

Opinion on the annual report on the functioning of the internal market

(94/C 393/04)

On 16 March 1994 the European Commission decided to consult the Economic and Social Committee, under Article 198 of the Treaty establishing the European Community, on the Annual Report on the Functioning of the Internal Market.

The Section for Industry, Commerce, Crafts and Services, which was responsible for preparing the Committee's work on the subject, adopted its Opinion on 31 August 1994. The Rapporteur was Mr Connellan.

At its 318th Plenary Session (meeting of 14 September 1994), the Economic and Social Committee adopted the following Opinion unanimously.

SUMMARY OF THE MAIN RECOMMENDATIONS

1. The Economic and Social Committee considers that the full operation of the Internal Market is crucial to economic and social development within the European Union. Trade with third countries must also be cleared and monitored efficiently. The expectations which existed at the time of passage of the single European Act have not yet been met. The Hearing and responses to the questionnaire demonstrate clearly that many obstacles to the free movement of goods, services, people and capital remain. The Committee recommends the adoption of a vigorous programme to eliminate all remaining obstacles.
2. There is need to achieve an appropriate balance between EU and national regulation. The implementation and control of existing regulations must be supervised rigorously. The Committee repeats its recommendation that the use of Regulations rather than Directives is more appropriate to strictly technical provisions.
3. The Committee recommends the systematic development of a Europe-wide inventory of trade barriers in the European Union and EEA.
4. The Committee repeats its support for the mandatory notification of cases where Member States derogate from the principle of the free movement of goods within the Union.
5. The Committee recommends that easily understandable information about the legal rights of the various economic and social interests should be disseminated.
6. The Committee recommends that the Commission should publish annually a list of all complaints received about the inadequate functioning of the Internal Market, should comment thereon and state the action which has been taken or is proposed.
7. Having completed this initial assessment in the context of the First Annual Report of the Commission on the functioning of the Internal Market, the Committee proposes to conduct further analyses of specific areas during the coming year.
8. The Committee recommends that the scope of Directive 83/189/EEC be widened, that it be implemented more intensively, and that greater emphasis should be placed on programmes for the harmonization of standards.
9. The Committee recommends a greater harmonization of environmental standards even at a higher level to ensure balance and compatibility between the objectives of improved environmental requirements, and the operation of the Internal Market.
10. The Committee recommends that measures be taken when introducing the definitive VAT system throughout the Union to achieve the maximum clarity, simplicity and consistency so that all obstacles to intra-Union trade are eliminated.

11. The Committee recommends that the taxation treatment of house mortgage interest payments, and insurance premiums should be the same whether sourced in another Member State or in the home State of the user.
12. The Committee recommends the adoption of the proposed Directive concerning 'the posting of workers' as a step towards avoiding distortion of competition linked to cross border employment.
13. The Committee recommends the development of an intensive programme to establish objective educational and training equivalence for all 'non-regulated' professions.
14. The Committee recommends the adoption of measures where practicable to prevent the loss of certain social welfare benefits and state pension entitlement when citizens change residence to another Member State.
15. The Committee recommends the adoption of a code of practice to accelerate the speed of cross-border payments and to reduce the associated costs.
16. The Committee recommends an urgent examination of public purchasing procedures in Member States to ensure that administrative requirements are not imposed on firms from other Member States which effectively act as barriers to trade.

1. Introduction

1.1. In a Resolution on the 1992 Internal Market Programme the European Parliament recommended to the Council that the Economic and Social Committee should constitute a forum for the future development of a Community action plan and should periodically analyze and study its progress and implications for the various categories of economic activity represented by the Committee.

1.2. The Commission supported this view in its Working Document on a Strategic Programme on the Internal Market. It stated that in relation to supervising the operation of the Internal Market and evaluating the effectiveness of Community rules that the Commission 'was prepared to work through the Economic and Social Committee which consists of representatives of all these groups and thus combines technical knowledge with the political sensitivity for an assessment of this kind'.

1.3. In its Opinions of 27 May 1993⁽¹⁾ and 22 September 1993⁽²⁾ the Committee accepted that it should be more involved in the process of ensuring greater transparency in the implementation of Community law. It would hold ESC hearings to which recognized interest groups representing consumers and the various categories of economic and social activities throughout the Union would be invited to present their experiences in the operation of Internal Market legislation to date.

1.3.1. The Committee also undertook to comment

periodically on the operation of the internal market to ensure that the objectives are being achieved.

1.4. The first annual report on the operation of the Internal Market in March 1994 provides an initial opportunity for the Committee to comment on the application of Community law regarding the Internal Market, and to identify the areas of greatest success and of greatest shortcoming.

2. General comments

2.1. There was a sharp increase in the rate of growth of economic output and employment throughout the European Community in the period 1986-90, coincidental the passage of the Single European Act in 1987. During this period economic growth in the European Community exceeded that in the United States. This was probably due to the interaction of interdependent factors such as the intensification of inter-European trading, increasing economies of scale in a larger market, and notably higher investment in anticipation of Internal Market effects.

2.2. The combined impact of the disruption and uncertainty caused by the break-up of the USSR and Comecon, the rapidly escalating costs of German reunification, the crisis caused by the Gulf war and the recession in the US brought this strong growth trend to a halt in 1992 and 1993 and thrust the Union into a recession from which it is only now beginning to recover. It is arguable that the improvement in the overall competitiveness of European industry arising from the greater economies of scale made possible by the completion of the Internal Market will enable the economy of the Union to recover more rapidly from the impact of these shocks than would otherwise have been possible. The Commission plans to carry out its first assessment on

⁽¹⁾ OJ No C 201, 26. 7. 1993.

⁽²⁾ OJ No C 304, 10. 11. 1993.

the macroeconomic impact of the Single Market in 1996 when it is hoped a clear picture will emerge. It is in this context that the first Annual Report of the Commission on the Internal Market must be assessed.

2.3. The full implementation of the Internal Market will provide a substantial boost to the competitiveness of the European Union leading to greater employment. Its impact on living standards is likely to be significant. However it is clear that there is still a considerable way to go in achieving the goal of a completely open Single Market. The expectations which existed at the time of passage of the Single European Act in 1987 have not yet been met. Many obstacles to the free movement of goods, services, people and capital remain. Furthermore it must be emphasised that the completion of the Single European Market is not just a matter of completing a limited and well defined legislative programme. The scope of the original programme needs to be enlarged and there must be continuous vigilance against the introduction of new barriers, Trans-European Networks need to be developed, and competition policy must be made more effective. Trade with third countries must also be cleared and monitored efficiently.

2.4. The Annual Report is divided into two parts. The first part is concerned with a description of horizontal issues such as the performance of Member States in the transposition of legislation, and the manner in which the Strategic Programme is being implemented throughout the Member States of the Union. The second part outlines the performance in 1993 in respect of the four freedoms: goods, personnel, capital and services and in particular in relation to sectors such as public procurement, transport, etc.

2.5. The Report states that 93% of the 282 White Paper measures have entered into force; that about 87% of the total number of transposition measures have been taken by Member States. However because of the lack of transposition by one or two Member States only half of the measures have been transposed by all Member States⁽¹⁾. The most important delays are concentrated in the areas of public procurement, company law, intellectual and industrial property and the insurance sector.

2.6. The Report states that the Internal Market is working but can and must be improved if it is to fulfil its promise. Apart from complaints relating to the continuation of identity controls on persons, it states that most public criticism has been concerning the temporary VAT regime.

2.7. This Committee's Opinion will provide background for the recommendations in the Commission's second report due for publication in November. This report will focus in greater detail on particular sectors and issues and will identify specific sectoral studies which should be conducted prior to the review of the internal market and of the operation of the Treaty on European Union in 1996.

2.8. Furthermore it is essential that all future reviews should take fully into account the need to complete the Internal Market throughout all Member States of the new European Economic Area which came into being on 1 January 1994.

2.9. Many earlier studies have been conducted regarding various aspects of the operation of the Internal Market. The main conclusions of a selection of these studies are outlined below.

3. Successes outlined in previous studies

3.1. There are many examples of the successful operation of the Internal Market demonstrated in previous surveys⁽²⁾. There has been a substantial increase in the volume of Intra-European Trading. Transport hauliers can testify to the reduction in transit time for intra-Union traffic. Certain telecommunications services have become more tradable. Industries have reported lower costs because labelling requirements have been harmonized. The cost of banking has been reduced as a result of increased competition resulting from freedom of establishment.

3.2. With respect to the free movement of goods:

- Time savings at borders have resulted in decreases in delivery times of up to 48 hours⁽³⁾ when supplying products to other Member States. As goods can now traverse borders round the clock they are no longer restricted by the opening hours at the customs' post.
- 52% of European directors surveyed in February 1994⁽⁴⁾ cited easier access to market products across the Community as a noticed benefit from of the Single Market.
- Substantial cost savings were made due to the abolition of customs' documentation and border controls⁽³⁾. 52% of European directors surveyed in February 1994 cited lower costs, a result of less red tape, border controls, etc., as a noticed benefit of the Single Market⁽⁴⁾.

⁽¹⁾ B: 89%; DK: 94%; D: 79%; GR: 75%; E: 81%; E: 84%; IRL: 80%; I: 89%; L: 83%; NL: 82% P: 84%; UK: 90% (EC Commission data).

⁽²⁾ Survey results must, of course, be interpreted with care.

⁽³⁾ Euro Info Centre Survey 1994.

⁽⁴⁾ European Directors Publ. *Financial Times*, February 1994.

- Improved economies of scale due to increased exports. Greater diversification of suppliers and customers⁽¹⁾.
- 73 % of European directors surveyed in February 1994 considered the opening up of public contracts to bidders from other EC countries to be either a very important or fairly important area of EC policy⁽²⁾.
- 88 % of European directors surveyed in February 1994 considered simplifying VAT procedures to be either a very important, or fairly important area of EC policy⁽²⁾.

3.3. With respect to the freedom to provide services and the freedom of establishment:

- Lower cost of transport, insurance, and intra-European Union banking transactions⁽¹⁾.
- 29 % of European directors surveyed in February 1994 cited easier to compete in world markets through European mergers and joint ventures as a noticed benefit of the Single Market⁽²⁾.
- 23 % of European directors surveyed in February 1994 cited easier transfer of research and development across Europe as a noticed benefit of the Single Market⁽²⁾.
- 86 % of European directors considered conditions for the physical transport of goods to be either a very important or fairly important area of EC policy⁽²⁾.

3.4. With respect to the free movement of capital:

- Directive 88/361/EEC provides for the complete liberalization of all forms of capital movement between Community residents. The Directive has been implemented by all Member States. Only one Member State was permitted to restrict certain short term capital transactions until 30 June 1994 in order to implement its economic stabilization programme.
- Surveys have indicated a view that it is now easier to invest in companies in other Member States.

3.5. The Economic and Social Committee's Opinion⁽³⁾ on Consumer Protection and Completion of the Internal Market stated that 'there are many inherent benefits for consumers in the removal of obstacles to the free movement of persons, goods and capital and

the creation of a Single Market: in general terms they should benefit from the increased competition brought about by the wider range of products on the market originating from all corners of the Community, with the lower prices which such competition implies'.

4. Shortcomings indicated in previous studies

4.1. Reference has already been made to many surveys documenting various shortcomings. The following is a summary of the main findings from a selection of them:

4.1.1. A 1990 survey in one Member State⁽⁴⁾ specifically investigated mutual recognition of national norms, to be dealt with under Article 100b EC. The survey indicated several hundred examples of barriers to trade in the Internal Market due to lack of mutual recognition.

4.1.2. A 1993 survey of some 700 companies in the same Member State⁽⁵⁾ found that approximately half of all companies in manufacturing industry were experiencing technical barriers to trade in the EC, mostly due to lack of mutual recognition of national norms.

4.1.3. A 1994 survey is currently in progress in another Member State⁽⁶⁾. As of May 1994, the preliminary conclusions are that mutual recognition of technical standards in the European Union still does not function adequately. Companies are obliged to certify their products once again for each market. The barriers are largest in the electronic and electrical goods sector.

4.1.4. In early 1994 the European Commission issued a press release outlining the experiences with the Internal Market of some 80 cases of companies who have been in contact with Euro-Info Centres. However, the responses are not limited to matters directly resulting from the Internal Market programme.

4.1.4.1. While companies in the survey generally appreciate the savings in time and money due to the abolition of border controls and the lower cost of transport, those reporting negative aspects tend to complain about lack of European Union standards, lack of mutual recognition of national norms, type-approvals, etc., and the cost of international payments. The change to the new VAT system and the reporting of Intrastat information has been costly to many companies.

⁽¹⁾ Euro Info Centre Survey 1994.

⁽²⁾ European Directors Publ. *Financial Times*, February 1994.

⁽³⁾ OJ No C 339, 31. 12. 1991, p. 16.

⁽⁴⁾ Confederation of Danish Industries.

⁽⁵⁾ Danish Ministry of Industry.

⁽⁶⁾ Confederation of Spanish Employees.

4.1.5. Eurochambres has published an April 1994 report on an European Union-wide survey of non-tariff barriers in the European Union, so far covering 2,000 companies in five Member States. Companies in general find the new VAT system to be an improvement, but many have experienced transitional problems. Intrastat reporting is considered burdensome. Problems with refund of VAT and the differing systems of fiscal representatives are criticized, but generally speaking European companies believe that trade has become easier with the removal of frontier controls.

4.1.5.1. Companies complain about refusal of Member States to recognize national standards and tests. The diversity of type-approval and certification procedures and the small number of recognized laboratories that can grant European type-approval are criticized. Firms believe that more information is needed on the mutual recognition of standards and their rights in this area.

4.1.6. The US International Trade Commission has published its 6th follow-up report on the Internal Market in January 1994. The report focuses strictly on Member State implementation of Internal Market rules, but interprets the Internal Market substantially wider than the European Commission, and includes some 600 legal measures in its survey, including flanking policies in the field of energy policy, social legislation, etc. The report cites the ongoing recession, monetary instability and difficulties in the ratification of the Maastricht Treaty as having fuelled uncertainty and implicitly delayed realization of the Internal Market.

4.1.7. The Economic and Social Committee's Opinion⁽¹⁾ on Consumer Protection and Completion of the Internal Market stated inter alia that 'in a number of cases, official statements do not reflect consumer realities. For instance, the idea of a frontier-free European area is difficult to reconcile with duty-free allowances for travellers, national quotas for certain products such as cars, obstacles to the provision of after-sales services and guarantees for cross-frontier purchases, or the problems encountered by consumers in cross-frontier banking transactions'.

5. Results of the ESC Hearing and Questionnaire — Remaining obstacles to completion of the Internal Market

Despite the well documented successes in creating a Single European Market there are still many obstacles

which remain to be overcome. These were indicated in responses received by the Economic and Social Committee to 200 questionnaires, and in the oral evidence given by over 40 of the participants representing national and European interest groups at a one day Hearing organized by the Committee on 30 June 1994. A total of 62 substantive obstacles were mentioned of which 32 referred to the free movement of goods, 15 to the freedom to provide services and freedom of establishment, 13 to the free movement of people and 2 to the free movement of capital. The following is a summary of the main issues which were raised in these monitoring exercises, and represent the views of respondents.

5.1. Free movement of goods

5.1.1. Standards

- There is insufficient application of the principle of the mutual recognition of standards in many areas. This leads to the persistence of technical barriers to trade e.g. in food additives, nutritional labelling, pesticide residues in fruit, electrical and electronic equipment, weighing equipment, and weights and dimensions of vehicles.
- Slow pace of production of EU standards within the framework of 'new approach' Directives e.g. building materials. Widespread complaints about the lack of standardization mandates for CEN.
- European product safety markings are interpreted differently at Member State level and give rise to different or additional national requirements.
- Different testing requirements in several Member States make additional tests on imported products necessary although these products have already been tested in the Member State of origin.
- Difficulties have been experienced due to the lack of recognition by national authorities of certificates of conformity for industrial products. Companies are questioning the competence of certain Member States' testing laboratories.
- There is a general tendency towards 'environmental nationalism' whereby the application of Member State environmental regulations act as non-tariff barriers e.g. the chemical industry, packaging.
- The method of implementation of the European Environment Mark (Ecolabel) is perceived by some to be a technical barrier to trade. The objectivity of environmental requirements is perceived as questionable by some manufacturers.

⁽¹⁾ OJ No C 339, 31. 12. 1991, p. 16.

- Additional labelling information is required in some Member States. There is a problem of 'label inflation' as the EU eco-labelling scheme can coexist with national labelling requirements.
- Concern was expressed about the non-uniform application of ecotaxes and packaging waste legislation throughout the European Union. Bans on secondary packaging in wrapping is a major barrier to trade for non-local companies.
- There is a lack of harmonization of legislation regarding the movement of waste, including toxic waste, throughout the European Union. At present some Member States may be dumping grounds for others.
- Non-harmonization of legislation for the use and release of biotechnology products constitutes an obstacle to the free movement of goods.
- European Union legislation regarding food additives is not applied in one Member State.
- Some Member States impose more strict health requirements e.g. pesticide levels in infant foods.
- Variations in consumer protection standards inhibit free movement of goods, for example there are different legal traditions in northern and southern Europe. Manufacturer's declarations are sufficient in northern Europe, whereas certification per individual product is required in southern Europe.

5.1.2. Public procurement

- Complex bureaucratic requirements in certain Member States effectively work as barriers to trade in the construction industry.
- Difficult in practice to get contract unless the company is established locally.
- For construction contracts some Member States require the submission with tender documents of a balance sheet not more than 6 months old.
- The thresholds for the publication of requests for tenders in the Official Journal are too high to ensure access for SMEs.
- Complaints about short delays between publication date and tender date.
- Difficulties are experienced by SMEs in getting access to tenders in other Member States due to stringent prequalification requirements.

- Translation problems often make it impossible for SMEs to respond to public tenders in other Member States within the prescribed period.

5.1.3. Taxation

- The application of VAT at destination rather than at source causes trade distortion due to different rules for local products. A better cash flow is achieved for imported purchases.
 - The transitional VAT system does not operate in a satisfactory manner. Costs are higher and the administrative burden greater than heretofore. There are concerns that the definitive system may also be too complex.
 - Different VAT rules in Member States create substantial difficulties. European distribution centres cannot be established due to severe VAT administrative burdens.
 - There is concern about the long delay encountered in some Member States to obtain the required information for determining VAT transfers between Member States, and also to obtain intra-European Union trade statistics. In one Member State it was reported that only 50% of returns had been received from firms in the first quarter of 1994 regarding products which had been despatched in November 1993.
 - To obtain VAT registration in some Member States as a prerequisite for obtaining orders, it is necessary either to have a resident office or to have obtained a contract. The stringent requirement for fiscal representation is a particular obstacle for SMEs.
- Many SMEs claim that they cannot work in other Member States because of differences between Member States in the application of the 6th VAT Directive.
- Farmers in one Member State having high VAT payment thresholds purchase a substantial amount of input materials in other Member States. There is a large difference in the purchase price due to a wide gap in VAT rates in adjacent Member States resulting in major losses for suppliers in the home Member State.
 - With continuing and significant variations in the tax exclusive prices of motor vehicles, obstacles created by dealers and/or manufacturers hinder the personal importation of vehicles in some Member States.

- There are wide variations in the production cost of products where energy represents a high proportion of cost, e.g. chlorine, crystal glass. This is due to different rates of excise duties on fuels used in the manufacturing process.
- There are wide variations in taxation on biofuels in adjacent Member States.

5.2. *Freedom to provide services and freedom of establishment*

5.2.1. Financial services

- It was argued that legislation is necessary to regulate financial services such as mortgages. An example was quoted of a person taking out a house mortgage with a company in another Member State not being allowed to offset the interest payments against taxation which would have been possible if the mortgage had been taken out in the home State of the mortgagee. Thus the taxation rules of some Member States effectively prevent cross-border transactions.
- Although the market for insurance services was opened on 1 July 1994, there are discrepancies in the taxes levied on insurance policies in the home Member State, ranging from 0% to 30%, resulting in a distortion of competition.
- An insurance company in one Member State refused to accept a liability claim for automobile equipment of a standard accepted in each of the Member States concerned because it was installed in another Member State. The Economic and Social Committee has adopted an Opinion on this issue⁽¹⁾.
- Differences in withholding taxes on interest at source distort trading between Member States, including transfers between parent companies and subsidiaries⁽²⁾.
- Banks in some EEA countries reported difficulties in setting up branches in some European Union Member States due to obstacles caused by national legislation.

5.2.2. Transport

- Variations in State aid to airlines.
- Aircraft noise limits vary considerably in practice between Member States leading to the imposition of a ban on noisy aircraft in some Member States.

- Different size pallets are required for the handling of air freight in some Member States.
- Discrepancy in treatment between companies which apply European Union transport hygiene requirements and those which do not due to the non-enforcement of the legislation.
- Different axle weights per country for road transport cause problems for international freight movement.
- Some passengers eligible for concessionary fares for rail transport must purchase tickets separately in each Member State, thus making it impossible to travel without interruption across frontiers.

5.2.3. Subcontracting

Distortion of competition in the construction industry, particularly affecting SMEs, when there is temporary transfrontier employment which does not respect host State legislation with regard to working and living conditions.

5.2.4. Energy

- Electricity supply and/or distribution monopolies and the lack of third-party access to the transmission network prevent competition.
- Differences in the treatment of public and private energy suppliers vis-a-vis competition from third countries are regarded as constituting distortions of the Internal Market.

5.2.5. Telecommunications

- Concern was expressed that freedom to provide voice telephony throughout the European Union is not yet permitted.

5.3. *Free movement of people*

- The mutual recognition of diplomas and certificates in practice applies only to the 'regulated' professions. There is a lack of mutual recognition in the non-regulated professions often requiring re-education. The definition of regulated and non-regulated professions is not the same in all Member States.
- Member State legislation reserves the right to give legal advice to members of the home State legal profession.
- A citizen of another Member State, who has paid the same social insurance contribution, is often not eligible for the same entitlements as a citizen of the

⁽¹⁾ OJ No C 339, 31. 12. 1991, p. 16.

⁽²⁾ CES 689/94 final, 6. 7. 1994 (ECO/190 'Report').

home State. In some cases citizens may forfeit certain entitlements if they reside in Member States other than their home Member State.

- Pensioners who change residence to another Member State often lose supplementary State benefits.
- There is no reciprocal recognition of pension contributions given to public officials who wish to take up a position in the public service of another Member State.
- Apprentices who go to another Member State for unpaid training can obtain only a 3 months residence permit as they are classified neither as students nor as employees.
- When unemployed people travel from their home Member State to another Member State, for example on a language training programme, they are not permitted to collect unemployment benefits in either State.
- Language barriers inhibit the free movement of people.
- Third country citizens find it to be almost impossible to obtain an educational qualification in a Member State other than their Member State of residence.
- Cross-border motorists entering some Member States are stopped and asked the nature of their business.
- Three lane motorways between Member States frequently contract to single lane carriageways at the border, thus inhibiting cross-border commuting to work.
- In one Member State motor car export documentation must be taken when a car is driven across the frontier of that Member State.
- Citizens of the European Union and non-European Union citizens of the EEA are treated differently at European Union airports.

5.4. *Free Movement of Capital*

- Cross-border payments are perceived as taking too long, being too expensive, and having costs which are not transparent. The Committee has adopted an opinion on this issue ⁽¹⁾.
- Complaints about the absence of a single currency.

6. **Synopsis of key findings of the Economic and Social Committee's Hearing and Questionnaire**

6.1. This first assessment by the ESC of the operation of the Internal Market has examined the situation in a constructively critical manner, and has identified a substantial number of issues which remain to be resolved. The following are some of the key findings of the ESC assessment.

6.2. *Regulation and Subsidiarity*

6.2.1. Respondents emphasized the need for transparency and consistency with regard to European Union legislation. Concern was frequently expressed about the unevenness of European Union legislation and its enforcement in the areas of human and animal health, product safety, consumer protection, standards and testing, taxation and environmental protection leading to distortions of competition in the Internal Market.

6.2.2. For example it was pointed out that there are different legal traditions for consumer protection in northern and southern Europe. In northern Europe a manufacturer's declaration of conformity is deemed to be sufficient while in southern Europe certification is required for each individual product. Harmonization at the level of the EEA is considered to be the only real solution.

6.2.3. It was noteworthy that no concern was expressed about over-regulation by the institutions of the European Union. On the contrary, it was considered that the concept of subsidiarity is often carried too far in the direction of decentralized regulation, the result of which is the creation of new barriers to trade between Member States.

6.3. *Standards and Testing*

6.3.1. Many companies and organizations reported difficulties in obtaining mutual recognition of Member State product requirements, testing and certification. Although European Union Internal Market legislation should, in principle, cover essential health and safety requirements, it appears that Member States often demand additional requirements.

6.3.2. Information about national standards is difficult to obtain. Widespread differences remain in the methods of approval, and in the scope and duration of approvals.

6.3.3. The application of Directive 83/189/ESC has been the primary instrument for preventing barriers to trade in the area of technical standards. However it is perceived as being too narrow in its scope. Difficulties have been experienced by the lack of recognition by

⁽¹⁾ CES 854/94, 6. 7. 1994, not yet published.

national authorities of Certificates of Conformity for industrial products. The competence of testing laboratories in certain Member States is called into question.

6.4. *Environment*

6.4.1. This issue emerged almost autonomously. Environmental legislation is perceived as posing a large number of obstacles to free trade. A significant number of respondents expressed concern about a trend towards a new environmental protectionism and the application of subsidiarity which were perceived as major dangers for the Internal Market.

6.4.2. There is an increasing number of product related national environmental laws, decrees or voluntary agreements. Many companies are concerned about 'label inflation' as the EU eco-labelling scheme can coexist with national labelling schemes.

6.4.3. Bans on secondary packaging and requirements to recycle packaging are perceived as making trading more difficult for non-local companies which have to transport products over long distances. The Committee refers to its recent Opinion⁽¹⁾ on the proposed 'Packaging Directive'.

6.4.4. The key issue is the existence of wide variations in the environmental requirements for products throughout the European Union. There is an urgent need for harmonization even at a higher level so as to ensure that the objectives of higher environmental standards and the completion of the Internal Market are balanced and complementary⁽²⁾.

6.5. *Value Added Tax and Excise Duties*

6.5.1. There is widespread concern about the difficulties caused by the application of VAT at destination. There are two main reasons for this concern.

6.5.1.1. The first is that it gives rise to distortions of trade as a better cash flow can be achieved by the purchase of products imported from other Member States. This distortion is amplified in cases where wide discrepancies occur between VAT rates in adjacent Member States, or when large quantities of products may be purchased legally without declaration of the VAT paid.

6.5.1.2. The second reason relates to administrative procedures which are very complex. In some cases, for example where fiscal representation is demanded requiring lengthy and expensive procedures in several Member States, the costs are prohibitive for SMEs. In

general the implementation of the transitional VAT control system has imposed additional administrative burdens on businesses.

6.5.2. Another cause for concern arising from the transitional VAT system, which imposes VAT at destination combined with the abolition of border controls, is the development of fraud and also the reduction in VAT revenue for some Member States leading to higher budget deficits.

6.5.3. Furthermore, different VAT rules in Member States cause substantial difficulties. Firms wishing to operate European distribution centres cannot do so without a severe administrative burden. There are widespread difficulties with consignment stocks, differing definitions of contract work, distance-selling operations. It appears that all but the most simple bilateral transactions have become administratively complex.

6.5.4. Trade distortions also occur due to discrepancies in excise duties on industrial materials in adjacent Member States. This is particularly relevant in the case of fuels and chemicals used in the manufacturing process.

6.6. *Other issues*

6.6.1. *Public Procurement*

Complex bureaucratic requirements in certain Member States effectively work as barriers to trade in the construction industry whether for public tendering, repair work, or for the establishment of a business. It is claimed that it is difficult to obtain a contract, unless the company tendering has a local establishment.

6.6.2. *Free Movement of People*

The main issues which were raised related to the lack of recognition of qualifications in the 'non regulated' professions; the loss of certain social welfare benefits and pension entitlements by citizens when resident in another Member State; and the lack of reciprocal recognition of pension contributions given to public officials wishing to work in another Member State.

7. *Conclusions*

7.1. The full operation of the Internal Market is crucial to economic and social development within the European Union. However, the expectations which existed at the time of passage of the Single European Act have not yet been met. It is essential that a vigorous programme be adopted to eliminate all remaining obstacles.

⁽¹⁾ OJ No C 129, 10. 5. 1993, p. 18.

⁽²⁾ OJ No C 332, 31. 12. 1990, p. 107.

7.2. There is need to achieve an appropriate balance between EU and national regulation. The implementation and control of existing regulation must be supervised rigorously. The responses to the hearing and questionnaire have pointed to the need for greater harmonization of legislation.

7.2.1. The Economic and Social Committee repeats its recommendation expressed in its Opinion on the Strategic Programme on the Internal Market ⁽¹⁾ that the use of Regulations rather than Directives is more appropriate to strictly technical provisions.

7.3. Directive 83/189/EEC has been the primary instrument for preventing barriers to trade in the area of technical standards. However this Directive applies only to proposals for national technical requirements introduced after the coming into force of the Directive. While the scope of the Directive was widened subsequent to its introduction, a further widening of its scope is necessary together with more intensive implementation and a greater emphasis on harmonization programmes.

7.4. There is at present no formal European Union mechanism for the systematic review of trade barriers. The Economic and Social Committee considers that a systematic Europe-wide inventory of these barriers in the European Union and the EEA is needed to understand the full extent of existing problems. This inventory would make possible the drawing up of a comprehensive working programme to eliminate the remaining barriers.

7.5. Until now there has been no obligation on Member States to notify the Commission when they do not recognize the equivalence of the national rules of other Member States. However, the Commission has put forward a new procedure for the exchange of information on national measures derogating from the principle of the free movement of goods within the Community. The Economic and Social Committee has strongly welcomed this proposal subject to certain modifications recommended to improve operational procedures ⁽²⁾.

7.6. Differences are emerging in the environmental provisions for products throughout the European Union. There is need to ensure an appropriate balance between the requirements of higher environmental standards and the completion of the Internal Market. The Economic and Social Committee recommends a greater harmonization of environmental standards, even at a higher level so as to ensure balance and compatibility between objectives of improved environmental requirements and the functioning of the Internal Market.

7.7. The complexity of the transitional VAT regime, the existence of different administrative procedures in Member States, inadequate administrative cooperation between Member States and wide variations in the rates of value added taxes between Member States are inhibiting the free movement of goods throughout the European Union. They also contribute to serious budgetary problems in some Member States.

7.7.1. The Committee recommends that measures be taken to achieve the maximum clarity, simplicity and consistency when introducing the definitive system so that all obstacles to intra-Union trade are eliminated.

7.8. There is an information gap regarding the rights of the various economic and social interests in relation to their rights in the Internal Market. Basic knowledge of when a barrier is legal or illegal would be useful.

7.8.1. The Committee recommends that easily understandable information about legal rights should be disseminated.

7.9. There are significant differences in the taxation treatment of certain financial services sourced in another Member State.

7.9.1. The Committee recommends that individuals who obtain house mortgage in another Member State should be given the same taxation allowance for interest payments as if they had sourced the mortgage in their home State. Similarly taxation on insurance premiums should be charged at the rate applicable in the home State of the insured.

7.10. The lack of mutual recognition of qualifications in 'non-regulated' professions is inhibiting the free movement of people.

7.10.1. The Committee recommends that an intensive programme be developed by the Commission to establish objective educational and training equivalence for all 'non-regulated' professions.

7.11. Cross border payments are perceived as taking too long, being too expensive, and having costs which are not transparent.

7.11.1. The Committee in its Opinion on 'Cross-Border Payments' ⁽³⁾ has recommended the development of a code of practice between the interested parties which would increase speed of payment, reduce costs and improve transparency.

7.12. Complex bureaucratic requirements for public purchasing in certain Member States act as barriers to trade.

⁽¹⁾ OJ No C 304, 10. 11. 1993, p. 10.

⁽²⁾ OJ No C 195, 18. 7. 1994, p. 6.

⁽³⁾ CES 854/94, 6. 7. 1994, not yet published.

7.12.1. The Committee recommends that an urgent examination be conducted by the Commission to ensure that administrative requirements are not imposed on firms from other Member States which effectively act as barriers to trade.

7.13. To avoid distortion of competition linked to temporary cross-border employment, it would be helpful if the Proposal for a Directive concerning the posting of workers in the framework of the provision of services⁽¹⁾ were accepted by the Council.

7.14. The loss of certain social welfare benefits and pension entitlements by citizens when resident in another Member State inhibits the free movement of people.

⁽¹⁾ OJ No C 225, 30. 8. 1991, p. 6; OJ No C 49, 24. 2. 1992, p. 41.

7.14.1. The Committee recommends that measures should be proposed by the Commission to remove these disparities, where practicable.

7.15. The Committee recommends that the Commission should publish annually a list of all complaints received about the imperfect functioning of the Internal Market, should comment thereon and state the action which it has taken or proposes to take.

7.16. Having completed this initial assessment in the context of the First Annual Report on the Functioning of the Internal Market, the Committee intends to conduct further analyses of specific areas prior to the publication of the Commission's Report next year.

7.17. The Committee considers that the operation of the Internal Market is crucial to economic and social development within the European Union. While much has been achieved, much remains to be done. The Committee hopes that the actions resulting from this assessment will lead to the elimination of the obstacles identified, and to the creation of a more equitable and transparent Internal Market.

Done at Brussels, 14 September 1994.

*The President
of the Economic and Social Committee*

Susanne TIEMANN
