food supplements¹¹ and also intends to present a proposal for a Directive on fortified foods by the end of 2002.

The second round tables on mutual recognition were held on 6 September 2001 and concerned several categories of industrial products¹². They confirmed that there were still some problems in everyday practice. For certain products (buses, scaffolding), legislation to achieve greater harmonisation is currently being adopted. As a result of the recent publication of the first harmonised standards and the issuing of European technical approvals, rapid progress is being made towards the completion of the single market for construction products. For intra-Community trade in the other types of products dealt with at these round tables, mutual recognition is still crucially important. For most of the product categories concerned, a number of economic operators complained that, whether they like it or not, they always have to adapt their products to comply with the technical rules of the Member State of destination.

The idea of drawing up practical guides on the application of mutual recognition to certain types of products with a view to better informing the parties concerned was warmly welcomed by the participants in the round tables. They also considered that reinforcing administrative cooperation through specialised networks of competent national officials by product category, and greater transparency of national decisions, would be very useful for reinforcing the application of mutual recognition on the ground.

⁸ The summary of these round tables is published on Internet site http://europa.eu.int/comm/internal_market/en/goods/index.htm

⁹ See the cases pending before the Court of Justice, and in particular C-387/99, C-150/00 and C-95/01. COM(1999)719 final of 12 January 2000.

¹¹ COM(2000)222 final of 8 May 2000, as amended by COM(2001)159 final.

¹² The sectors discussed at these specialised round tables cover the following product categories: buses, lorries, vans and trailers; coupling systems for these vehicles, for passenger vehicles (M1) and for wheeled farm or forestry tractors; bicycles; tanks and containers; construction products for which there are no (harmonised) standards or technical type-approval; ladders and scaffolding not designed to be incorporated into a building; fire and burglar alarm systems; and childcare products (in particular beds, pushchairs and baby seats). A summary of these round tables has been published on Internet site http://europa.eu.int/comm/internal_market/en/goods/mutrec.htm

The Swedish authorities were particularly interested in this subject and organised, in close cooperation with the Commission, a seminar on mutual recognition in the field of conformity assessment, which took place on 13 June 2001¹³.

2.1.2. *Guides and various publications*

There is no doubt that the application of the principle of mutual recognition requires a basic knowledge of the principles of the free movement of goods. The Commission published a "Practical guide to the concepts and application of Articles 28-30 of the EC Treaty", in which it describes in particular the principle of mutual recognition and summarises the most pertinent case law of the Court of Justice on the subject. It is available on the Commission's Internet site¹⁴.

Following the commitment entered into in the report on the implementation of Decision 3052/95/EC¹⁵ in 1997 and 1998¹⁶, the Commission published, during 2001, a guide to Decision 3052/95/EC. This document is intended not only for the national authorities who have to implement the decision, but also for economic operators. The Commission is making every effort to distribute it as widely as possible, particularly by publishing it on its Internet site¹⁷.

The Commission also published in autumn 2000 a brochure entitled 'Maintaining the single market. Directive 98/34/EC', which outlines the purpose and operation of the notification system established by that Directive. This brochure was distributed to the central units responsible for managing the notification system in the Member States and to a large number of European industrial associations.

2.1.3. *Internet sites*

In order to increase public awareness of the principle of mutual recognition in the single market, a new Internet site is devoted to it¹⁸.

For Directive 98/34/EC, the Commission also created a new Internet site¹⁹ which enables all economic operators and the interested public to find out about draft technical rules and rules on information society services which have been notified to the Commission, so that they can register their reactions if they so wish.

¹³ See <http://www.swedac.se>.

¹⁴ http://europa.eu.int/comm/internal_market/en/goods/art2830.htm

¹⁵ Decision No 3052/95/EC of the European Parliament and of the Council, of 13 December 1995, establishing a procedure for the exchange of information on national measures derogating from the principle of the free movement of goods within the Community.

¹⁶ COM(2000) 194 final of 7 April 2000.

¹⁷ http://europa.eu.int/comm/internal_market/en/goods/3052intro.htm

¹⁸ http://europa.eu.int/comm/internal_market/en/goods/index.htm

¹⁹ <http://europa.eu.int/comm/enterprise/tris/>

2.2. Instruments for the prevention and amicable settlement of problems

2.2.1. Notification of draft national regulations under Directive 98/34/EC²⁰

In 2001, the Commission received 530 draft technical regulations (25 relating to **rules** on information society services and the rest to products), which were examined by its departments. There were 604 in 1998, 591 in 1999 and 751 in 2000²¹. These figures show that, despite the completion of the single market, the Member States continue to adopt a large number of technical regulations, or even "re-regulate", mainly as a result of technological advances and the desire to have more thorough health checking, particularly as regards food health. These initiatives must be monitored so as to prevent them from jeopardising the smooth operation of the single market. Recording them makes it possible to identify the sectors in which Community measures are necessary.

There is a discernible trend towards improving the quality of national legislation: the Member States are endeavouring to introduce an increasing number of mutual recognition clauses into their draft legislation for the non-harmonised sectors²².

In 2000, the Directive also contributed to harmonisation at Community level by preventing the adoption of national measures which might have made some Member States' positions inflexible, while the purpose was to seek common solutions (e.g. on dangerous substances in electric and electronic equipment, food supplements, compound feed, and the addition of vitamins and minerals to foodstuffs).

There was a rapid increase in the field of services. Thus, while the Commission received 11 notifications in 1999, there were 23 in 2000 and 25 in 2001, covering subjects as complex as electronic signatures, combating computer crime, electronic commerce, the protection of minors in communications, or the names of domains.

²⁰ Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations. Directive 98/48/EC of the European Parliament and of the Council of 20 July 1998 extended this procedure to include rules on information society services (OJ L 217, 05.08.1998, p. 18).

²¹ See Table 7.2.4 in annex to this report. For the 1995-1998 statistics, see the report of the Commission to the Council, the European Parliament and the Economic and Social Committee on the operation of Directive 98/34/EC from 1995 to 1998: COM(2000)429 final of 7 July 2000, and the statistics in http://europa.eu.int/comm/enterprise/tris/statistics/index_en.htm.

²² In 1999, the Member States and the Commission delivered 408 observations and 148 detailed opinions. In 2000, despite a considerable increase in the number of notifications, the Member States and the Commission delivered 444 observations and 144 detailed opinions. In 2001, the Member States and the Commission delivered 152 detailed opinions. However, less than half the detailed opinions delivered by the Commission concerned the absence of mutual recognition clauses.

Unfortunately, in the field of information society services, it is apparent that Member States often still do not apply to a sufficient extent the principle of mutual recognition and demand the duplication of the requirements already met by operators in other Member States. Problems are also caused by the fact that, in some cases, the Member States include concepts of extra-territoriality in their draft regulations²³. In such cases, the Commission systematically reminds the Member State concerned that it cannot impose the same obligations on operators established elsewhere in the EC as it imposes on its own operators and that, on the contrary, each new regulation must recognise and take due account of the requirements and checks already fulfilled by each operator in his country of establishment.

2.2.2. *Notification of specific measures under Decision 3052/95/EC*²⁴

As the Commission stressed in its report of 7 April 2000²⁵ on the implementation of the Decision, the Decision is not operating satisfactorily, since the number of notifications recorded during the years covered by the report (1997 and 1998) and confirmed during the following years²⁶ is not sufficient to give a faithful portrayal of how mutual recognition operates in the Community.

The Commission, as it announced in its report, is endeavouring to promote the application of the Decision²⁷. It is, however, clear that, without the active cooperation of the Member States, the Commission will on its own not be able to guarantee that the Decision fully and satisfactorily performs the function expected of it at the time of its adoption.

2.2.3. *Administrative cooperation in networks*

All the Member States have set up some contact points for citizens and some for businesses²⁸. There is also a coordination centre for each Member State which operates as a network coordinator in the Member State, as an initial point of contact between Member States (within this network), and as a point of contact between these countries and the Commission. The purpose of this network is to assist citizens and businesses in the event of problems resulting from the incorrect application of the single market rules by a public authority²⁹.

²³ This statement is confirmed by the statistics. Thus, in 1999, the Commission delivered 8 observations and one detailed opinion on the 11 notifications received in this field, while the Member States delivered 2 observations. In 2000, the Commission delivered 4 observations and 9 detailed opinions on the 23 notifications received, while the Member States delivered 5 observations. In 2001, the Commission delivered 10 observations and 4 detailed opinions. The Member States, for their part, delivered 2 observations.

²⁴ Decision 3052/95/EC of the European Parliament and of the Council of 13 December 1995 establishing a procedure for the exchange of information on national measures derogating from the principle of the free movement of goods within the Community.

²⁵ Report COM(2000)194 final of 7 April 2000 from the Commission to the Council, the European Parliament and the Economic and Social Committee on the implementation of Decision 3052/95/EC in 1997 and 1998.

²⁶ The Commission received a total of 33 notifications in 1997, 69 in 1998, 26 in 1999 and 67 in 2000.

²⁷ See point 4 of the above-mentioned report COM(2000)194 final and points 2.1.2 and 2.1.3 of this report.

²⁸ See http://europa.eu.int/comm/internal_market/en/cpoints/index.htm.

²⁹ This network normally deals with cases which the contact points and coordination centres receive directly from citizens and businesses. The Commission forwarded, on a trial basis, cases about which it had received complaints regarding vehicle registration.

The results of this mechanism are somewhat disappointing. One of the reasons for this is the absence of compulsory deadlines for dealing with cases submitted to the network and the time it takes to solve problems, which varies extremely widely. And yet the speed with which their problems are solved is crucially important for a large number of citizens and businesses. It also emerges that the target groups of the contact points are not yet well aware of their existence, since the extent of most Member States' promotional measures is insufficient.

The Commission therefore adopted a communication on this subject³⁰ with a view to rectifying these shortcomings. By June 2002, a user-friendly on-line database covering the entire EU will be set up in order to improve transparency and, by introducing an element of peer pressure, to encourage the Member States to achieve better results. The Commission also adopted a Recommendation³¹ giving the coordination centres clear principles for dealing with cases within the network.

There has long been more fruitful cooperation on the recognition of professional qualifications³². In order to arrive more rapidly at solutions to certain problems detected, the Commission has had regular contacts with the national authorities, in particular the experts of the groups and committees responsible (coordinators' group and other committees of senior officials).

2.2.4. "Package meetings"

As part of the constructive dialogue between the Commission and the national administrations, the Commission organises regular "package meetings" with the competent authorities of the Member States. By means of thorough discussions on the complaints submitted to the Commission and on the infringement proceedings under way, it is possible to arrive at amicable settlements of the cases on the agenda of these meetings.

It should be emphasised that the "package meetings" are not an alternative to instituting infringement proceedings under Article 226 of the EC Treaty, but a complementary and parallel approach. A "package meeting" enables all the participating parties to exchange their points of view and is therefore a didactic instrument much valued by the authorities of the Member States.

During the period 1998-2001, 53 "package meetings" were organised: 19 in 1998, 13 in 1999, 11 in 2000 and 10 in 2001³³. It is worth noting that the decline in the number of meetings has been offset by improved efficiency, mainly due to an increase in the number of cases discussed per meeting. In addition, there is a marked increase in the number of *ad hoc* bilateral meetings with the national authorities. This type of meeting permits a more thorough discussion of highly technical dossiers.

³⁰ COM (2001) 702 final of 27 November 2001.

³¹ Commission Recommendation 2001/893/EC of 7 December 2001 on principles for using "SOLVIT" - the Internal Market Problem-Solving Network (OJ L 331, 15.12.2001, p. 79).
See http://europa.eu.int/comm/internal_market/en/update/solvit/index.htm.

³² http://europa.eu.int/comm/internal_market/en/qualifications/index.htm

³³ See Table 7.2.5 in annex.

2.2.5. *Professional qualifications*

In the field of professional qualifications, it is worth recalling initiatives involving political and academic cooperation aimed at coordinating courses of study and at improving the transparency of diplomas and qualifications.

The Commission, the Council of Europe and UNESCO have jointly drawn up, outside the harmonised field, a supplement to the diploma which contains both the personal results of the holder of the diploma and a description of his or her national system of higher education. Although the supplement to the diploma is a voluntary instrument, is now starting to be widely implemented throughout Europe. In conformity with the Recommendation of the European Parliament and of the Council of 10 July 2001 on mobility within the Community for students, persons undergoing training, volunteers, teachers and trainers³⁴, a parallel instrument, the certificate supplement, has been devised for vocational qualifications³⁵. This supplement is currently being tested in the Member States.

The ministers of education of more than 30 countries have agreed, under the Bologna process, to create by 2010 a "European higher education area" in which it will be easier to compare diplomas. A parallel process is being launched in vocational education and training, the aim being to increase transparency and mutual trust in the field of vocational qualifications.

2.3. **Infringement proceedings**

2.3.1. *Products*

Approximately 28% of the cases recorded (complaints and own-initiative cases) by the Commission during the period 1998-2001 in the "non- harmonised" field of the free movement of goods (Articles 28-30 of the EC Treaty) involve mutual recognition. About a third of the infringement proceedings³⁶ during the same period concern the lack of mutual recognition³⁷.

There would be little point in trying to draw conclusions on the basis of the statistics of cases shelved or settled, since they also include groundless complaints and complaints regarding very specific situations in one or more Member States³⁸. As for infringement proceedings, the same statistics reflect not only the large number of obstacles due to the lack of mutual recognition, but also the Commission's considerable efforts to oblige the Member States to incorporate the proper application of the principle of mutual recognition into their regulations and administrative practice.

³⁴ OJ L 215 of 9 August 2001, pp.30-37.

³⁵ See <http://www.cedefop.eu.int/transparency/certsupp.asp>

³⁶ A letter of formal notice, a reasoned opinion and referral to the Court of Justice in accordance with Article 226 of the EC Treaty.

³⁷ More detailed statistics are given in Tables 7.2.1 to 7.2.3 in annex to this report.

³⁸ It should be noted that there was a one-off increase in the number of complaints during the reference period as a result of the obstacles created in the wake of the dioxin crisis. These complaints are included in the total number of cases examined in 1999 and 2000.

2.3.2. Professional qualifications

With regard to the recognition of professional qualifications, the application of the principle of mutual recognition mainly concerns citizens, who continue to benefit from the Community Directives on the recognition of diplomas as part of the freedom of movement conferred by the Treaty³⁹. It should also be noted that a declining number of complaints were recorded for the period 1999-2000⁴⁰, which seems to indicate that the Community instruments concerned are operating satisfactorily.

3. HARMONISATION: MEASURES ADOPTED OR PROPOSED

Mutual recognition is not always a miracle solution for ensuring the free movement of goods in the single market. Harmonisation or further harmonisation remains without doubt one of the most effective instruments, both for economic operators and for the national administrations. Mutual recognition cannot be a miracle solution for ensuring the free movement of goods in the single market.

Thus, between 1999 and 2000 the number of continuing obstacles and particular difficulties called for a specific effort of harmonisation not only in the field of professional qualifications, electronic commerce, consumer protection, commercial communications and financial services, but also in the sectors of foodstuffs (food supplements) and industrial products (measuring instruments, lifts, recreational craft, civil aviation products, etc.). In the field of consumer protection, the Commission intends to draw up a proposal for a framework Directive providing, in particular, for maximum harmonisation with a high level of protection.

3.1. Products

3.1.1. Horizontal measures

The new Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety⁴¹ repealed the previous Directive on the same subject⁴². The new Directive not only lays down safety requirements for products which are not subject to specific sectoral provisions (such as childcare products and cigarette lighters), but also creates a legal reference framework for assessing the equivalence between the levels of protection afforded by the product and the level of protection of the Member State of destination.

Thus, the Directive stipulates that a product is deemed to be safe (i.e. pose no or only very slight risks) if, in the absence of specific Community provisions governing the safety of the product, it complies with the specific national regulations of the Member State on whose territory it is marketed, on condition that such provisions lay down the health and safety requirements which the product must satisfy in order to be marketed and that they are drawn up in accordance with the Treaty, and in particular Articles 28-30 thereof.

³⁹ See Tables 7.1.1 and 7.1.2 in annex.

⁴⁰ See Table 7.1.3 in annex.

⁴¹ OJ L 11, 15.01.2002, p.4.

⁴² Council Directive 92/59/EEC of 29 June 1992 on general product safety.

In addition, the Directive establishes a presumption of conformity where the product complies with the voluntary national standards transposing European standards, the references of which the Commission has published in the Official Journal of the European Communities, in accordance with the specific procedure provided for by the Directive.

Thus, the Directive will facilitate the application of mutual recognition for products intended for consumers and posing no or only slight risks, while providing a high level of protection for human health and safety.

In the communication on the follow-up to the Green Paper on consumer protection in the European Union⁴³, the Commission proposes a framework Directive providing, in particular, for maximum harmonisation with a high level of protection. In this field, combining an adequate level of harmonisation with the principle of mutual recognition and the country-of-origin principle (both of which would have to be enshrined in the framework Directive) would avoid the fragmentation of the internal market due to diverging interpretations in the case law at national level.

3.1.2. *Vertical measures: some specific cases*

Harmonisation or further harmonisation is necessary, particularly if it is established that the principle of mutual recognition cannot be applied. Thus, the Commission proposed a specific directive on food supplements⁴⁴. As for substances which may be added for specific nutritional purposes to foods intended for particular nutritional uses, Commission Directive 2001/15/EC of 15 February 2001⁴⁵ seeks to remove the continuing obstacles to the free movement of these products.

In the industrial products sector, further harmonisation is planned for measuring instruments⁴⁶, lifts⁴⁷, recreational craft and personal watercraft⁴⁸, and in the field of civil aviation⁴⁹.

3.2. **Professional qualifications**

The adoption of the new Directive 1999/42/EC of the European Parliament and of the Council of 7 June 1999 on professional qualifications in craft trades, commerce and certain services will facilitate professional recognition. This Directive (a) creates a mechanism for the recognition of diplomas for professions not yet covered by the general system (Directives 89/48/EEC and 92/51/EEC) and (b) recasts 35 directives on liberalisation and transitional measures adopted in the past. It will therefore help

⁴³ COM(2002)289 final.

⁴⁴ COM (2000)222 final of 8 May 2000, as amended by COM(2001)159 final.

⁴⁵ OJ L 52, 22.02.2001, p.19.

⁴⁶ Proposal for a Directive of the European Parliament and of the Council on measuring instruments: COM(2000)566 final of 15 September 2000.

⁴⁷ Proposal for a Directive of the European Parliament and of the Council on machinery and amending Directive 95/16/EC - COM(2000) 899 final of 26 January 2001.

⁴⁸ Proposal for a Directive of the European Parliament and of the Council amending Directive 94/25/EC on the approximation of the laws, regulations and administrative provisions of the Member States relating to recreational craft - COM(2000) 639 final of 12 October 2000.

⁴⁹ Proposal for a Regulation of the European Parliament and of the Council on establishing common rules in the field of civil aviation and creating a European Aviation Safety Agency - COM(2000)595 final of 27 September 2000.

to promote the free movement of EU citizens in the Union while simplifying Community law.

3.3. Electronic commerce

Directive 2000/31/EC on electronic commerce⁵⁰ seeks to remove obstacles to the free movement of information society services between Member States by establishing a clear and stable legal framework based on single-market principles.

With a view to facilitating the movement of information society services throughout the European Union, the Directive lays down that service providers can provide their services on the basis of the rules of the Member State in which they are established (the country of origin). Member States can restrict the movement of information society services from other Member States only on the basis of the exemptions set out in the Directive. In addition, the Directive harmonises certain legal aspects of information society services with a view to guaranteeing their freedom of movement⁵¹.

Directive 1999/93⁵² establishes a legal framework for electronic signatures and certain certification services with a view to ensuring the proper functioning of the Internal Market. Amongst other things, the Directive lays down the requirements to be met by certification service providers issuing qualified certificates. It lays down that each Member State must apply the national provisions adopted under the Directive to certification service providers established on its territory and to the services they provide. Member States may not impose any restriction on the provision of certification services originating in another Member State in the fields covered by the Directive.

3.4. Commercial communications

There are still some national restrictions on commercial communications, for which the simple application of the principle of mutual recognition would not be enough to complete the single market since, according to the analyses carried out by the Commission, a number of single-market fields interact: import of services, freedom of establishment, export of services and elimination of serious distortions of competition. Without targeted harmonisation, it would be impossible to establish uniform rules.

⁵⁰ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ("Directive on electronic commerce"), OJ L 178, 17.07.2000, p.1. It should be noted that that Directive does not lay down additional rules of private international law and does not deal with the powers of national courts.

⁵¹ Definition of providers' place of establishment and their obligations of transparency, transparency requirements for commercial communications, the conclusion and validity of electronic contracts, liability of Internet intermediaries, on-line settlement of disputes, and cooperation between national administrations.

⁵² Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures, OJ L 13 of 19 January 2000, p. 12.

In this context, the Commission adopted a communication⁵³ proposing a Regulation on the use and communication of sales promotions. This Regulation provides for the replacement of certain restrictions by targeted harmonisation measures and the application of mutual recognition for any continuing national requirements on sales promotions.

The Commission also initiated a discussion on sponsorship⁵⁴.

The communication on the follow-up to the Green Paper on consumer protection in the European Union⁵⁵ deals, in particular, with all aspects of communications between consumers and businesses. The Commission proposes that the problem of existing restrictions in this field be resolved through complete harmonisation.

3.5. Financial services

The Commission is particularly keen to maintain a clear and coherent legislative framework for financial services, for which, owing to the complexity and volume of the applicable standards, mutual recognition plays a particularly important role. This is illustrated by the Directive on electronic commerce, the basic principle of which is the "single market" clause, which enables on-line suppliers to offer their services throughout the Union on the basis of the rules applied by the Member State in which they are established. However, the Directive provides for several exemptions to this clause, a number of which concern financial services. Furthermore, the single-market clause will apply to fields in which the national rules still differ considerably, particularly in the non-harmonised fields.

In order to present an action programme, the Commission adopted a Communication on electronic commerce and financial services⁵⁶.

In its Communication, the Commission considers that greater convergence of national rules will be necessary, particularly as regards the rules of professional conduct for investment services and the obligations to provide pre-contract information. The latter are largely covered by the proposal for a Directive on the distance marketing of financial services. In order to guarantee maximum convergence, various approaches should be combined, by drafting legislative proposals to ensure a high level of consumer protection throughout the Union and, whenever it appears appropriate, by providing for the need for the Member States to apply mutual recognition.

The Commission is putting forward a three-stage strategy: it plans to launch a convergence programme covering contractual and non-contractual rules. These harmonisation measures will be accompanied by targeted measures to reinforce consumer confidence in electronic commerce, in particular by using appropriate means for settling cross-border disputes and by improving Internet payments. Lastly, the Commission lays stress in its Communication on improved cooperation between

⁵³ Communication COM(2001)546 final of 2 October 2001 on sales promotions in the Internal Market, containing a proposal for a Regulation of the European Parliament and of the Council on sales promotions in the Internal Market.

⁵⁴ See http://europa.eu.int/comm/internal_market/comcom/sponsorship/index_en.htm.

⁵⁵ COM(2002)289 final.

⁵⁶ COM(2001)66 final of 7 February 2001.

the supervisory authorities, since the authorities in the host Member States are increasingly dependent on their counterparts in the Member State in which the service provider is established.

4. SPECIFIC SURVEYS ON HOW MUTUAL RECOGNITION OPERATES IN CERTAIN PRODUCT SECTORS

*On the basis of surveys of economic operators and national administrations, the application of the principle of mutual recognition was tested for a number of **product** categories. The results of these surveys vary considerably from one category to another.*

However, the following results can be highlighted:

- *In the sectors where Community harmonisation does not yet concern new or technologically advanced product categories, economic operators are very often confronted by barriers to trade resulting from the lack of mutual recognition (e.g. fortified food products, certain construction products).*
- *In the optionally harmonised sectors (buses, lorries, trailers), the nature of the obstacles to trade ranges from stringent requirements in the national type-approval procedures to restrictions imposed by the "highway codes", which differ from one Member State to another.*
- *The construction products sector still suffers from market fragmentation, which is the result of the application of national technical rules and "quality marks", which are commercial necessities for obtaining market access for a given product.*
- *In the non-harmonised sectors studied (bicycles, ladders, scaffolding, articles of precious metal, childcare articles, and tanks and containers) and in the field of alarm systems, some parts of which are harmonised, the difficulties vary depending on the complexity and technical sophistication of the product.*

4.1. Specific surveys

In its 1999 communication, the Commission already recognised the need for more reliable information for accurately assessing the application of mutual recognition in sectors where there is incomplete or no harmonisation of legislation on products. The Commission therefore collected a range of data on the successes and shortcomings recorded in the field of mutual recognition by conducting two series of similar surveys: the first on a sample of economic operators in the European Union⁵⁷ and the second on the competent national administrations⁵⁸. These surveys were carried out on the basis of highly detailed questionnaires containing specific questions on, in particular, the invocation of mutual recognition, the attitudes of national administrations and economic operators in the conformity-assessment process, any difficulties encountered, their nature and their consequences.

⁵⁷ About 2 000 economic operators were contacted.

⁵⁸ Where appropriate, national administrations include regional authorities when the matter under consideration falls outside the field of competence of a central national administration. The number of national authorities is given in Table 7.3.8 of this report.

Mainly because of the low response rate from economic operators, the results of some of these surveys provide only a rough outline of the situation and would probably need to be supplemented by more thorough surveys. This is particularly true in the following sectors: canned food, non-alcoholic beverages and beer, fortified products and construction products⁵⁹.

The results of these surveys⁶⁰ are summarised below.

4.2. Foodstuffs

Mutual recognition still plays an important role in the field of foodstuffs despite the fact that harmonisation is already well advanced⁶¹.

Two-thirds of the businesses which replied to the questionnaire in the canned food sector experience no difficulty in marketing their products in another Member State. The surveys of national administrations do not reveal any particular problems.

In the sector of non-alcoholic beverages and beer, about 59% of the replies do not reveal any difficulty in marketing these beverages in another Member State. 31% of the replies mentioning obstacles complain of differences between the national technical specifications which define the characteristics required of the beverage, while 75% refer to problems relating to packaging and labelling. Two-thirds of the national administrations questioned have not yet encountered problems with mutual recognition. In contrast, the surveys suggest that the national administrations consider that the most frequent problems concern labelling (35% of the administrations questioned).

With regard to fortified products, 89% of the businesses which replied to the questionnaire refer to problems in intra-Community trade in this type of product. Most of these problems seem to be due to differences between the national technical specifications which define the characteristics required of the product, thus confirming the need for Community legislation. To this end, as announced in the action plan in the White Paper on food safety, the Commission intends to present a proposal for a Directive on fortified foodstuffs by the end of 2002. In particular, the proposal will lay down the provisions governing the marketing of foodstuffs to which nutrients such as vitamins and mineral salts have been added.

⁵⁹ For canned food, replies were received from 21 of the 394 economic operators contacted (5%). For the surveys on non-alcoholic beverages and beer, there were replies from 38 of the 289 economic operators contacted (13%). For fortified products, 18 of the 67 businesses contacted replied. For construction products, replies were received from 5% of the businesses contacted, which were mainly active in the field of masonry products (28 replies). It should also be noted that, with regard to construction and ladders, some Member States have a national certification and branding system which, although voluntary, is actually a commercial necessity for gaining access to the **national market** (customer confidence in national brands). This grey area between compulsory authorisation procedures and voluntary certification and branding systems means that the replies in these two sectors should be interpreted with caution. For vans, 38 businesses replied.

⁶⁰ The detailed results of these surveys are given in Tables 7.3.1 to 7.3.7 and 7.4.1 to 7.4.14 in annex. These statistics should not be confused with those referred to in point 3 of the Internal Market Scoreboard of November 2001 (No 9), namely the survey on the quality of the EU regulatory environment, which deals more generally with operators' opinions on the conformity requirements for products in both the harmonised and the non-harmonised sector. See Internet site http://europa.eu.int/comm/internal_market/en/update/score/index.htm.

⁶¹ See Internet site http://europa.eu.int/comm/food/index_en.html.

Furthermore, these replies confirm the information available to the Commission from infringement proceedings.

4.3. Various vehicles: buses, lorries, trailers⁶² and bicycles

The analysis of the surveys conducted in the bus sector shows that almost 60% of national administrations have encountered problems with the application of mutual recognition. Since almost all the administrations questioned state that there is a national approval procedure before the product is placed on the market, it is hardly surprising that one of the main causes of difficulties is, according to the businesses questioned, the unwieldiness of approval procedures and the need to adapt certain buses to local standards before they can be marketed. As regards administrations, the dimensions of buses seem to be the main difficulty for 40% of those questioned.

In the lorry sector, the marketing difficulties are very similar in number and nature to those encountered for buses. 34% of the 223 attempts to market lorries in a Member State have met with difficulties, the main sources of which seem to be compliance with compulsory technical rules of the Member State of destination and the refusal to recognise certificates and attestations obtained in the Member State of manufacture. It should be emphasised that, in 70% of cases in which difficulties were encountered, businesses had to adapt their products at the request of or following action by the host Member State.

As for trailers, the businesses questioned stated that certain technical specifications seem to be imposed by the provisions of the various local "highway codes", which contain requirements that vary widely from country to country (e.g. maximum dimensions, particular markings, maximum axle loads, etc.). In 61% of cases, businesses had no difficulties in marketing their products. It is possible that manufacturers ensure that the provisions of the Member State of destination's highway code are complied with at the production stage.

Bicycles are not covered by Community harmonisation. The analysis of the surveys shows that there are still relatively few problems caused by the incorrect application of the principle of mutual recognition. None of the administrations questioned suggested that there should be harmonisation in this field. Economic operators seem to experience difficulties mainly in four Member States. Furthermore, economic operators in the bicycle sector seem to be very willing to adapt their products to the demand on the target market: 68% of the manufacturers questioned stated that they had adapted their bicycles to fit in with local consumption habits. However, on the basis of the replies to the survey, it is not possible to assess how far the various local "highway codes", which sometimes contain technical rules requiring manufacturers to adapt their products, directly influence local consumption habits.

4.4. Construction products

In the absence of technical specifications such as those provided for in Article 4 of Directive 89/106/EEC on construction products⁶³, mutual recognition applies to a

⁶² Buses, lorries and trailers have been partly harmonised. See, in particular, Internet site <http://europa.eu.int/comm/enterprise/automotive/index.htm>.

⁶³ Council Directive 89/106/EEC of 21 December 1988 on the approximation of laws, regulations and administrative provisions of the Member States relating to construction products.

broad category of construction products, in particular road safety equipment, pipes and masonry products⁶⁴.

About 54% of the businesses which replied to the questionnaire refer to problems, in contrast to the other 46%, which belong mainly to the import branch. It is possible that the fact that manufacturers often deal with authorisation and certification procedures benefits importers, who are thus able to sell duly authorised or certified products. 80% of the replies criticise different testing methods as a major problem, and compulsory tests to be conducted by a third party under a compulsory conformity-assessment procedure (73% of replies).

The national administrations questioned do not seem to encounter as many problems as economic operators. Despite the considerable number of marketing procedures, no more than 35% of national administrations stated that they had encountered problems of mutual recognition. A quarter of the national administrations did not agree that products from other Member States provide an equivalent level of protection.

4.5. Ladders and scaffolding not designed to be incorporated into a building

71% of the businesses contacted did not report any problems. However, none of them actually manufactures this type of product. Problems were reported only by the remaining 29% of manufacturers⁶⁵. In 80% of the problem cases, the certificates and information submitted by the manufacturers failed to convince the national administrations that the level of protection afforded by the product was equivalent to that required by the legislation of the Member State of destination. The legislation of only one Member State required four ladder manufacturers to modify their products to comply with its legislation. According to the replies to the surveys, no other Member State has required the manufacturers concerned to modify their products.

Since the overall number of problems encountered by administrations is small, few administrations consider that harmonisation is desirable.

4.6. Other product categories

The analysis of the surveys conducted on childcare articles suggests that the number of difficulties encountered in marketing them in the European Union remains small. This seems to be due to the fact that there are European safety standards for children's beds and cots and for babies' car seats.

Fire and burglar alarm systems make up a special product group because of the simultaneous application of a number of directives⁶⁶ and because of the important

⁶⁴ It should be emphasised that the role of mutual recognition in this sector will decrease considerably as harmonised standards are gradually adopted and European technical type-approvals are more systematically applied. A more detailed description of the recent progress in this specific sector can be found at: <http://europa.eu.int/comm/enterprise/construction/index.htm>.

⁶⁵ 5 businesses.

⁶⁶ Council Directive 73/23/EEC of 19 February 1973 on the harmonisation of the laws of the Member States relating to electrical equipment designed for use within certain voltage limits, Council Directive 89/336/EEC of 3 May 1989 on the approximation of the laws of the Member States relating to electromagnetic compatibility, and, for certain systems, Directive 1999/5/EC of the European Parliament and of the Council of 9 March 1999 on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity.

role of insurance companies, which seem to promote the installation of alarm systems which meet certain quality standards⁶⁷. There seem to be relatively few difficulties. The technical complexity of this type of product probably explains why more problems were reported by administrations than by economic operators, and why 39% of administrations would like to see further harmonisation.

At first sight, there seem to be few problems with articles of precious metal. The main difficulties are due to the obligation to obtain a national hallmark⁶⁸ and to differences between national specifications on minimum fineness⁶⁹ and nickel content. Thus, manufacturers established in Member States with a low minimum fineness standard sometimes have to market their products under a name other than "gold" in the countries with a higher minimum fineness standard or design different product lines, which obliges them to revise their production methods. However, some of the businesses questioned pointed out that consumer tastes and habits varied from country to country and that manufacturers mostly had to adapt their products for purely commercial reasons.

The more widespread use of hallmarking systems and the resulting problems of mutual recognition are confirmed by the national administrations, despite a high level of administrative cooperation. It is therefore not surprising that half of the administrations questioned would like to see harmonisation for precious metals and that the other half would like administrative cooperation to be stepped up⁷⁰.

The analysis of the replies by businesses in the tank sector reveals that there seem to be few difficulties with the application of mutual recognition. However, businesses which state that they have not experienced any difficulties have often adopted avoidance strategies or work to order according to their customers' particular specifications. Besides the differences between the national technical specifications laying down the characteristics required of the product, the main source of problems seems to be the obligation to resubmit products to all or some of the acceptance tests, with different test methods and different methods of conformity assessment by third parties.

Lastly, the existence of international, and particularly European, standards on containers (of all types) seems to facilitate the application of mutual recognition: few problems were reported.

⁶⁷ See, in particular, <http://www.cea.assur.org/cea/v1.1/publ/uk/ouvrage/> and <http://www.efsac.org/list.html>.

⁶⁸ The hallmark serves to testify to the conformity of the product with regard to its gold content (and hence the standard of fineness) and its nickel content. The requirement for national hallmarking seems to be a source of difficulty for the marketing of articles of precious metal in ten Member States. See the recent judgments of the Court of Justice on this matter: judgment of 14 June 2001, Commission v. France, Case C-84/00 and judgment of 21 June 2001, Commission v. Ireland, Case C-30/99.

⁶⁹ The legal minimum standard of fineness represents the gold content below which the guarantee service does not grant its hallmark and the article cannot be marketed in a country under the name "gold". There is no European standard on this minimum fineness.

⁷⁰ The Commission has proposed harmonising legislation, but nothing has yet come of it: see in this connection the proposal for a Council Directive 93/C 318/06 on articles of precious metal (OJ 1993, C 318, p. 5), as amended by the proposal for a Directive 94/C 209/04 of the European Parliament and of the Council on articles of precious metal (OJ 1994, C 209, p. 4).

5. THE NON-HARMONISED PRODUCT FIELD

*The Commission notes that it is very difficult to obtain a genuine and reliable picture of how mutual recognition operates for **products**, despite the surveys of national administrations and economic operators on the basis of targeted questions.*

Certain economic operators want to adapt their products to the consumer tastes of the target market and have therefore not resorted to mutual recognition. Those who do not want to adapt their products are reluctant to take on the problems involved in possible conformity-checking procedures in the host Member State.

The source of any such difficulties generally seems to be the failure of the principle of mutual recognition and the uncertainty of the national administrations as to how to apply them.

5.1. Do the surveys reveal how mutual recognition actually operates?

The Commission has always found it very difficult to obtain, even by means of very precise surveys, a clear and reliable picture of how the principle of mutual recognition is actually applied in practice. The Commission notes that the national administrations possess very few statistics on the number of cases in which the principle of mutual recognition is applied, invoked or refused. In a large number of cases, for mutual recognition to be applied, national legislation does not require the active intervention of the national authorities before a product is placed on the market in the host Member State. Furthermore, in a number of cases it was not easy to identify the national administration responsible.

With regard to economic operators, either such statistics do not exist or they were not sent to the Commission. Furthermore, the commercial strategy of some of the manufacturers questioned undermines the reliability of the information on how mutual recognition operates in the single market. This is because, although they state that they have no difficulties in marketing their products, they have adopted strategies which could be described as "problem avoidance". One such strategy is to manufacture products which comply with the national standards of a target market before any attempt to place the product on that market. Another is to manufacture a number of product lines, each complying with a different and more demanding national standard than the others and to have the product approved by the appropriate authorities responsible for these standards. These two strategies oblige manufacturers to propose different product lines but avoid any difficulty with marketing. The cost of such strategies can therefore only be offset by businesses which sell sufficiently large volumes of products. Lastly, in some of the sectors studied, manufacturers work to order and offer customised products which meet the national standards required by their customers.

Another major problem, at least for certain product categories, is the low response rate. Apart from reasons associated with the methodology used (telephone surveys or written surveys), the main reason for this low rate may be the reluctance of some economic operators to reveal what they regard as strategic commercial information. However, the low response rate could also be explained by the fact that businesses consider that mutual recognition operates well and that, since there were no difficulties regarding mutual recognition, there was no need to reply to the surveys. This same reluctance, coupled with a lack of precise information within the businesses surveyed, seems to be the reason why it is impossible to quantify, or even

estimate, the additional direct or indirect costs incurred as a result of difficulties in applying mutual recognition.

In any event, the surveys conducted did not produce any major surprises. The comparison of their data with those of infringement proceedings shows that infringement proceedings are a relatively reliable source of what can be the major problems of mutual recognition in the single market.

5.2. The extent of unfamiliarity with mutual recognition must not be underestimated...

The surveys described in Chapter 4 of this report and the round tables mentioned in point 2.1.1 confirm that a considerable proportion of the economic operators questioned are still unfamiliar with the principle of mutual recognition⁷¹. Furthermore, even if the principle of mutual recognition is often regarded as the practical application of the free movement of goods within the single market, its invocation by economic operator remains relatively marginal⁷². Since the main interest of economic operators is to gain rapid access to the national market, they often opt for adapting the composition of the product to the national rules of the Member State of destination. They believe too often that invoking the principle would not lead to any relaxation of the attitude of the national authorities concerned and state that they wish to avoid wasting time. It must therefore be concluded that, if all the parties directly concerned were more familiar with the principle of mutual recognition, access to the target market could be easier and cheaper for economic operators.

5.3. ...and is reflected in practice by an over-cautious attitude

The round tables and the surveys confirm that, in the face of unknown factors – that of a product which does not comply to the letter with the technical rules of the Member State of destination or that of other rules and traditions in the Member State of destination - uncertainty predominates in the attitudes of administrations and economic operators. This uncertainty is sometimes reflected in excessive caution on the part of both economic operators and the national authorities questioned, which expressed on numerous occasions the wish to strengthen and improve administrative cooperation.

5.4. Does unfamiliarity imply that the principle does not work?

Not necessarily. The surveys clearly show that the principle of mutual recognition operates satisfactorily for a large number of products (beverages, bicycles, ladders and scaffolding, and childcare products). For the large majority of economic operators and national administrations active in these sectors, the free movement of these products has become so self-evident that deliberately invoking the principle of mutual recognition has become superfluous.

⁷¹ See, in particular, Table 7.4.14 in annex.

⁷² Tables 7.4.4 and 7.4.5 in annex.

5.5. Does unfamiliarity pose a problem?

Unfamiliarity will have few consequences for uncomplicated products involving low risks to health, safety or the environment. In this case, the mutual trust between the Member States ensures that such products can move freely in the single market.

In contrast, for new or complex products which are subject to a national authorisation procedure or any other form of conformity check when marketed in the Member State of destination, unfamiliarity with the principle poses a real problem both for the administrations responsible for conformity checking as part of market supervision and for the economic operators who do not want to adapt their products to the market of the Member State of destination.

6. CONCLUSIONS

The outcome of the measures taken between 1999 and 2001 is positive. However, in view of the continuing lack of information on the principle of mutual recognition and of the uncertainty of the national administrations as to how to apply it, the Commission considers that the guidelines proposed in the 1999 Communication on mutual recognition are still valid.

The Commission will adopt practical guidelines on mutual recognition, in particular by a communication to the Member States and economic operators, explaining the rights and obligations of the parties concerned when the principle of mutual recognition needs to be applied. It will also ensure that the best possible use is made of existing instruments in order to root the proper application of the principle of mutual recognition in national legislation and administrative practice. The Commission will launch more targeted measures in those product sectors where there are indications that mutual recognition does not always operate properly.

In any event, Community harmonisation will continue to be the most suitable solution in the specific sectors where there is such a difference in the levels of protection afforded by the national rules that the principle of mutual recognition cannot play its role properly (fortified food products and construction products).

The Commission has adopted a new strategy for services, with a special effort to improve the application of mutual recognition.

6.1. Products

A number of measures proposed in the 1999 Communication on mutual recognition have already been carried out, while others will be in the near future⁷³.

In view of the continuing lack of information on the application of the principle of mutual recognition and the uncertainty of the national administrations as to how it should be applied, the Commission considers that the approach defined in its 1999

⁷³ See detailed list in Table 7.5 in annex to this report.

Communication⁷⁴ will have to be continued in order to improve information for economic operators and national administrations.

The following one-off or ongoing measures are planned:

- clearer guidelines on the application of mutual recognition in everyday practice:
 - a) adoption by the Commission of a communication to the Member States and economic operators explaining the rights and obligations of the parties concerned in cases where the principle of mutual recognition is applied. In particular, the Member States will be reminded of the obligation to insert systematically a mutual recognition clause in their existing legislation⁷⁵ and the obligation to state adequate reasons in cases where a Member State deems it necessary to derogate from the principle of mutual recognition.
 - b) publication of practical guides in specific fields;
 - c) more regular exchange of information between administrations and improvement of administrative cooperation in networks⁷⁶;
 - d) launching training and information measures;
- better use of existing instruments in order to root the proper application of the principle of mutual recognition in national legislation and administrative practice. The instruments in question are, in particular, the complaints and infringement procedures, Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and the rules governing information society services, Decision No 3052/95/EC of the European Parliament and of the Council of 13 December 1995 establishing a procedure for the exchange of information on national measures derogating from the principle of the free movement of goods within the Community, and Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety;
- more targeted measures in the product sectors in which there are indications that mutual recognition does not always operate properly.

Nevertheless, greater harmonisation will continue to be indispensable in the specific sectors where the diversity and/or difference of the technical rules poses too many problems to permit the proper application of the principle of mutual recognition⁷⁷. In that case, harmonisation will at least have to cover all the problems for which mutual recognition cannot offer an effective solution. The more rapid adoption of harmonised European standards for product categories to which a Community

⁷⁴ Communication COM(1999)299 final to the Council and the European Parliament of 16 June 1999 on mutual recognition in the context of the follow-up to the Action Plan for the Single Market.

⁷⁵ See, in particular, the "foie gras" judgment of the Court of Justice of 22 October 1998, Commission of the European Communities v. French Republic, Case C-184/96, ECR 1998, p. I-6197.

⁷⁶ See point 2.2.3 of this report.

⁷⁷ See, for instance, cases C-12/00 and C-14/00 currently pending before the Court of Justice. They concern the ban on the marketing of certain cocoa and chocolate products under the name under which they are marketed in the Member State of origin.

directive applies (e.g. Directive 89/106/EEC on construction products, the new "general product safety" Directive, etc.) will still be vitally important⁷⁸.

6.2. Professional qualifications: need for simplification and consolidation

The European Commission presented a proposal for a Directive⁷⁹ to clarify and simplify the rules in order to facilitate the free movement of qualified persons between Member States, particularly in view of the forthcoming enlargement of the European Union. This proposal would replace the fifteen existing directives on this subject. The proposal represents the first overall modernisation of the Community system since it was devised.

Without prejudice to the maintenance of existing guarantees for migrant professionals, a number of changes are proposed to the current rules, in particular greater liberalisation of the provision of services, making the recognition of qualifications more automatic, and making the procedures for updating the Directive more flexible. The Commission also proposed stepping up its cooperation with the Member States in order to make citizens more aware of their rights and to provide more help for them to have their qualifications recognised.

6.3. Services: a new strategy for the freedom to provide them

The Commission noted that European businesses and consumers generally begin by studying what is available to them nationally before purchasing, providing or using services from abroad. This approach prevents full advantage being taken of the opportunities afforded by the new service-oriented economy, since the single market must be regarded as a "natural" market for all service providers and their customers.

In order to speed up the achievement of this objective, the Commission launched a new strategy for services⁸⁰, one of the principles of which is that a genuine single market based on the effective application of the basic freedoms set out in the Treaty (in this case the freedom of establishment and the freedom to provide services) and hence on the application of mutual recognition and the principle of proportionality eliminates the pointless (and often contradictory) superposition of regulations which impede cross-border trade. The European Parliament explicitly stated in a resolution on the subject that "as far as is possible, mutual recognition of national rules and requirements and the country of origin principle should be applied"⁸¹. Nevertheless, resorting to harmonisation is one means of establishing a high level of protection, at Community level, in the public interest, such as consumer protection.

The Commission will carry out an exhaustive and systematic analysis of all continuing obstacles to the free movement of services and of their repercussions in

⁷⁸ COM(2001)527 final of the 26 September 2001: report from the Commission to the Council and the European Parliament on actions taken following the resolutions on European standardisation adopted by the Council and the European Parliament in 1999; see also point I.D of Internal Market Scoreboard No 9 of November 2001 (SEC(2001)1908).

⁷⁹ Proposal for a Directive of the European Parliament and of the Council on the recognition of professional qualifications, COM(2002)119 final of 7 March 2002 - See also http://www.europa.eu.int/comm/internal_market/en/qualifications/02-393.htm.

⁸⁰ "An Internal Market Strategy for Services": Communication from the Commission to the Council and the European Parliament of 29 December 2000; COM(2000)888 final.

⁸¹ See Resolution of 4 October 2001, A5-0310, PE 309.503.

other sectors of the economy. This analysis will cover the rules and practices involved at each of the six stages of the commercial process⁸². It will also assess how the differences between regulatory and administrative practices impede the provision of cross-border services and prevent the export of effective commercial models in the Union. This analysis will be based on the six stages of the commercial process. The results of this study will be presented in a report to the Parliament and the Council in 2002. The Commission will then be able to identify the key fields in which infringement proceedings may have to be instituted or in which it is necessary to improve the existing mechanisms which help businesses and individuals to take advantage of the single market.

On this basis, another series of initiatives will be launched in a second phase, namely: measures dealing with obstacles which can be removed by directly applying the principles of the Treaty, non-legislative measures and measures to dismantle obstacles by targeted harmonisation, involving in particular a mechanism to ensure that the single market can be used by all European service providers as their national market, mainly as a result of the effective application of the principle of mutual recognition.

* * *

The Commission requests the Council, the European Parliament and the Economic and Social Committee to take note of this report.

⁸² The first stage is establishment. When a business is set up in a Member State, it must, in order to be competitive and to provide its own services as effectively as possible, call on recruitment services, financial services and commercial services (second stage) and be able to promote its own services (third stage), provide them (fourth stage), set their prices and sell them (fifth stage) – all in the best possible conditions. It must also manage an after-sales service in order to continue to fill its order books and to get to know its market in order to improve its services (sixth stage).

7. ANNEXES

7.1. Statistics on qualifications for the regulated professions

Fig.7.1.1: Mutual recognition of qualifications for the regulated professions: number of cases in which diplomas were recognised

Profession	Period	Total number	Countries which did not supply figures	Main host countries	Main countries of origin
Doctors	1997/1998	6517	D-F-Lux-P and for 1998 also E	UK-NL-EL-E-B	D-I-EL-IRL-B
Nurses	1997/1998	2496	D-LUX-IRL- for 1997 A- for 1998 UK and E	UK-NL-F-S-B-	B-D-UK-F-FIN
Dentists	1997/1998	779	D-LUX-P - for 1998 F-UK-E	UK-E-NL-IT-IRL	S-D-B-UK-F
Midwives	1997/1998	164	D-LUX-IRL - for 97 A and for 98 F-UK-E-FIN	NL-UK-B-I-E	B-UK-D-F-NL
Architects	1997/1998	849	I-EL-FIN LUX - for 98 NL-FIN-(IRL-DK-S no authorisation required to practise).	UK-D-E-B-A	D-I-NL-UK-F-A
Veterinarians	1997/1998	337	B-I-EL-E-NL-UK - for 97 A-P	F-IRL	B-D
Pharmacists	1997/1998	423	I -LUX-EL -PT-A - for 98 NL-IRL	IRL-F-UK-NL-DK	IRL-F-DE-UK-E

Fig. 7.1.2: Mutual recognition of qualifications for the regulated professions: number of cases in which diplomas were recognised (all professions, general system)

Profession	Period	Total number	Countries which did not supply figures	Main host countries	Main countries of origin
All professions General system	1997/1998	10639⁸³	EL	UK-NO-D-IRL-LUX	UK-D-B-NL-S
- Teachers		2431		B-NL-D-UK-F	UK-LUX-E-A-NO
- Physiotherapists		2068		D-E-UK-B-F	D-UK-NO-IRL-E
- Engineers		762		UK-D-DK-IRL-E	UK-IRL-I-D-IS
- Lawyers		326		UK-D-F-A-IRL	IRL-D-E-B-I
All professions General system	1999/2000	8118⁸⁴	E-IRL-F	UK-LUX-D-NO-NL	D-B-NL-F-E
- Teachers		2145		UK-NL-NO-IT-DE	E-D-B-F-SV
- Physiotherapists		1192		D-LUX-NO-A-UK	B-D-NL-UK-F
- Engineers		189		I-UK-D-ISL	DK-D-IRL-A-UK
- Lawyers		425		UK-B-I-D-F	D-I-E-F-IRL

Fig. 7.1.3: Number of complaints received concerning qualifications for the regulated professions for the period 1999-2000

Profession	Number of complaints
Doctors	0
Nurses	0
Dentists	5
Pharmacists	2
Veterinarians	0
Other paramedical professions	8
Architects	3
Teachers	2
Engineers	5
Lawyers	8
Other	12
Total	45

⁸³ Including EEA countries.

⁸⁴ Including EEA countries.

7.2. Products: statistics on complaints and infringements

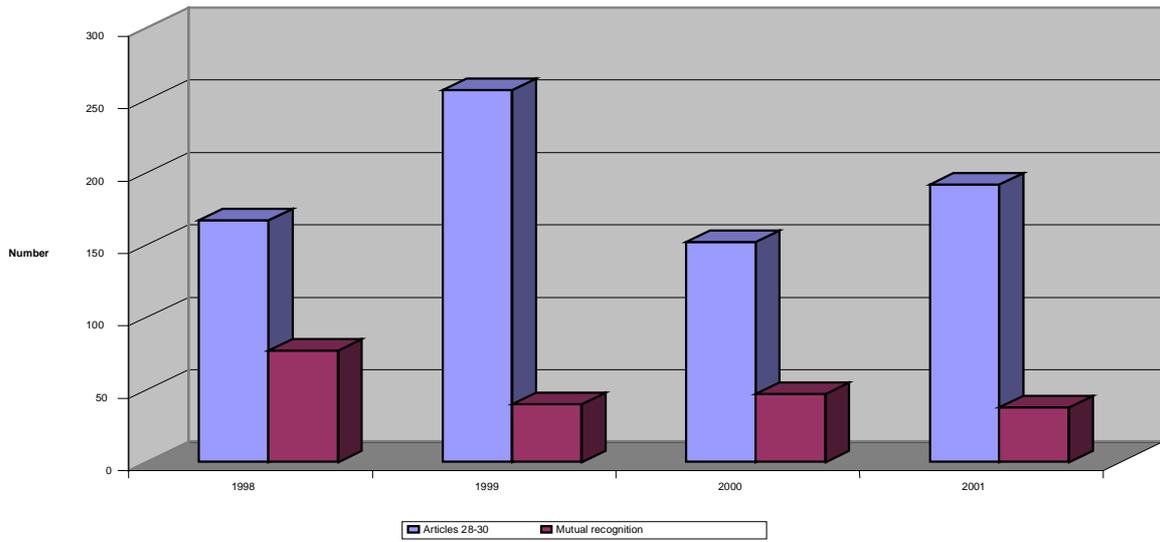
Fig. 7.2.1: Statistics on complaints and cases of infringement of mutual recognition involving products during the period 1998-2001

<i>Member State</i>	<i>Cases resolved or filed without action during this period</i>	<i>Number of infringement proceedings under way at 31/12/2001</i>	<i>Cases being investigated at 31/12/2001</i>	<i>Total number of cases dealt with during this period</i>	<i>New cases recorded during this period</i>
Belgium	12	10	3	25	21
Denmark	6	4	2	12	9
Germany	22	6	18	46	32
Greece	5	5	2	12	9
Spain	10	3	1	14	9
France	50	14	9	73	41
Ireland	1	3	0	4	4
Italy	20	10	5	35	13
Luxembourg	0	0	0	0	0
Netherlands	10	8	3	21	12
Austria	9	4	2	15	11
Portugal	4	2	0	6	3
Finland	6	2	7	15	13
Sweden	16	4	6	26	12
United Kingdom	14	2	2	18	13
Total	185	77	60	322	202

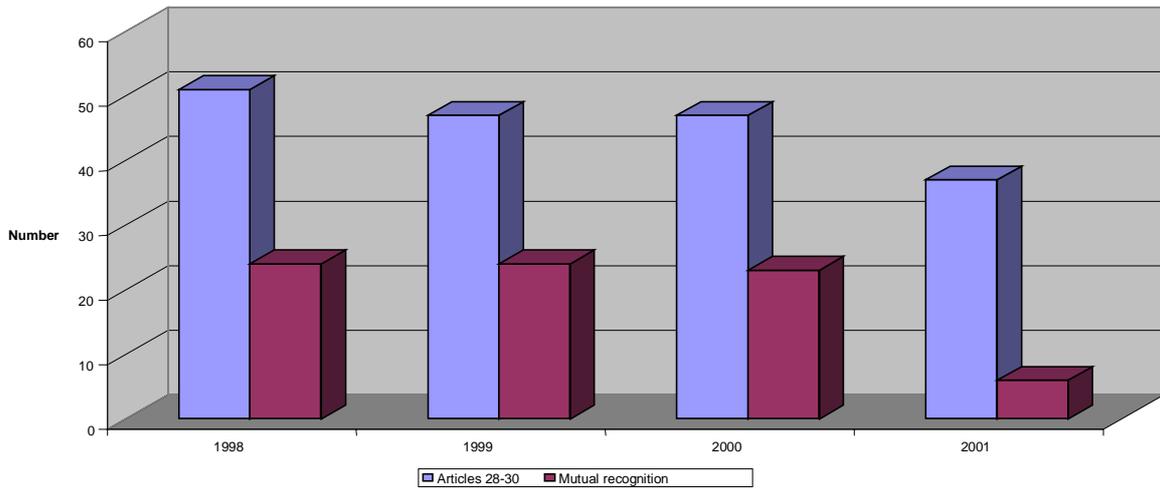
Fig. 7.2.2: Statistics on the proportion of cases involving mutual recognition in relation to the total number of cases covered by Articles 28-30 of the EC Treaty (1998-2001)

<i>Member State</i>	<i>Total cases Articles 28-30</i>	<i>Mutual recognition cases</i>	<i>Proportion</i>
Belgium	100	25	25%
Denmark	86	12	14%
Germany	118	46	39%
Greece	109	12	11%
Spain	52	14	27%
France	225	73	32%
Ireland	20	4	20%
Italy	133	35	26%
Luxembourg	4	0	0%
Netherlands	47	21	45%
Austria	59	15	25%
Portugal	18	6	33%
Finland	48	15	31%
Sweden	92	26	28%
United Kingdom	57	18	32%
Total	1168	322	28%

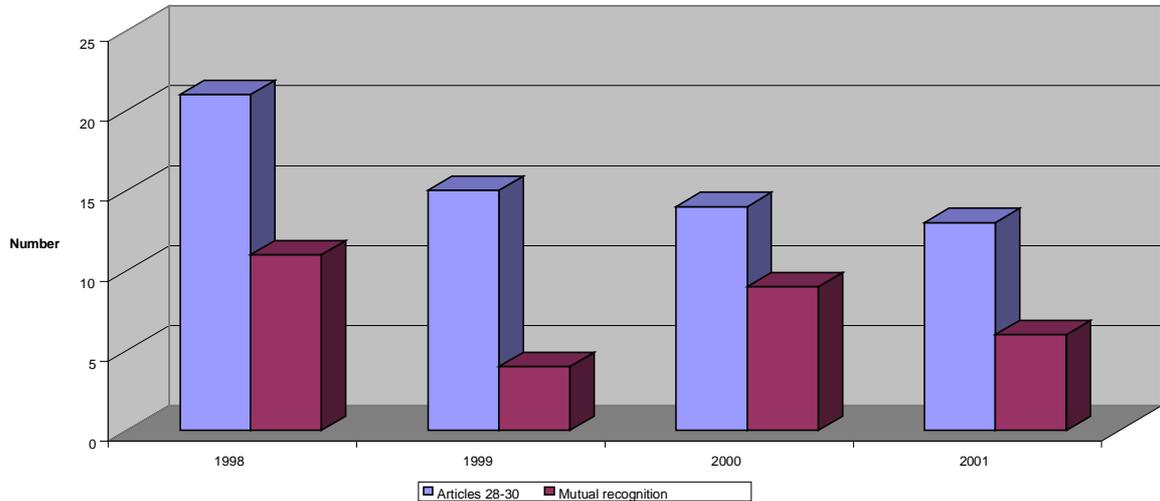
New cases recorded (Articles 28-30 of the EC Treaty)



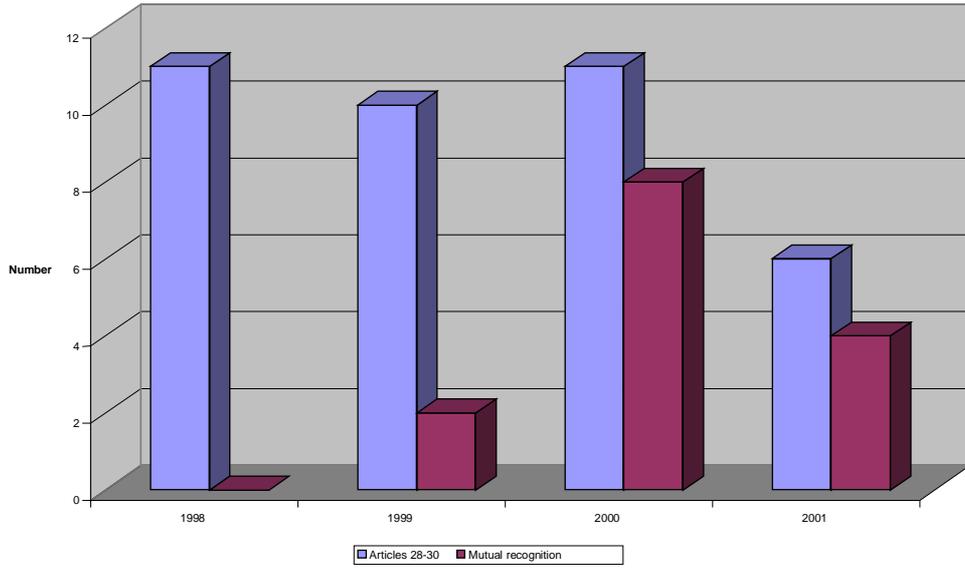
Formal notice (Articles 28-30 of the EC Treaty)



Reasoned opinions (Articles 28-30 of the EC Treaty)



Referrals (Articles 28-30 of the EC Treaty)



Cases filed without action (Articles 28-30 EC)

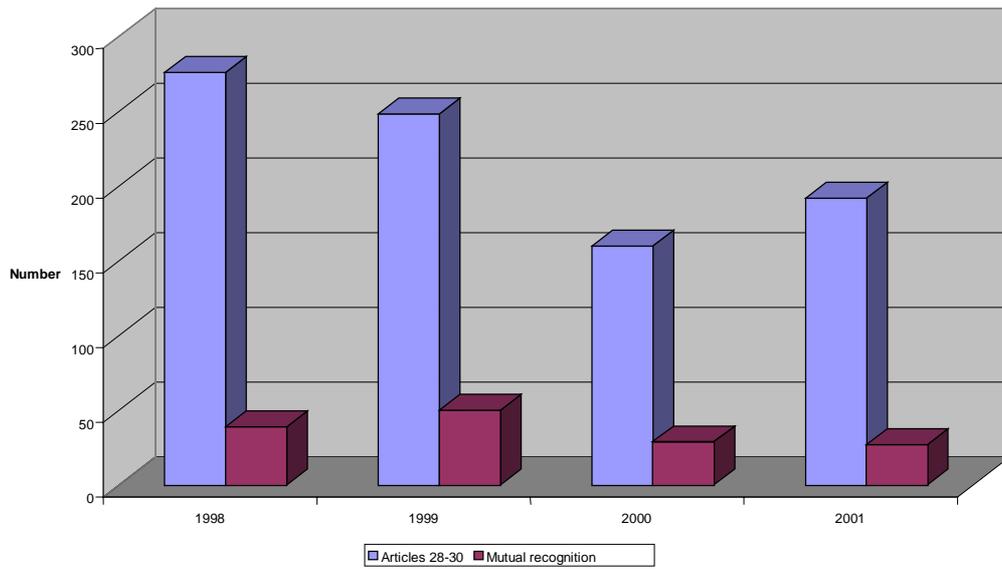


Fig. 7.2.3: Breakdown of cases by product sector (1998-2001)

<i>Product sector</i>	<i>Number of complaints</i>	<i>Percentage</i>	<i>Number of infringements</i>	<i>Percentage</i>
Foodstuffs:				
Fortified products	23	7.14%	13	13.40%
Food supplements	28	8.70%	5	5.15%
Other	48	14.91%	21	21.65%
Total foodstuffs	99	30.75%	39	40.21%
Medical appliances	3	0.93%	1	1.03%
Textiles	4	1.24%	1	1.03%
Fuels	2	0.62%	0	0.00%
Vehicles:				
Cars	38	11.80%	5	5.15%
Motorcycles/bicycles	14	4.35%	1	1.03%
Accessories	8	2.48%	4	4.12%
Other	14	4.35%	2	2.06%
Total vehicles	74	22.98%	12	12.37%
Fire and burglar alarm systems	10	3.11%	3	3.09%
Aircraft	4	1.24%	2	2.06%
Telecommunications	4	1.24%	1	1.03%
Construction	28	8.70%	7	7.22%
Precious metals	17	5.28%	9	9.28%
Pesticides and other chemical products	13	4.04%	4	4.12%
Ladders	4	1.24%	2	2.06%
Machinery	23	7.14%	4	4.12%
Metrology	4	1.24%	2	2.06%
Miscellaneous	33	10.25%	10	10.31%

<i>Fig. 7.2.4: Application of Directive 98/34/EC (1999-2001)</i>			
	<i>1999</i>	<i>2000</i>	<i>2001</i>
Total number of notifications	591	751	530
Telecommunications	70	186	47
Foodstuffs/agricultural products	125	127	108
Transport	90	131	69
Construction	73	109	99
Mechanical engineering	61	42	25
Chemicals	37	33	19
Pharmaceutical products	27	13	24
Household and leisure equipment	9	8	13
Energy, minerals, wood	24	26	32
Environment, packaging	44	33	37
Health, medical equipment	3	5	6
Miscellaneous products	17	15	26
Information society services	11	23	25

<i>Application of Directive 98/34/EC: detailed opinions and remarks (1999-2001)</i>			
	<i>1999</i>	<i>2000</i>	<i>2001</i>
Detailed opinions	148	144	152
delivered by the Commission	43	49	62
delivered by the Member States	105	95	90
Remarks	408	444	299
Made by the Commission	155	242	147
Made by the Member States	253	202	152

<i>Fig. 7.2.5: Package meetings in the Member States in 1998-2001</i>			
<i>Year</i>	<i>Number of meetings</i>	<i>Cases discussed</i>	<i>Average number of cases per meeting</i>
1998	19	240	12.63
1999	13	155	11.92
2000	11	164	14.91
2001	10	120	12
Total	53	679	12.81

7.3. Products: results of the surveys of national authorities

Fig. 7.3.1: Invocation of the rules of the Member State of origin

<i>Type of product</i>	<i>National authorities against which the rules of another Member State were invoked</i>	<i>National authorities against which a mutual recognition clause was invoked</i>	<i>National authorities which confirmed that there is a prior authorisation procedure</i>
Buses and lorries	33%	6%	82%
Alarm systems	32%	26%	22%
Bicycles	50%	0%	18%
Beverages ⁸⁵	35%	15%	5%
Tanks and containers	19%	0%	71%
Ladders and scaffolding	6%	12%	12%
Precious metals	31%	25%	63%
Construction products	35%	24%	59%
Childcare products	19%	19%	0%
Canned food	21%	53%	11%
Food supplements ⁸⁶	53%	40%	40%

Fig. 7.3.2: Administrative cooperation

<i>Type of product</i>	<i>National administrations participating in a form of intra-Community administrative cooperation</i>	<i>National administrations participating in a form of intra-Community administrative cooperation and satisfied with this cooperation</i>	<i>National administrations which want intra-Community administrative cooperation to be reinforced</i>	
			<i>As a percentage of all the administrations questioned</i>	<i>As a percentage of administration already participating in administrative cooperation</i>
Buses and lorries	59%	73%	29%	45%
Alarm systems	33%	57%	17%	57%
Bicycles	30%	100%	10%	33%
Beverages	55%	64%	29%	9%
Tanks and containers	19%	80%	29%	40%
Ladders and scaffolding	47%	75%	29%	50%
Precious metals	81%	57%	44%	43%
Construction products	65%	42%	29%	50%
Childcare products	57%	75%	33%	50%
Canned food	58%	55%	37%	27%
Food supplements	53%	86%	20%	43%

⁸⁵ "Beverages" means non-alcoholic beverages and beer.

⁸⁶ "Food supplements" means food supplements and fortified products.

Fig. 7.3.3: Harmonisation favoured by national administrations

<i>Type of product</i>	<i>National administrations in favour of harmonisation</i>
Buses and lorries	35%
Alarm systems	39%
Bicycles	0%
Beverages	18%
Tanks and containers	43%
Ladders and scaffolding	18%
Precious metals	50%
Construction products	18%
Childcare products	24%
Canned food	21%
Food supplements	47%

Fig. 7.3.4: National authorities which have encountered problems with mutual recognition:

<i>Type of product</i>	<i>National authorities which have already faced problems of mutual recognition</i>
Buses and lorries	59%
Alarm systems	32%
Bicycles	45%
Beverages	50%
Tanks and containers	43%
Ladders and scaffolding	29%
Precious metals	50%
Construction products	35%
Childcare products	24%
Canned food	53%
Food supplements	87%

Fig. 7.3.5: Type of problems already encountered by national administrations⁸⁷

<i>Type of product</i>	<i>Different level of quality or performance</i>	<i>Safety</i>	<i>Dimensions</i>	<i>Name under which it is sold</i>	<i>Terminology</i>	<i>Symbols</i>	<i>Testing</i>
Buses and lorries	27%	33%	40%	13%	0%	0%	13%
Alarm systems	29%	12%	6%	12%	18%	18%	24%
Bicycles	20%	30%	0%	10%	10%	0%	10%
Beverages	30%	25%	5%	20%	5%	0%	10%
Tanks and containers	14%	33%	10%	0%	0%	5%	19%
Ladders and scaffolding	24%	47%	18%	6%	6%	0%	12%
Precious metals	31%	6%	0%	25%	6%	6%	6%
Construction products	41%	41%	18%	12%	18%	6%	24%
Childcare products	14%	57%	10%	19%	5%	14%	14%
Canned food	37%	32%	5%	26%	0%	0%	16%
Food supplements	40%	80%	7%	47%	13%	7%	20%

<i>Type of product</i>	<i>Testing methods</i>	<i>Packaging</i>	<i>Marking</i>	<i>Labelling</i>	<i>Conformity assessment procedures</i>	<i>Production methods and processes directly affecting the product</i>
Buses and lorries	7%	0%	0%	7%	0%	7%
Alarm systems	18%	6%	18%	24%	29%	0%
Bicycles	10%	10%	10%	10%	10%	0%
Beverages	5%	0%	15%	35%	10%	10%
Tanks and containers	14%	0%	10%	0%	10%	5%
Ladders and scaffolding	12%	18%	6%	18%	6%	0%
Precious metals	13%	0%	38%	31%	13%	13%
Construction products	29%	6%	24%	12%	24%	18%
Childcare products	19%	19%	14%	14%	24%	10%
Canned food	21%	16%	26%	42%	11%	16%
Food supplements	7%	7%	40%	60%	13%	20%

⁸⁷

More than one answer possible.

Fig. 7.3.6: Information requested by national authorities when assessing the conformity of the product⁸⁸

<i>Type of product</i>	<i>Proportion of administrations requesting information on the product</i>	<i>Type of information requested</i>			
		<i>Compulsory technical rules already applied</i>	<i>Certificates or attestations already obtained</i>	<i>Voluntary standards applied</i>	<i>Other documents</i>
Buses and lorries	65%	47%	65%	0%	12%
Alarm systems	56%	44%	44%	33%	33%
Bicycles	40%	20%	30%	20%	20%
Beverages	40%	35%	20%	10%	20%
Tanks and containers	62%	33%	67%	24%	14%
Ladders and scaffolding	65%	47%	41%	35%	41%
Precious metals	56%	38%	31%	13%	19%
Construction products	76%	59%	71%	47%	35%
Childcare products	57%	48%	52%	52%	38%
Canned food	63%	32%	42%	5%	11%
Food supplements	80%	60%	53%	0%	20%

⁸⁸

More than one answer possible.

Fig. 7.3.7: National authorities which have already refused to recognise the equivalence of the level of protection determined by⁸⁹:

<i>Type of product</i>		<i>The compulsory technical rules applied for this product</i>	<i>The certificates or attestations already obtained for this product</i>	<i>The voluntary standards applied for this product</i>
Buses and lorries	Yes	35%	6%	0%
	No answer	18%	35%	29%
Alarm systems	Yes	22%	33%	28%
	No answer	39%	39%	39%
Bicycles	Yes	0%	20%	10%
	No answer	50%	50%	60%
Beverages	Yes	10%	0%	0%
	No answer	50%	55%	55%
Tanks and containers	Yes	10%	10%	10%
	No answer	38%	38%	38%
Ladders and scaffolding	Yes	12%	18%	12%
	No answer	29%	29%	29%
Precious metals	Yes	19%	6%	0%
	No answer	56%	56%	56%
Construction products	Yes	24%	18%	0%
	No answer	29%	35%	41%
Childcare products	Yes	10%	19%	14%
	No answer	38%	33%	33%
Canned food	Yes	0%	5%	0%
	No answer	37%	32%	37%
Food supplements	Yes	13%	7%	7%
	No answer	53%	53%	73%

Fig. 7.3.8: Number of national authorities which participated in these surveys

Buses and lorries	17	Precious metals	15
Alarm systems	16	Construction products	13
Bicycles	11	Childcare products	21
Beverages	19	Canned food	19
Tanks and containers	19	Food supplements	15
Ladders and scaffolding	16	Total	181

⁸⁹

More than one answer possible.

7.4. Products: results of the surveys of economic operators

Fig. 7.4.1: Proportion of economic operators who have encountered marketing problems in another Member State

Buses	34%
Lorries	34%
Vans	53%
Trailers	39%
Bicycles	33%
Childcare articles	18%
Fire alarm systems	28%
Burglar alarm systems	43%
Objects in precious metals	27%
Tanks	41%
Ladders and scaffolding	29%
Canned food	33%
Non-alcoholic beverages and beer	41%
Fortified products	89%
Construction products	54%
Containers	18%

Fig. 7.4.2: Contacts with the administration of the Member State of destination

The economic operator has been in contact with the national authorities of the Member State of destination

<i>Sector</i>	<i>(A)</i>	<i>(B)</i>
Buses	25%	72%
Lorries	11%	34%
Vans	25%	48%
Trailers	16%	41%
Bicycles	8%	24%
Childcare articles	5%	27%
Fire alarm systems	12%	43%
Burglar alarm systems	11%	25%
Articles of precious metal	5%	18%
Tanks	18%	44%
Containers	5%	27%

(A) = as a percentage of the number of attempts to market the product

(B) = as a percentage of the number of problems

Fig. 7.4.3: Request by the host Member State

Sector	The authorities asked what technical specifications were met by the product		The economic operator did not invoke conformity with the rules applicable in the Member State where the product was marketed or manufactured		The economic operator had to demonstrate the equivalence of the level of protection provided by the product under national regulations	
	(A)	(B)	(A)	(B)	(A)	(B)
Buses	13%	37%	5%	15%	9%	26%
Lorries	10%	30%	5%	14%	5%	14%
Vans	16%	30%	4%	7%	16%	30%
Trailers	13%	33%	2%	5%	10%	27%
Bicycles	5%	16%	2%	6%	4%	11%
Childcare articles	4%	20%	1%	8%	3%	14%
Fire alarm systems	8%	28%	1%	4%	11%	38%
Burglar alarm systems	4%	9%	1%	2%	9%	22%
Articles of precious metal	2%	8%	2%	8%	1%	1%
Tanks	14%	35%	7%	18%	10%	25%
Containers	5%	27%	0%	0%	2%	13%

(A) = as a percentage of the number of attempts to market the product
(B) = as a percentage of the number of problems

Fig. 7.4.4: The economic operator invoked the mutual recognition clause

Sector	(A)	(B)
Buses	7%	20%
Lorries	4%	11%
Vans	12%	22%
Trailers	12%	31%
Bicycles	3%	10%
Childcare articles	3%	16%
Fire alarm systems	11%	38%
Burglar alarm systems	0%	0%
Articles of precious metal	1%	5%
Tanks	1%	2%
Containers	4%	20%

(A) = as a percentage of the number of attempts to market the product
(B) = as a percentage of the number of problems

Fig. 7.4.5: Reasons for which the clause was not invoked

<i>Sector</i>	Ignorance of the clause		The economic operator thought that there was no clause in this sector		Did not want to invoke the clause		Other reason	
	(A)	(B)	(A)	(B)	(A)	(B)	(A)	(B)
Buses	3%	9%	3%	9%	0%	0%	1%	4%
Lorries	0%	0%	1%	2%	4%	12%	1%	2%
Vans	6%	11%	4%	7%	0%	0%	4%	7%
Trailers	2%	6%	2%	5%	3%	7%	1%	1%
Bicycles	2%	6%	1%	3%	0%	0%	2%	6%
Childcare articles	1%	4%	0%	0%	1%	1%	1%	6%
Fire alarm systems	2%	6%	0%	0%	0%	0%	1%	2%
Burglar alarm systems	10%	23%	0%	0%	0%	0%	1%	2%
Articles of precious metal	1%	5%	1%	4%	1%	1%	1%	2%
Tanks	6%	14%	3%	7%	2%	4%	5%	11%
Containers	0%	0%	0%	0%	0%	0%	0%	0%

(A) = as a percentage of the number of attempts to market the product

(B) = as a percentage of the number of problems

Fig. 7.4.6: Number of cases in which the authorities ruled that a product did not provide the requisite level of protection (non-equivalence)

<i>Sector</i>	(A)	(B)
Buses	9%	26%
Lorries	6%	19%
Vans	22%	41%
Trailers	4%	9%
Bicycles	1%	3%
Childcare articles	2%	12%
Fire alarm systems	6%	21%
Burglar alarm systems	0%	0%
Articles of precious metal	1%	5%
Tanks	5%	12%
Containers	1%	1%

(A) = as a percentage of the number of attempts to market the product

(B) = as a percentage of the number of problems

Fig. 7.4.7: Documents forwarded to the Member State of destination⁹⁰

The economic operator had to forward to the authorities of the Member State of destination information or documents on the product

Sector	Total		Type of information							
			Certificates or attestations already obtained		Voluntary standards		Compulsory technical rules		Other information	
	(A)	(B)	(A)	(B)	(A)	(B)	(A)	(B)	(A)	(B)
Buses	22%	63%	16%	46%	3%	9%	13%	37%	4%	11%
Lorries	30%	87%	25%	76%	10%	28%	22%	66%	2%	7%
Vans	39%	74%	25%	48%	4%	7%	14%	26%	6%	11%
Trailers	26%	67%	18%	47%	0%	0%	4%	11%	13%	33%
Bicycles	11%	35%	8%	24%	2%	6%	5%	14%	3%	8%
Childcare articles	9%	51%	6%	32%	1%	8%	7%	37%	1%	4%
Fire alarm systems	19%	66%	17%	60%	8%	28%	7%	23%	3%	11%
Burglar alarm systems	25%	57%	11%	26%	5%	11%	7%	17%	2%	5%
Articles of precious metal	4%	15%	3%	12%	2%	8%	2%	7%	1%	4%
Tanks	30%	72%	18%	45%	11%	27%	27%	66%	12%	29%
Containers	17%	93%	16%	90%	2%	10%	4%	20%	0%	0%

(A) = as a percentage of the number of attempts to market the product

(B) = as a percentage of the number of problems

⁹⁰

More than one answer possible.

Fig. 7.4.8: Refusal by the Member State of destination to recognise the equivalence of the level of protection attested by⁹¹:

<i>Sector</i>	<i>Certificates or attestations already obtained</i>		<i>Voluntary standards</i>		<i>Compulsory technical rules</i>		<i>Other information</i>	
	<i>(A)</i>	<i>(B)</i>	<i>(A)</i>	<i>(B)</i>	<i>(A)</i>	<i>(B)</i>	<i>(A)</i>	<i>(B)</i>
Buses	3%	9%	1%	4%	3%	9%	0%	0%
Lorries	6%	19%	1%	3%	8%	24%	1%	2%
Vans	4%	7%	0%	0%	8%	15%	2%	4%
Trailers	5%	13%	1%	3%	1%	1%	1%	2%
Bicycles	3%	8%	1%	3%	1%	3%	0%	0%
Childcare articles	1%	8%	1%	4%	1%	6%	0%	0%
Fire alarm systems	9%	32%	0%	0%	1%	4%	0%	0%
Burglar alarm systems	1%	2%	0%	0%	1%	2%	1%	2%
Articles of precious metal	1%	3%	1%	1%	0%	0%	1%	2%
Tanks	6%	14%	0%	0%	7%	17%	1%	2%
Containers	2%	13%	0%	0%	1%	6%	0%	0%

(A) = as a percentage of the number of attempts to market the product

(B) = as a percentage of the number of problems

⁹¹ More than one answer possible.

Fig. 7.4.9: Changes made to the product (A)

<i>Sector</i>	<i>The economic operator was ultimately able to place or keep the product on the market without having to adapt it</i>	<i>The economic operator adapted the product</i>	<i>Changes made mainly on the initiative of the company</i>	<i>Changes made mainly at the request of the importer or purchaser</i>	<i>Changes made mainly at the request of the authorities of the Member State of destination</i>	<i>Actions or measures by the country which led directly or indirectly to changes being made to the product</i>
Buses	30%	43%	17%	2%	28%	39%
Lorries	10%	70%	26%	12%	42%	46%
Vans	14%	35%	18%	0%	20%	20%
Trailers	38%	36%	9%	14%	12%	18%
Bicycles	44%	48%	16%	21%	10%	27%
Childcare articles	10%	61%	10%	39%	27%	31%
Fire alarm systems	53%	36%	4%	9%	26%	26%
Burglar alarm systems	38%	54%	6%	29%	5%	6%
Articles of precious metal	27%	52%	13%	15%	23%	26%
Tanks	21%	60%	31%	19%	11%	17%
Containers	77%	17%	10%	7%	0%	0%

(A) on the basis of the number of problems – More than one answer possible

Fig. 7.4.10: Adaptation of products to allow for local consumption habits

<i>Sector</i>	<i>Economic operators who have adapted their products and who would in any case have adapted their products to allow for local consumption habits</i>	<i>Other economic operators</i>
Buses	45%	55%
Lorries	56%	44%
Vans	38%	62%
Trailers	31%	69%
Bicycles	68%	32%
Childcare articles	62%	38%
Fire alarm systems	33%	67%
Burglar alarm systems	33%	67%
Articles of precious metal	58%	42%
Tanks	54%	46%
Containers	100%	0%

Fig. 7.4.11: Delay in placing products on the market

<i>Sector</i>	<i>Delay in placing on the market</i>		<i>Delay caused directly or indirectly by actions or of measures by the country concerned</i>	
	<i>(A)</i>	<i>(B)</i>	<i>(A)</i>	<i>(B)</i>
Buses	9%	26%	7%	21%
Lorries	15%	44%	8%	23%
Vans	6%	11%	2%	4%
Trailers	16%	41%	5%	12%
Bicycles	6%	19%	3%	8%
Childcare articles	8%	45%	3%	16%
Fire alarm systems	13%	45%	7%	23%
Burglar alarm systems	25%	57%	5%	12%
Articles of precious metal	10%	37%	8%	29%
Tanks	6%	14%	5%	11%
Containers	2%	10%	0%	0%

(A) = as a percentage of the number of attempts to market the product

(B) = as a percentage of the number of problems

Fig. 7.4.12: Giving up the attempt to market products

<i>Sector</i>	The economic operator gave up the attempt to market his product of his own accord		The economic operator gave up the attempt to market his product as a result of the following actions or measures by the Member State:					
			<i>Refusal to grant a marketing authorisation</i>		<i>Withdrawal of the product from the market</i>		<i>A blanket ban on the product</i>	
	<i>(A)</i>	<i>(B)</i>	<i>(A)</i>	<i>(B)</i>	<i>(A)</i>	<i>(B)</i>	<i>(A)</i>	<i>(B)</i>
Buses	7%	22%	0%	0%	0%	0%	0%	0%
Lorries	4%	11%	1%	4%	0%	0%	0%	0%
Vans	6%	11%	6%	11%	0%	0%	0%	0%
Trailers	1%	1%	2%	5%	0%	0%	0%	0%
Bicycles	3%	8%	0%	0%	0%	0%	0%	0%
Childcare articles	2%	12%	1%	2%	1%	2%	0%	0%
Fire alarm systems	7%	23%	2%	6%	0%	0%	0%	0%
Burglar alarm systems	3%	8%	0%	0%	0%	0%	0%	0%
Articles of precious metal	2%	9%	0%	0%	0%	0%	0%	0%
Tanks	4%	10%	1%	2%	0%	0%	0%	0%
Containers	1%	7%	0%	0%	0%	0%	0%	0%

Fig. 7.4.13: Delays in marketing due to the authorisation procedure

The compulsory marketing authorisation procedure in the Member State of destination lasted

Sector	less than 45 days		from 45 to 90 days		from 90 days to 6 months		more than 6 months		Total	
	(A)	(B)	(A)	(B)	(A)	(B)	(A)	(B)	(A)	(B)
Buses	4%	11%	0%	0%	1%	4%	3%	9%	8%	24%
Lorries	4%	12%	8%	23%	2%	5%	1%	2%	16%	47%
Vans	14%	26%	8%	15%	2%	4%	0%	0%	22%	41%
Trailers	6%	15%	8%	21%	1%	1%	1%	3%	20%	51%
Bicycles	4%	11%	1%	3%	0%	0%	0%	0%	5%	14%
Childcare articles	1%	2%	1%	6%	1%	2%	1%	4%	3%	14%
Fire alarm systems	2%	6%	3%	11%	0%	0%	1%	4%	11%	40%
Burglar alarm systems	10%	23%	3%	8%	0%	0%	9%	20%	22%	51%
Articles of precious metal	3%	12%	1%	1%	0%	0%	1%	1%	4%	14%
Tanks	7%	18%	2%	4%	1%	3%	1%	2%	13%	31%
Containers	1%	7%	0%	0%	1%	7%	0%	0%	2%	13%

(A) = as a percentage of the number of attempts to market the product

(B) = as a percentage of the number of problems

Fig. 7.4.14: Economic operators' familiarity with the principle

Sector	%		Number of economic operators		
	Familiar	Unfamiliar	Familiar	Unfamiliar	Total
Buses	46%	54%	11	13	24
Lorries	70%	30%	40	17	57
Vans	79%	21%	30	8	38
Trailers	56%	44%	32	25	57
Bicycles	59%	41%	20	14	34
Childcare articles	45%	55%	21	26	47
Fire alarm systems	54%	46%	21	18	39
Burglar alarm systems	45%	55%	14	17	31
Articles of precious metal	56%	44%	51	40	91
Tanks	52%	48%	28	26	54
Containers	61%	39%	22	14	36
Total	57%	43%	290	218	508

Table 7.5: Progress of the measures proposed in the communication "Mutual recognition in the context of the follow-up to the Action Plan for the Single Market" (COM(1999)299 final of 16 June 1999)

<i>Measure</i>	<i>Completed</i>	<i>Under way</i>	<i>Future measure</i>	<i>Remarks</i>
1. Biennial Report		√		
2. Ensuring that the Member States properly apply Community law in the field of mutual recognition		√		Points 2.3 and 6.1.1 of this report
3. Making full use of the possibilities afforded by Directive 98/34/EC as an instrument for promoting mutual recognition		√		Points 2.2.1 and 6.1.1 of this report
4. Compiling guides on the application of mutual recognition in particular sectors			√	Point 6.1.1 of this report
5. Compiling an explanatory brochure on the application of Decision 3052/95	√			Point 2.1.2 of this report
6. Economic analysis of the application of this mechanism in various sectors.	√			Point 1.1 of this report
7. Organisation of sectoral round tables and specific seminars	√			Points 2.1.1 and 6.1.1 of this report
8. Community contribution to the practical projects to increase awareness of the principle of mutual recognition among target groups			√	
9. Preparation of a "standard" request which will be sent to the European and national federations concerned so that their members can use it in their dealings with the authorities responsible for applying mutual recognition			√	Point 6.1.1 of this report
10. Promoting dialogue with citizens and businesses		√		Points 2.2.3 and 6.1.1 of this report
11. Specific sectoral initiatives to promote the better application of the principle of mutual recognition in the field of services			√	Point 6.3 of this report
12. Drafting a communication on electronic commerce and financial services	√			Point 3.5 of this report