

COMMISSION OF THE EUROPEAN COMMUNITIES

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REPORT OF THE COMMISSION ON THE IMPACT
OF COMMUNITY LEGISLATION ON BUSINESS
WITH SPECIAL REGARD TO SMEs

Improvement of the Business Environment, in particular for SMEs,
in the Community

Report from the Commission to the Council

Introduction

The objective of improving the business environment became part of express Community policy through the adoption of the SME Action Programme in 1986⁽¹⁾. The Council's Resolution on that programme contained a specific declaration on this objective. The first major actions adopted were the introduction by the Commission of the fiche d'impact system for all legislative proposals and the launching of a study on the obligations imposed by Community legislation on business and on SMEs in particular.

Since then the Community has on several occasions reaffirmed its commitment to this policy, notably in the Council Resolution of June 30, 1988⁽²⁾ and in the formal Council Decision of July 28, 1989⁽³⁾ on the improvement of the business environment and the promotion and development of SMEs. This latter decision gave formal general recognition to the business environment objective and was taken under article 235 of the Treaty which provides for the adoption of necessary policies not otherwise covered in the Treaty.

The administrative and legal environment in which business operates is not, however, created by Community legislation alone. Many of the areas which involve regulation of business lie entirely within the Member States competence. The Commission has created a Business Environment Committee, in which the Member States experts meet to discuss and exchange views and experiences with the Commission and each other on this subject. The work of this committee led to the preparation of the Commission's Report⁽⁴⁾ on measures taken by the Member States with regard to administrative simplification and to the proposal for a Council Recommendation⁽⁵⁾ on policy on this subject in the Member States.

It should also be noted that difficulties for SMEs from Community legislation often arise from the details of national implementing legislation rather than from directives themselves. Efforts to ensure simplification at national level are therefore important even where matters regulated at Community level are concerned.

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- (1) COM(86)445 final
 - (2) OJ C 197 of 27.7.1988
 - (3) OJ L 239 of 16.8.1989
 - (4) SEC (89) 726 final
 - (5) COM (90) 58 final

Action in relation to the improvement of the business environment can be divided into three broad categories namely, examination of legislative proposals, review of existing legislation and development of specific measures and actions. The current position within the Commission on action in relation to each category is reviewed hereunder and the note concludes with a review of the present position on the development of some specific measures.

Examination of legislative proposals

The Commission's examination of legislative proposals is particularly important in view of the relatively large programme pursued in the context of the internal market.

The fiche d'impact is the system used within the Commission for assessing the likely effects of proposals on business. The Commission completed a review of the system at the end of 1989 and introduced a number of changes. This mainly involves the following :

- All proposals are now covered by the system, even where the final legislation is adopted by the Commission rather than the Council (previously only legislation adopted by the Council was covered);
- An assessment is only made, however, where the proposal is likely to have a significant impact on business (previously an assessment was made for all proposals);
- Proposals which may have a significant impact on business are identified as far as possible in advance by reference to the Commission's Work Programme;

The main advantage arising from these amendments should be the targeting of the assessment procedure on the proposals in the Commission's Work Programme which have the most significance for business. Advance targeting should also stimulate early consultation of business by the Commission services so that the effects of any proposed legislation can be taken into consideration at the earliest possible stage. It is hoped to establish arrangements for advising both the services responsible for administrative simplification in the Member States and business organisations of the proposals targeted so that all concerned should be in a position to make their views known at the earliest possible stage.

The new arrangements should lead to an improvement in the quality of the fiche. It is to be hoped that Member States will make greater use of the fiche when proposals are discussed in Council. It should be remembered that in adopting the fiche system one of the principal aims was to ensure that in considering legislative proposals the Commission, Council, Parliament and Economic and Social Committee should have objective information available on the effects of a proposal on business. It should also be recalled that in its Resolution of 30th of June 1988 the Council emphasised the need for Member

States to take account of assessments in discussions in the Council.

Review of existing legislation

While examination of legislative proposals is clearly important it is existing legislation which establishes the current business environment. In addition examination of individual proposals is often too specific to allow a more general view of policy objectives and associated obligations on firms to be formed.

The above-mentioned study of the obligations imposed on business by Community legislation related to five areas : indirect taxation, competition, social legislation, environment and consumer protection. Based on extensive consultation with interested parties it covered national methods of implementing the legislation and the costs and benefits for businesses, particularly SMEs. A separate report from the Commission on the results of the study is annexed to this Communication.

The Commission will continue its efforts to identify areas where existing legislation imposes unnecessary obligations on business.

Development of specific measures

From time to time it may come to the Commission's notice that a particular problem exists for business in general or for SMEs in particular which requires specific action. To some extent treatment of these individual actions can run contrary to the general approach of reviewing broad policy areas as mentioned under the previous heading. Nevertheless it is considered that where such problems arise a certain flexibility should be maintained to allow for their immediate treatment.

The current position with regard to the development of some specific measures is outlined hereunder.

Present Position on Specific Measures

1. Company law

The Council Resolution of June 30, 1988 urged that further substantial simplification be made in the 4th Company Law Directive concerning annual accounts. The Commission's proposal for such simplification is however meeting with difficulties in the Council. It is important for the business environment that the Member States accept the proposal to make the current optional derogations for small companies mandatory.

The proposal also aims at excluding small closed companies from the scope of the Directive. Regardless of the Council's decision on the previous point, but particularly if the Council decides to maintain the optional nature of the derogations for small companies, it is important that the Member States accept that the obligations imposed by national

law on small closed companies do not exceed the minimum obligations imposed by the 4th Directive on small companies. Thus, small closed companies throughout the Community would have the benefit of the options.

In addition, it is important that the Member States accept a substantial increase in the thresholds which define small and medium enterprises in the 4th Directive to extend the accounting simplifications to a greater number of enterprises.

In considering this matter Member States are asked to balance their traditional approach to company accounts against their intention of seeking further substantial simplification in this field as declared in the Resolution of June 1988.

Nevertheless, some progress in the field of company law has been achieved with the adoption by the Council of the 12th Directive on single-member private limited liability companies⁽⁶⁾ which is of particular interest for smaller businesses.

2. "Economie Sociale"

As emphasised in the Commission's Communication on enterprises in "économie sociale" sector⁽⁷⁾ it is important to make available to this sector the means available to other enterprises to profit from the frontier-free market.

One of the first problems to be tackled is the question of the applicability of the provisions of the Treaty on freedom of establishment to enterprises in the "économie sociale" sector. The Commission is considering a communication on the interpretation of Article 58(2) of the Treaty with the view to clarifying its scope.

Moreover, a certain number of problems arise with regard to the development of cooperation between enterprises of this sector because of national legislation which is specific to them. In this context the Commission asked the Economic and Social Committee in January 1990 for its opinion on "the feasibility of a European statute capable of regulating mergers, holdings or joint subsidiaries between enterprises of the "économie sociale" sector". On the basis of that opinion the Commission will if appropriate prepare a proposal for such a statute.

3. Improvement of the Fiscal Environment for Enterprises

The Community Institutions have constantly urged that the general fiscal environment for enterprises and SMEs in particular be improved. The work carried out by the Institutions and other bodies concerned in the context of the European Year for Small Business in 1983, the SME Action Programme of 1986 and the studies made since then by the

(6) 89/667/EEC OJ L 395 of 30.12.1989

(7) SEC (89) 2187 of 18.12.1989

services of the Commission have enabled those aspects of the taxation of enterprises and of SMEs which need particular attention to be identified.

Improvement of these aspects, while a valid objective in its own right, also has an important role to play in the deepening of the internal market. It is essential that enterprises, and SMEs in particular, do not face fiscal obstacles to their creation or their development if they are to be able to benefit from the large market.

A. VAT

Simplified SME systems

At present in the Member States there is considerable diversity in the application of the Community provisions that allow small traders to be exempted from VAT.

The proposal submitted by the Commission in 1986⁽⁸⁾ on simplified VAT systems for SMEs provided for the introduction of a threshold of annual turnover of 10.000 ECU, below which firms could opt out of the VAT system. Member States could raise that threshold to 35.000 ECU. At the same time simplified procedures for the calculation and payment of VAT were to be applied to enterprises with a turnover of less than 200.000 ECU. As VAT is generally recognised as a major source of administrative burdens for enterprises, prompt adoption of this proposal is particularly important for smaller enterprises.

VAT System for Intra-Community Trade as from 1 January 1993

The Commission has just adopted new proposals on the issue of the VAT system to be applied to trade between Member States as from 1993. The new general system proposed would significantly reduce existing burdens on enterprises. From 1993, frontier controls will be suppressed and VAT arising from intra-Community trade will be declared and paid through the normal VAT returns. While the final objective remains the total elimination of differences between procedures for national and intra-Community trade, the Commission proposes that for a transitional period expiring at the end of 1996 the principle of taxation at the rate and conditions of the country of destination should be maintained.

The Commission proposes, however, that from 1993, purchases of exempt and non-taxable operators from other Member States should not be submitted to VAT of the country of destination except when the total annual purchases from other Member States exceed 35.000 ECU (70.000 ECU from 1995). The adoption by the Council of the proposed 22nd Directive would therefore permit small enterprises to benefit not only from a VAT exemption for their domestic transactions but also allow them to operate outside the general VAT intra-Community

(8) COM (86) 444

system if the amount of their purchases do not exceed the above-mentioned thresholds.

Abolition of fiscal formalities and associated documentation at the frontiers has been highlighted by the Institutions and Member States as one of the major benefits of the internal market. It is important that the Council adopt the Commission's proposals and that new administrative burdens should not be imposed on enterprises.

B. Direct Taxation

The more visible aspect of the Commission's work on direct taxation has, in the context of the establishment of the internal market by 1992, concerned measures aimed at ensuring that fiscal obstacles to cross-border activities are removed. The Commission has recently submitted to the Council and Parliament a Communication on the guide-lines it will follow in the matter of enterprise taxation. This sets out the measures which the Commission considers necessary to create a fiscal environment for enterprises adapted to the dual perspective of the creation of the internal market and its deepening.

The Communication confirms that the Commission will shortly make proposals on the inclusion of foreign results in those of parent companies and the suppression of withholding taxes on royalties and interest within groups of companies. These proposals will complement those already made regarding mergers, relations between parents and subsidiaries and double taxation.

Elimination of fiscal obstacles to cross-border activities is necessary for the benefit of all enterprises, including SMEs. A general improvement of the fiscal environment for enterprises, however, would justify that attention be given to some particular aspects of the tax systems which may hinder the creation or development of SMEs.

In most Member States non-incorporated enterprises are subject to personal taxation whereas companies are subject to a specific system. Non-incorporated enterprises constitute the majority in the Community and are mostly SMEs which are, moreover, the enterprises which depend to a greater extent on self-financing for their investments. The Commission has already referred to the possibility of allowing non-incorporated businesses to opt for taxation under the same conditions as companies in its Report in 1980⁽⁹⁾ on the scope for convergence of tax-systems in the Community. This could contribute to the reduction of fiscal charges on profits re-invested in SME and would increase fiscal neutrality with regard to capital injections. Moreover, non-incorporated enterprises are confronted by fiscal obstacles if they wish to change their existing legal status and incorporate. In terms of the harmonious development of the market it should

(9) Supplement 1/80 to the Bulletin EC

be noted that non-incorporated enterprises play a more important role in some Member States than others.

In the above-mentioned Communication the Commission also announced its decision to undertake a study of the necessity for other initiative which should take account both of the existing situation and the perspective of the integration of the Community and of the results of the major fiscal reforms of the eighties in the Community and elsewhere. The study will include an examination as to whether Community initiatives should concern one or more of the elements which make-up the taxation of enterprises, including differences in fiscal treatment linked to the legal form of an enterprise, (the other elements being the system of company taxation, the tax-base and tax-rates).

Finally, attention is drawn in particular to the fiscal treatment of the EEIG, an instrument developed to encourage cross-border cooperation between enterprises, and of special interest to SMEs. The Commission will shortly discuss with the EEIG Contact Committee the taxation methods which the Member States intend to maintain and will if necessary make appropriate proposals, so that this instrument can meet the success it deserves.

4. SMEs and Public Procurement

The liberalisation of public procurement is one of the principal features of the internal market programme. SMEs do not, however, participate in this very important sector to an extent commensurate with their share in the overall economy. Greater possibilities of participation would not only help to stimulate enterprise and small business development but would bring to public markets a significantly new and competitive element.

The Commission has therefore prepared a Communication on promoting SME participation in public procurement in the Community. Four categories of measures were examined : measures to promote the opportunities for SMEs to compete for public contracts, to lower the cost of participation, to provide information and training to the participants (SMEs and public authorities) and to discriminate in favour of SMEs.

Measures should facilitate and encourage SME participation and aim to increase rather than restrict competition. Accordingly, discrimination in favour of SMEs and against larger enterprises (by means of set-asides or price preferences for SMEs) is not recommended. Such systems either reduce or distort competition and indeed withdraw the incentive for SMEs to seek optimal efficiency.

The Commission considers that in the other three categories public authorities have at their disposal a sufficient set of instruments to ensure greater participation of SMEs in public procurement.

5. Competition Rules

There are two developments under this heading, both aimed at increasing the transparency of policy for SMEs

State Aids (Articles 92-94)

The Commission has always considered that promotion of SMEs is a valid objective of economic policy and has taken this into account in examining Member States proposals for aid systems. Member States proposals on aids to SMEs are however somewhat diverse and this has not helped the Commission in its task.

The Commission will therefore shortly prepare and issue a Communication on the guide-lines which will apply in assessing the compatibility with the common market of aids to SMEs.

Rules applying to Undertakings (Articles 85 and 86)

It is generally recognised that there is a need for improved information and advice to SMEs on these rules.

A guide is now being prepared and should be available shortly. This will be in an easily readable and practical format. It will highlight the protection afforded to SMEs against practices contrary to the competition rules and the many block exemption regulations, notices and communications issued by the Commission which allow for an application of the rules in a manner adapted to the characteristics of SMEs.

6. SMEs and Technical Standardisation, Testing and Certification

This is another area which becomes of increasing importance for SMEs with the creation of the internal market. SMEs often complain that they are not sufficiently informed on developments in this field. Some consider that they should be more involved in the actual development of policy including the elaboration of individual standards.

As regards information, the problem for many SMEs is probably that their needs are very specific and sporadic. They will not have the resources to sift through the vast amount of information to identify the items of particular interest to them. However it does seem that a general information campaign on the importance of this matter would be of assistance. The Commission services are examining the possibilities for such a campaign in consultation with the Community standard organisations. A study is also being commissioned to try to identify SMEs more precise needs.

Consideration is being given to the possibility of making better arrangements for targeting information to specific users. Existing organisations or net-works, such as the employer organisations or Euro Info Centres can play a valuable role in filtering information in this area through to specific members and clients.

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INTRODUCTION

1. Following a Council Request, the Commission undertook a study, with the help of outside consultants, and on the basis of their research extensive consultation with European business organisations, trade unions and consumer organisations. The study covered existing Community legislation in five fields: tax, competition, social legislation, environment and consumer protection. On the whole, some 100 Directives and 15 Regulations were examined. For each measure, the state of implementation at national level was reviewed, and the costs and benefits for business were analysed, with special but not exclusive regard for SMEs. The aim of this exercise was to identify the main obligations deriving from Community legislation, and to isolate these from obligations resulting from national implementing legislation.
2. The conclusions of this study have been widely publicised. The present report is intended to summarise the issues raised by the study, and more generally to present the measures which have been taken by the Commission to optimise the impact of Community legislation on business.

I. GENERAL CONSIDERATIONS AND MEASURES

Nature of Community legislation

3. Current developments in Community legislation must be seen in the context of the programme to complete the internal market. One of the fundamental objectives of this programme is to create a favourable environment for Community businesses by abolishing various costly obstacles to their development. SMEs bear a proportionately higher share of these costs than large firms and should therefore benefit greatly from the programme. Simplifications will take place in particular with regard to technical standards, with the general principle of mutual recognition, and to trade formalities, with the abolition of frontiers.

The Preamble to the Single European Act states the determination of Member States, not only to strengthen existing common policies, but also to pursue new objectives.

Priorities for Community legislation set out in the Single European Act include the "social dimension" of the internal market, cooperation in economic and monetary policy, research and development, and environmental protection.

4. While priorities for Community legislation are clearly established, it remains true that the Community legislative process and instruments can sometimes result in complexity.

Community Directives result from political compromises between Member States and this often leads to the use of imprecise concepts which are interpreted differently at national level. Moreover, Directives often allow several options regarding national implementation, which also results in differences between Member States. These - as well as amendments to the Directives - are factors of legal uncertainty for enterprises.

In addition, whereas business favours in principle harmonisation of national legislation, in order to eliminate competition distortions, it considers that a "false" harmonisation, allowing for still important differences between Member States, leads to the opposite effect.

5. The Commission and the Council should be aware of this fundamental weakness. They should endeavour wherever appropriate and possible to reduce the number of options left open to Member States in EC legislation and limit the possibility of divergent interpretations of certain concepts at national level. The fact remains, however, that in some fields such as workers health and safety (Article 118A of the EEC Treaty) or environmental protection (Article 130T of the EEC Treaty), Member States are free under certain conditions to lay down more stringent requirements than those fixed by Community legislation.
6. The Commission obviously agrees that Community legislation should only be prepared to meet a particular need within the Community and, to that extent, that a "necessity test should be applied to each legislative proposal. This test should notably take account of the principle of the "subsidiarity" of Community measures to national measures. However the "need" for Community legislation should not be interpreted in a narrow sense and should encompass all the objectives laid down in the EEC Treaty, as amended by the Single Act (see 3 above). In particular, the Commission retains its commitment to the harmonisation of existing legislation in Member States to improve the competitive environment and simplify procedures for business.

While harmonisation itself can lead to a simplification of the legal and administrative environment for Community enterprises, the need to avoid over-regulation should be borne in mind.

Consultation

7. The Commission also acknowledges that its legislative proposals should, as far as possible, be likely to enjoy the support of Member States, business, workers and consumers. This can best be achieved by early and extensive consultation and assessment of impact, so as to ease any difficulties within the proposal. The European Parliament and the Economic and Social Committee also play an extremely valuable role in the refining of proposals by bringing to bear their experience in the business and consumer world. By effective consultation, the resulting proposal will be more likely to be accepted and therefore complied with. This is clearly in the interest of all.

8. The Commission recognises the value of the Green Paper system as a means of consultation and debate, and often uses this procedure, as it has done recently for example with regard to copyright (1988) and telecommunications (1987).

The memorandum on the Statute for European companies, issued by the Commission in July 1988 (COM (88) 320), was used as a means to consult Member States, the European Parliament, the Economic and Social Committee, as well as all interested parties, about the major orientations to be followed on this project.

SME compliance

9. The Commission is of the view that SMEs should, in the interest of the public, comply with all general requirements like the protection of health and safety, consumers and the environment. This is in line in particular with the declaration annexed to the Single Act in relation with Article 118A, whereby it was agreed that SME workers should not be penalised vis-à-vis other workers with respect to health and safety.

However, the particular difficulties faced by SMEs may be eased by, for example: the reduction of administrative requirements; providing a longer implementation period etc. As far as possible, the Commission includes such measures designed to ease compliance for SMEs in its legislative proposals.

Information

10. Improved availability and diffusion of information should help to ease the apparent confusion of SMEs in some areas of Community legislation.

One method by which this is being achieved is through the Euro-Info Centre network. As decided in May 1989, the Commission is currently extending the network to improve communication with the Community's small and medium-sized businesses.

A number of publications are issued by the Commission to describe the state of Community legislation in various fields. A particular effort has been made to explain the legislation proposed or adopted as part of the internal market programme and a Commission data base on this subject is now accessible to the public (INFO 92). The publications can also be consulted via the SCAD data base, which is accessible to the public at large.

In order to reduce problems of interpretation of Community legislation, and thereby increase legal certainty for businesses, the Commission also issued guidelines on the interpretation to be given to certain articles of the EEC Treaty. Interpretative communications have thus been issued on the application of Article 30 in the sectors of pharmaceutical products, second-hand cars, and, more recently, food products. A communication on Article 58 is at present being considered with the view to clarifying the scope of the EEC Treaty's provisions on freedom of establishment. Communications on the interpretation given by the Commission to major European Court

cases are also issued, such as the Communication on the Cassis de Dijon case (free circulation of goods, 1980) or on the Gaston Schul case (double taxation of imported goods, 1986).

Existing legislation

11. The Commission has noted the comments and suggestions made in the consultants' report on the five specific areas of existing Community legislation and possible simplifications. It considers that, as far as simplification is concerned, existing legislation should be changed where the "benefits" from change outweigh any "costs" caused by that change.

While too frequent amendments of EC legislation should be avoided to limit the cost of adjustment for enterprises, it remains sometimes necessary to revise existing legislation for purposes other than simplification (eg. adaptation to technical or economic changes).

In any event, the Commission will continue its efforts to identify areas where existing legislation imposes unnecessary obligations on business.

12. The Commission retains its strong commitment to codify and thereby simplify and make more transparent existing legislation. Since 1987, all legislation with ten amendments should be codified and the Commission continues to encourage earlier codification where possible. Indeed the European Parliament, in its Resolution of March 1989 on the 1989 Commission Programme, calls on the Commission to submit a new proposal for a regulation which will allow for the codification of all legislative acts, given the multiplicity of Community legal acts and the need to make Community legislation more accessible to citizens, more transparent and understandable.

In addition, since 1989 the list of codified legislation is published in the Official Journal of the European Communities, C Series, every six months. It should be noted that in 1989 more than thirty legislative areas have been codified as against twelve in 1986. To a large extent this concerned agricultural legislation; the wine producing sector in particular has been codified in a more systematic manner during the last three years. The codification of the basic regulation on sheep and goat meats has just been published. In 1990 it is planned to codify the fish and beef and veal meats sector as well as milk and dairy products.

Other sectors included amongst the priorities for which draft codification is already well advanced include public procurement, access to the road transport profession, cosmetics, travellers' allowances as well as the consolidation of the twenty four directives on agricultural tractors or forestry vehicles into a unique codified text. A proposal concerning labelling and presentation of foodstuffs to the final consumer is already with the Council. Finally, a major effort is being undertaken to consolidate customs legislation in the Customs Code.

Impact Assessment

13. The Commission has been committed since 1986 to the assessment of the impact of proposals on business through the impact assessment system. In November 1989 the Commission decided to reinforce this procedure by concentrating it on proposals having a significant impact on businesses and by bringing within its scope measures within the Commission's own powers. The procedure encourages the Commission's services to take account of the concrete effects on enterprises of legislative measures from their very conception and allows the Community Institutions to take their decisions with full knowledge of the facts.

It is also important that Member States, business organisations, trade unions and other representative organisations, examine carefully draft proposals from the Commission and alert the services to any which, in their experienced view, are likely to have a detrimental effect on some aspect of business, employment and competitiveness. The difficulties may then be overcome, or at least recorded in the fiche d'impact to allow the Commission and Council to take them into consideration when making a final decision on the proposal.

National Implementing Legislation

14. The objectives of Community legislation will obviously not be reached if certain Member States do not implement it or implement it only partially at national level. This leads in particular to distortions of competition between enterprises established in different Member States. The number of complaints received by the Commission from individuals or enterprises has more than doubled in the past five years. The Commission is striving to speed up its decisions on these complaints. The Commission will continue to monitor closely the implementation of Community legislation at national level and use the legal means provided under the Treaty to ensure its observance by Member States. It has decided to give wider publicity to infringement proceedings started against Member States and it informs enterprises of the results of these actions.
15. Many of the difficulties encountered by business are the result of Member States' implementing legislation. The Commission will seek to ensure an increasingly uniform implementation of legislation within the Community. Member States will be encouraged further to enact implementing legislation which is unlikely to additionally burden business. This will improve the competitive environment and also ensure that SMEs throughout the Community will benefit from any special measures designed to assist them. The 1988 proposed amendment to the 4th Directive on annual accounts (COM(88)292 et COM(89)561), which would make simplification compulsory in all Member States, is a recent illustration.

National Administrative Simplification Units

16. Some Member States have initiated special units to try to encourage transparency in and simplification of national and Community implementing legislation. The Commission has been able to promote exchanges of views and experience between Member States and this is one way of identifying areas of difficulty and improvements which might be made. Member States without units like this are encouraged to set them up with the aim of working with the Commission to try to keep the burdens on all the Community's business to a minimum.

In 1989, the Commission submitted a draft Resolution to the Council which goes in this direction.

II. SPECIFIC MEASURES

17. Under this section, the Report deals with five areas of Community legislation which are particularly important and which correspond to the areas covered by the above-mentioned consultants' study.

Clearly, a number of measures taken in other fields of Community legislation have an impact on enterprises and have received the same attention from the Commission, such as the area of company law, mentioned under paragraph 15 above.

Tax legislation

18. Variations in practice between Member States are greater in the area of taxation than in any other area covered by the report. The Commission shares the view that greater harmonisation, in particular of VAT legislation, is a key instrument for the completion of the Internal Market.

Moreover, the Commission emphasises that the creation of the internal market should not lead to the introduction of additional formalities for enterprises engaged in intra-Community trade, whether with regard to VAT or excise. On the contrary, it should lead to a reduction in procedures and the Commission will submit revised proposals which go in this direction.

19. It should be noted that, although VAT is sometimes perceived by business as difficult to implement, it has, in many Member States replaced even more complex systems of indirect taxation applicable to enterprises.

Besides, account has been taken of the increased VAT compliance difficulties for SMEs in comparison to large business. To that end, the Commission has presented a proposition (COM (86) 444 final of 30 September 1986, amended OJ C 310 of 20.11.87) on VAT which includes the following obligatory measures :

- a VAT exemption for firms with an annual turnover below 10.000 ECU, and the possibility for Member States to raise this minimum level up to 35.000 ECU (unless the present system is more favourable)
- an option for SMEs below the above mentioned exemption level to fall under the normal VAT system
- the ability for businesses with an annual turnover of less than 200.000 ECU to opt for a simplified VAT system along the lines described in the proposal or under national schemes, if these are at least as favourable.

The Council has not been able so far to reach an agreement on this proposal.

20. There are still a number of differences in the implementation of the 6th VAT directive at national level. These are due on the one hand to certain imperfections of this Directive and to the fact that it leaves a number of options open to Member States, and on the other hand to problems of interpretation of certain provisions of the Directive. The consultants' report tends to demonstrate that the burdens of compliance with the 6th Directive for business depend largely on national implementing measures. The Commission thus continues its efforts to achieve a more uniform VAT system.
21. As regards existing VAT legislation, the regular meetings of the VAT Committee, made up of national and Commission officials, allow some harmonisation of national points of view, in particular on the interpretation of the 6th directive. It also enables Member States to agree on guidelines for the implementation of important provisions determining for example whether certain services are taxable, the place where the provision of services is taxable, exemptions, the basis of assessment, etc.

Reports on the work of this Committee are regularly communicated to the Council.

22. While certain divergences can be eliminated through dialogue between the Member States and the Commission, the latter is convinced of the need to abolish certain derogations allowed by the 6th Directive in order to achieve better harmonisation. This was the aim in particular of the proposal for an 18th VAT Directive, that has been partially adopted by the Council¹.

It still leaves derogations which will be the subject of a report from the Commission, to be examined by the Council before 1 January 1991, with the view to their abolition.

23. The proposed 19th VAT Directive² aims at interpreting certain concepts in the 6th directive such as permanent establishment or means of transport, and at specifying the extent of certain provisions.

¹ JOCE L 226 of 3.8.1989

² JOCE C 347 of 29.12.1984 amended COM(87) 315

24. Concerning the specific problems encountered by firms with the implementation of the 8th VAT Directive, (reimbursement of VAT charged in another Member State) the Commission has entered into discussions with certain Member States against which complaints were particularly serious and has obtained their commitment to amend current implementing practices.
25. As regards the tax free allowance for fuel, an agreement has already been reached for coaches and a proposal to raise the allowance for lorries is pending before the Council.

Competition legislation

26. In implementing its competition policy the Commission takes into account the size of the businesses concerned. Thus a "Notice concerning agreements, decisions of associations of undertakings and concerted practices of minor importance" was issued in 1977 and updated in 1986. Accordingly, agreements between SMEs operating mainly in local markets (defined by criteria related to market share and turnover) are excluded in principle from the application of Article 85 of the Treaty and do not need to be notified to the Commission. Besides, thresholds related to market share and turnover are also used to exclude specific types of agreements between SMEs from EC rules, such as specialisation agreements, R & D or exclusive distribution agreements.
27. Considerable efforts have also been made by the Commission in recent years to increase the transparency for businesses of EC competition rules. A number of block exemption regulations have been adopted, eg on patent licensing, R & D agreements, motor vehicle distribution and servicing, know-how licensing and franchising agreements. The Regulations on exclusive distribution (1983/83) and exclusive purchasing (1984/83) also contribute to clarify EC competition rules to the benefit of many large and small businesses.
28. The Commission believes that the drawing up of standard agreements to be used by SMEs in the most commonly met contractual situations, is not necessarily a good solution for SMEs. Whether an agreement is restrictive or not cannot be assessed out of context but must be examined in the light of all circumstances (e.g. existence of similar agreements, market share, potential competition, etc.). In particular circumstances, certain restrictions can be permitted which could not be included in a standard agreement for general use. Conversely, clauses which are generally unobjectionable can occasionally be quite restrictive. However, the existing block exemption regulations may serve as useful references for the drawing-up of agreements.
29. EC competition rules can offer an appreciable protection to SMEs, for example when they are involved in restrictive agreements or practices, or when they suffer from abuses of dominant positions.

The Commission agrees that action is required to improve the advice and information available to SMEs both on the protection afforded by the law and the applicability of the law to their agreements. An update of the 1983 brochure on EC competition law has just been published and is available in the Euro Info Centres.

30. Moreover, in December 1989, the Commission modified the "de minimis" rule on State aids. In raising the threshold of number of employees (150) and of turnover (15 million ECU) the Commission increased the number of aids which can benefit from the simplified and accelerated procedure for obtaining the Commission's agreement.

Social legislation

31. Under Article 118A of the EC Treaty, Directives on the health and safety of workers "shall avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings".

The Commission is of the view that the same degree of protection should be offered to workers regardless of the size of the enterprise. However, workers' protection should not unnecessarily restrict management flexibility. The Commission will take particular account of that requirement in applying its Action Programme for the implementation of the Community Charter for the basic social rights of workers³.

32. As regards social legislation in the road transport sector, improvements have been made through harmonisation of control methods (Directive adopted by the Council in 1989) and clarification of the 1985 regulations (proposal to amend).
33. Regarding other aspects of existing social legislation, the area for action would seem to be the provision of information and the clarification of terms and legislative concepts.

Environmental legislation

34. The objectives of action by the Community relating to the environment are set out in the Treaty (Art. 130R) and the Commission believes that there can be no question of compromising these general objectives. It does, of course, have a responsibility to keep Community legislation and its implementation under review.

It should, however, be noted that the Treaty (Art. 130R) requires that "environmental protection requirements shall be a component of the Community's other policies". The Commission therefore recognises that measures to relieve administrative and other burdens on small and medium enterprises must not involve a lowering of environmental standards.

³ COM(89) 568

35. Directive 85/337 introduces a procedure for studies of the impact on the environment of certain projects of a significant size. The Member States can extend that requirement to less important projects. (As to the enterprises concerned, the Commission estimates the study costs at 1 or 2% of overall investment costs - costs which are normally compensated by economic or other factors).
36. Legislation on the handling or destruction of waste can affect enterprises of all sizes. In the context of the Community strategy for the management of waste (SEC(89)934) the Commission is conscious of the need to reduce the charges on enterprise within limits compatible with an efficient protection of environment.
37. On major accident hazards (82/501), two revisions of the annex defining the substances and the application thresholds have been adopted by the Council (87/216/EEC of 19.3.87 and 88/610/EEC of 24.11.88) and the Commission is giving a high priority to a fundamental review of the annexes based on systematic criteria.
38. With regard to water legislation, the Commission is aware of the necessity to establish a more efficient mechanism to examine the problems of practical implementation of water directives. In this respect, it has introduced a proposal to the Council (COM(88) 752 final) aiming at establishing a regulatory Committee whose major functions will be to adapt to scientific and technical progress the requirements of certain water directives including Directives 80/778 on drinking water and 75/440 on surface water. This Committee would also assist the Commission, in an advisory capacity, on any question related to the implementation of those directives.

Consumer protection legislation

39. The Commission notes the recommendation made in the consultants' report for action to try to reduce the variation in implementation measures and encourage harmonisation and simplification in the following areas: Product Liability (85/374); Labelling (79/112); Quantities and capacities of pre-packaged products (80/232); Unit pricing of foodstuffs (79/581); Cosmetics (76/768); Food additives; Chocolate products.
40. The Directive on product liability provides that the Commission will submit a report to the Council every five years on its implementation, accompanied if necessary by appropriate proposals. In the framework of the first report, due in 1993, and in the light of experience, it will consider whether it is desirable and possible to amend some of its provisions to reduce its impact on business, especially SMEs, without challenging consumer protection.

41. As regards food legislation, legislation has been improved on several aspects during the past years. An essential modification of the Directive on labelling has been approved by the Council. It aims at eliminating existing derogations within two years of its adoption and also takes into account the products in store.
42. The Directive on additives has also been modified to allow for the adoption of a list of additives authorised at Community level and the definition of conditions of use. The EEC coding system will be extended worldwide as it has been adopted in the Codex Alimentarius (FAO, WHO); this is certainly an advantage for Community enterprises which are already used to it.
43. The recent Communication on the conditions of use of Article 30 to the food sector (JOCE C 271 from 24.10.89) should give producers and distributors of food products a better understanding of conditions which they must fulfil to benefit from free circulation of their products in the Community.

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