

IND/499

Brussels, 22 September 1993

**OPINION**  
of the  
Economic and Social Committee  
on the  
**Working Document of the Commission**  
**on a Strategic Programme on the Internal Market**  
(COM(93) 256 final)

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Memorized text.

On 7 June 1993 the Commission decided to consult the Economic and Social Committee, under Article 198 of the Treaty establishing the European Economic Community, on the

*Working Document of the Commission on a Strategic Programme on the Internal Market (COM(93) 256 final).*

The Section for Industry, Commerce, Crafts and Services, which was responsible for preparing the Committee's work on the subject, adopted its Opinion on 15 September 1993. The Rapporteur was Mr CONNELLAN and the Co-Rapporteur was Mr SCHMITZ.

At its 308th Plenary Session (meeting of 22 September 1993), the Economic and Social Committee adopted the following Opinion by a large majority with 3 abstentions.

## 1. Introduction

1.1. On 27 May 1993, the Economic and Social Committee adopted an initial Opinion on the Sutherland Report and the subsequent Commission Communication SEC(92) 2277 final which concentrated particularly on the ESC role in the implementation and further shaping of the Internal Market. At the time, the Committee decided to prepare an Additional Opinion which would focus on the detailed recommendations in the Communication and in the Sutherland Report.

On 2 June 1993 the Commission issued its Working Document on a Strategic Programme on the Internal Market contained in the Communication addressed to the Council and the Parliament<sup>1</sup>. This Communication incorporates the Commission's further and more comprehensive response to the Sutherland Report, and its views of the broader Strategic Development of the Internal Market.

The present Opinion takes account of this Working Document, the Communication from the Commission to the Council and the European Parliament on Reinforcing Effectiveness of the Internal Market (COM(93) 256 final). It develops the recommendations made in the first Opinion with regard to the Committee's role and also highlights the issues which the ESC considers are of greatest importance. The Committee will return to more detailed issues in the future.

1.2. The Working Document on Reinforcing the Effectiveness of the Internal Market states that the objective of the Community is the improvement of the living conditions of its citizens and that the strategy for the management and development of the single market should ensure that the legislative framework becomes an integral part of the environment for the citizens, the economic operators and the administrations; three objectives are identified:

- a) to respond to the expectations of the citizens in supporting job creation and economic growth, leading to improved social protection and working conditions;
- b) to ensure a competitive environment for enterprise guaranteeing free movement, but limiting legislative interventions to domains in which mutual recognition cannot guarantee the protection of the essential requirements;
- c) to ensure the single market's dynamic economic and social development bringing added value to the legislative acquis in acting on the factors which influence the dynamism of the market.

The Committee supports these objectives proposed by the Commission, since the success of the Internal Market ultimately depends on how much it contributes to increasing employment and prosperity throughout the Community.

1.3. The Committee considers it extremely important that the Internal Market should operate properly, as

this can do much to ensure that the Internal Market's socio-economic objectives are achieved in a balanced way. In its Communication on Reinforcing Effectiveness of the Internal Market the Commission provides a clear and concise analysis of the objectives of the Community and the Internal Market and of the problems involved in completing the Internal Market.

1.4. The Committee subscribes to the view that the Community's main task is improving the living conditions of its citizens. The operation of the Internal Market should indeed be judged from that point of view. It was above all concerned about stubbornly high unemployment which in the 1980s provided the impetus for efforts to improve the competitiveness of European industry by establishing a real Internal Market.

The Internal Market is not yet complete and, partly as a result of this, optimistic expectations with regard to its impact on growth, jobs and technological innovation have been only partly fulfilled.

1.5. The Committee agrees with the Commission<sup>2</sup> that "the Internal Market is part of a global Community policy and in this respect cannot be appreciated independently of the other Community policies which allow the community space to function without internal frontiers:

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

1.6. The full implementation of the Internal Market will be a key factor in bringing economic growth and jobs. But the dramatically high level of unemployment will not be significantly reduced without additional economic and structural policy measures. The Committee therefore places great hopes in the White Paper on Competitiveness and Employment to be considered by the European Council at the end of the year.

1.7. Workers in particular are greatly disappointed at the shortcomings in labour and welfare policies at Community level. Without a more active social policy distrust on their part in the Internal Market process will increase so much that not all the advantages of the Internal Market will be enjoyed because of increasing social conflict.

1.8. In times of economic crisis there is an urgent need for Member States and the representatives of the social groups to find an appropriate balance between the various interests involved in the implementation of the different Community policies.

1.9. This Opinion comments on the preparation of the drafting of the Internal Market legislation, its transposition into national law and its subsequent application by the Member States. In particular, the Committee undertakes an analysis of the two Commission Communications and the Sutherland Report's recommendations on:

- confidence of consumers, workers and entrepreneurs in the Community legislative process;
- the transparency and consistency of the Community legislative system;
- administrative and legal cooperation between the Community and the Member States; and
- subsidiarity.

1.10. Furthermore, the Opinion deals with other issues in the Sutherland Report, and the Working Document which comprises:

- Administration of the Community area, including achievement of the single market, managing Community rules, supervising the operation of the single market, organization of partnership with the Member

States, and transparency of Community measures.

- Developing the single market including a barrier-free environment, an active policy on standardization, a policy in the area of quality, measures to assist SME's, and external policy.
- Trans European Networks.

## 2. General Remarks

2.1. The Communication on "Reinforcing Effectiveness of the Internal Market" provides a clear and concise analysis of the objectives of the Community and the Internal Market and of the problems involved in completing the Internal Market. In addition, it sets out clearly the various initiatives needed for the Internal Market to function properly.

2.2. The Committee considers that the effective involvement of the citizens of the Community from the various categories of economic and social activity through their representative organizations is essential to the achievement of the objectives outlined in paragraph 1.2. above. It draws attention to the views of the Committee expressed in previous Opinions<sup>3</sup>. In particular, the Committee wishes to emphasize the need for effective monitoring, for the organization of a cooperative partnership between the Commission and the economic and social interest groups, and the means to ensure transparency in the application of Community legislation.

2.3. The Committee notes the broader perspective of the second Commission Communication which includes issues not addressed in the Sutherland Report such as the free movement of persons, the further development of the internal market and the establishment of Trans-European Networks. It regrets that the Commission does not give sufficient attention to the general political, economic and social climate. The formulation of a "strategic programme on the internal market" is not primarily a technocratic problem. The need is to develop a political strategy based on contemporary economic and social challenges. To this extent the working programme does not fulfil the requirements. In this respect the White Paper on a Medium-Term Strategy for Growth, Competitiveness and Employment is particularly important.

2.4. Little account is taken of points of contact with the Internal Market's immediate environment, e.g. as regards :

- the establishment of the European Economic Area, through which non-EC Member States will be involved in the management and development of the Internal Market;
- the EMS and EMU: the Internal Market will only be truly complete when there is a single currency;
- competition policy, which above all requires stricter supervision of national aids to industry;
- shaping social legislation;
- regional policy.

2.5. In a Resolution on the 1992 Internal Market programme, the European Parliament suggested to the Council that the ESC should constitute a forum for future development of a Community action plan and periodically analyze and study its progress and implications for the various categories of economic and social activity represented in the ESC.

In its Working Document the Commission develops this resolution. It states that in relation to supervising the operation of the single market and evaluating the effectiveness of Community rules "as regard contacts with the economic and social groups concerned, the Commission is prepared to work through the Economic and Social Committee, which consists of representatives of all of these groups and thus combines technical knowledge with the political sensitivity for an assessment of this kind".

2.6. The Committee welcomes this commitment by the Commission and intends to contribute to a very full extent to the task of evaluating the effectiveness of Community rules. In doing so, it is essential that the Committee has access to adequate means and resources to fulfil the function.

The active involvement of the ESC in the total process of evaluating the effectiveness of

Community rules from preparation to national implementation is necessary.

2.7. An omission in the Commission's Communication and Working Document is a significant statement about the role of governments in opening up the Community to its citizens. Nothing would do more to make the Community intelligible to its citizens than the positive promotion of its ideals, achievements and opportunities by the governments of its Member States.

### **3. Specific comments**

#### **3.1. Preparation of EC legislative instruments**

3.1.1. The ESC acknowledges the Commission's response to the Sutherland Report's recommendations on the reasons and criteria for intervention - in particular, on the need for action, effectiveness, proportionality, consistency and communication in relation to the action to be taken. It calls upon the Commission to work out a method for developing legislative proposals on the basis of these criteria. It did not give an adequate answer in its Working Document.

3.1.2. The Committee awaits the publication of the Commission's proposals for coordination of the legislative work in order to ensure more consistency and avoid fragmentation. The Community must also fulfil its objective of simplification and avoid the imposition of any undue administrative burdens on business, in particular on SMEs. This is also in the interests of consumers and employees.

3.1.3. The Committee notes the Commission's intention to undertake wider consultation than in the past. In its first Opinion, the Committee has urged that it be more involved in the preparatory stages of proposals before a Commission proposal is adopted. The Commission's intention regarding a legislative proposal should be notified to the Committee and referred for consultation and opinion with respect to the subject matter of appropriate items of envisaged legislation analyzed under each of the five criteria of need, effectiveness, proportionality, consistency and communication recommended in the Sutherland Report. Such referral and consultation should precede the detailed preparation by the Commission of a proposal for legislation. The publication of background analyses, and discussion papers will be essential in making this process effective. This should be more possible in future, as following the plethora of legislative measures necessary to meet the 1992 deadline the number of legal measures are likely to be fewer but more substantive.

3.1.4. The Committee repeats the views expressed in its initial Opinion (CES 602/93, point 5.2.2.) that:

- where important issues are concerned the relevant interest groups should be informed and invited to attend public hearings, well in advance of a Commission decision;
- as far as possible the Council working groups should only start examining the proposed legislation after publication of the ESC Opinion;
- specific advisory committees should only be consulted if the ESC is not suitable, owing to the special technical nature of the subject.

3.1.5. One big shortcoming in the preparation of EC legislation is that the most important legislator, the Council, generally meets in secret. This is unacceptable for democratic reasons and makes it harder for consumers, workers and entrepreneurs to understand the legislative process. The ESC therefore calls upon the Council to meet in public when it adopts legislation.

#### **3.2. Application of Community Law**

3.2.1. In its first Opinion, the Committee stressed that while the Council had adopted 95% of the legislation set out in the Internal Market White Paper, it was not clear to what extent this legislation had been transposed into national law and actually applied in all Member States.

Today only 49% Council adoptions which require national implementing measures have been implemented in all 12 Member States. Some Member States<sup>4</sup> have transposed a higher proportion than others. However the overall picture remains most unsatisfactory in certain sensitive areas, especially public procurement.

3.2.2. Having regard to the statistics concerning the transposition of Community to national law, the Committee considers that the relationship between the Commission and the Member State in this respect needs to be improved. It welcomes the increased use of regular exchanges of information and experience between the Commission and the Member State.

3.2.3. The Committee considers that the Commission has a role, in cooperation with the Member States, in promoting the transparency of Community legislation. For example, Directives allow some scope for variations in national legislation. The Commission has a role in promoting the awareness in each Member State of the transposition legislation adopted in the other Member States. While the Info. 92 Data Base provides general information on the 2000 pieces of legislation resulting from the transposition of Community Directives into national law, the provisions of detailed information is a more complex process and requires cooperation between the Commission and Member States, and the increased involvement of the Council.

Systematic action is necessary to promote awareness of transposition legislation among consumers, workers and business; and in giving publicity to inspection, monitoring and certification measures. The publication of the practical guide to the "new approach" for eliminating technical barriers to trade in the near future which will be followed by regular updates is a step in the right direction, and should concentrate on achieving simplicity in presentation.

3.2.4. The Committee welcomes the Commission's indication that it will strengthen the partnership arrangements with Member States by improved administrative arrangements particularly through the establishment of a permanent network of contact points which will handle infringements of Community law; lay down operational guidelines; deal with urgent problems; and will be jointly funded by Member States and the Commission.

3.2.5. The Commission has indicated that it will adopt an approach comprising:

- notification by Member States of implementing measures in respect of Community Acts including the administrative implementing rules;
- definition of objectives and procedures for administrative cooperation at the implementation stage for each area of Community legislation;
- drawing up guidelines for administrative cooperation;
- the preparation by the Commission of a support programme for administrative cooperation;
- a report to the Council and Parliament on the position with regard to cooperation between authorities, accompanied by supplementary proposals as required.

The Committee awaits the publication of the Commission's guidelines on administrative cooperation later this year and looks forward to commenting on their adequacy and effectiveness particularly from the point of view of consumers, employers and employees.

3.2.6. First the Committee underlines the need to check the effectiveness of national systems for monitoring the observance of Community legislation, especially in the fields of public procurement, social provisions and environmental, consumer and worker protection. The purpose of this is to ensure uniform application, thereby helping *inter alia* to put competition on an equal footing. The strengthening of Community skills-training and exchange programmes would also be useful in this context.

3.2.7. As regards the adequacy of the administrative cooperation arrangements, the Committee is prepared to conduct periodic investigations into perceptions and experiences of the organizations representing economic and social activity, including consumers.

3.2.8. In addition, the Committee insists that as the representative of the various economic and social categories in the Community, especially of consumers, employers and employees, it should be involved in the application of Community law.

3.2.9. As a first step in the process, it intends, at appropriate intervals, to hold ESC hearings to which a

number of EC representative organizations will be invited to present their experiences of the operation of Internal Market legislation to date.

It will also request submissions by appropriate means, from recognized interest groups representing consumers, employees, employers and other categories of economic and social activity throughout the Community regarding their complaints and suggestions in respect of Community legislative process. Such submissions could be made through the relevant national organizations represented on the ESC. Submissions may also be made directly. These suggestions could then be taken into account by the ESC in its Opinions when it is dealing with the Commission's regular progress reports on implementation of legislation, and in special discussions on topics linked to the operation of the Internal Market.

3.2.10. Differences in the operation of single market legislation are possible because of the scope for interpretation provided for in Directives. Such variations are more easily perceived in border regions where consumers and participants in social and economic activity are most aware. It is also noteworthy that 77% of the 1,545 complaints regarding the application of Community law in 1992 were made by private individuals or firms. The Committee, therefore, recommends that the Commission should undertake a series of pilot projects on each side of borders between selected Member States in order to identify differences in application of legislation (for example the Euregio Rhein-Maas and Saar-Lor-Lux), and their possible effects on economic and social developments.

3.2.11. The Committee is pleased that the Treaty on European Union will create an Ombudsman to receive complaints from any citizen of the Union concerning maladministration of Community Institutions or bodies, including the application of the Internal Market. The ESC trusts that the Ombudsman will be allocated the staff and organizational facilities in the Member States to fulfil the function properly<sup>5</sup>.

### **3.3. Access to Justice and Judicial Cooperation**

3.3.1. The Commission agrees that the provision of information on ways of seeking legal redress is a matter primarily for Member States, in accordance with the principle of subsidiarity, and it therefore concentrates its efforts on keeping firms, consumers and individuals informed through its publications.

However, the Committee notes that the Title VI of the Treaty on European Union gives the Commission a right of initiative in dealing with judicial cooperation between Member States. It recognizes that this is an issue of some sensitivity.

3.3.2. The Committee welcomes the Commission's initiatives to consider proposals on how to improve access to justice, and judicial cooperation. The European Court has reinforced its case law by allowing a plaintiff compensation for damage resulting from the non transposition of a Community directive.

The Committee looks forward to commenting on the Green Paper to be published later this year on the subject of improving access to justice.

3.3.3. The Committee supports the proposal to ensure greater conformity in the interpretation of Community law, similar access to justice, and greater judicial cooperation. Additional training should be made available on a voluntary basis for judges and lawyers on the transnational application of Community legislation, where possible within existing training structures. The Committee welcomes the Commission's willingness to support such programmes. In many Member States training in European law for legal and tax professionals is elective rather than obligatory. It is essential that all professionals, including officials, likely to be involved in the monitoring and application of Internal Market legislation are trained accordingly.

### **3.4. Improvements in Quality of Existing Legislative Instruments**

3.4.1. The Commission defines its legislative role as ensuring the implementation of provisions relating to free movement and the functioning of the Internal Market. However, it states that legislative interventions must be limited to those domains in which mutual recognition cannot guarantee the protection of essential requirements.

3.4.2. The Committee welcomes the Commission's proposals for legislative consolidation contained in the programme in February 1993, and notes also the need for equivalent and transparent consolidation at national level.



3.4.3. The Committee considers that there is need for substantial progress in improving certification and testing systems so as to ensure that all products marketed throughout the Community meet acceptable safety standards. Some Member States are a long way behind in catching up with safety, testing and certification procedures.

3.4.4. The Committee is broadly supportive of the recommendation contained in the Sutherland Report that the approach to Community legislation should comprise in the first instance "the use of Directives as a means of harmonizing national laws, taking account of their particular characteristics; and subsequently, where progress over several years has enabled a satisfactory degree of approximation to be achieved, to convert these Directives into directly applicable regulations thereby giving consumers, businesses and enforcement authorities a single point of reference for Community legislation".

3.4.4.1. However flexibility is essential depending on the nature of the legislation. The use in particular circumstances of regulations rather than Directives is more appropriate to strictly technical provisions rather than in those cases where for cultural and other reasons there are wide variations in legislation between Member States.

3.4.4.2. The wider use of regulations has advantages in ensuring greater transparency. Often interested parties do not know whether their legal rights can be enforced on the basis of European or national law, especially in cases where transposition may not involve national Parliaments. It is vitally important that the introduction of regulations is subject to democratic accountability. The extended areas of legislative competence for the European Parliament incorporated in the Treaty on European Union will be of considerable assistance in this regard.

3.4.5. It is understood that the Commission is planning to introduce a system of notification by Member States where recognition for their products has been refused on the basis of technical requirements and will publish its first report on the outcome of these notifications later this year.

The Committee will also incorporate an assessment of difficulties encountered regarding mutual recognition in the submission and hearing process referred to in the above paragraph.

3.4.6. The Committee also intends to comment periodically on the overall operation of the Internal Market to ensure that the objectives of strengthening the international competitiveness of European business, the improvement of living standards and of economic and social cohesion are being achieved. It proposes to carry out an initial examination in 1994 through a process of hearings and to update the analysis annually.

Initially these hearings will concentrate on examining the manner in which Community legislation is applied. The Committee notes the Council Resolution which recognized that the impact of the Internal Market legislation cannot be assessed accurately for some years and has asked for an initial economic assessment to be postponed until 1996.

### **3.5. Information and Communication**

3.5.1. The Committee strongly supports the view of the Sutherland Committee that the Commission needs to develop a communication strategy to ensure that the consumers, workers and businesses are properly informed about the legal rights and duties, and notes the recent Communication which the Commission has addressed to the Council, the Parliament, and the ESC on transparency within the Community<sup>6</sup>.

3.5.2. The Committee will comment on the Annual Report to be prepared by the Commission as recommended by the Sutherland Committee and will make specific recommendations on how the communication strategy might be improved.

## **4. Sections B and C**

4.1. For Section B of the Commission Working Document, the Committee is in broad agreement with the Commission's views and refers for more detailed information to its previous Opinion on the several subjects concerned. But it regrets that not enough has been said about the interaction with other Community policies, with the result that the measures suggested concerning the full implementation of the Internal Market appear insufficient (see paragraph 1.3.).



4.1.1. The Internal Market also has a social dimension which should be shaped partly by the Community and partly by governments and the social partners. The Committee finds no reference to the social dimension in the strategic programme. A fully developed social dimension will, however, contribute to the Internal Market. A vigorous Community labour market policy is important here. In its strategic programme the Commission ought to spell out its views on the link between the proposals contained in the Action Programme for the implementation of the Community Charter of basic social rights of workers on the one hand and the effective operation of the Internal Market on the other.

4.2. The Committee is concerned about the inadequacy of the approach to Trans- European Networks outlined in the Commission's Working Document. There is insufficient emphasis on the adoption of an integrated approach as consideration of interoperability has been restricted to interconnection; the decision making process is fragmented by sector and by region and does not take sufficiently into account the requirements of global Community policy as recommended previously by the Committee<sup>7</sup>. Furthermore, the finance required does not take account of Member States' contribution although the Working Document states that "initial ... estimates, put investment costs at ECU 20 billion a year".

## 5. Working procedures

5.1. In accordance with its Opinion of 27 May 1993 (5.26.), the Committee recommends that the Commission and the Council should conclude an agreement with the Committee on the working procedures. The agreement should:

- settle technical aspects of document submission arrangements, and the timing and coordination of the consultation procedure with Parliament and the Council;
- provide for possible consultation before the Commission finalizes its decision; and
- lay down criteria for consideration of the Committee's proposals by the Commission and the Council.

Done at Brussels, 22 September 1993.

The Chairman The Secretary-General  
of the Economic of the Economic  
and Social Committee and Social Committee

Susanne TIEMANN Simon-Pierre NOTHOMB

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### **Summary of the main recommendations**

1. The Committee welcomes many of the individual proposals in the Working Document. Overall, however, it does not meet the requirements of a "strategic programme on the internal market", since insufficient account is taken of the general political, economic and social conditions which are a prerequisite for the success of the internal market (in terms of an improvement in the living conditions of its citizens).
2. The close involvement of the various categories of economic and social activity in monitoring and advising on the implementation of the Internal market through the Economic and Social Committee can make a substantial contribution to maintaining a climate of trust and cooperation throughout the Community.
3. The Committee will contribute to a very full extent to the task of evaluating the effectiveness of Community rules. In doing so, it is essential that the Committee has access to adequate means and resources to fulfil this function.
- 4.. The Committee should have greater involvement in the preparatory stages before a Commission proposal is adopted. Appropriate items of envisaged legislation should be referred to the Committee for consultation. Where important issues are concerned the Committee would be prepared to host public hearings of the relevant interest groups.
5. The Committee should be more involved in the process of ensuring greater transparency in the implementation of Community law. As a first step, it intends, at appropriate intervals, to hold ESC hearings to which a number of EC representative organizations will be invited to present their experiences in the operation of Internal Market legislation to date.
6. The Committee will also request submissions, by appropriate means, from recognized interest groups representing consumers and the various categories of economic and social activities throughout the Community regarding their complaints and suggestions in respect of the Community legislative process.

7. Since variations in the operation of single market legislation are more easily perceived in border regions, the Committee recommends that the Commission should undertake a series of pilot projects on each side of the borders between selected Member States in order to identify differences in the application of legislation.
8. The Committee regards it to be essential that all professionals, including officials, likely to be involved in the monitoring and application of Internal Market legislation are trained accordingly.
9. The Committee broadly supports the process of gradually modifying the Directive approach to one based on Regulations where a satisfactory degree of approximation has been achieved as recommended by the Sutherland Report.
10. The Committee recommends an urgent global policy initiative to remove obstacles to the development of Trans-European Networks. This would ensure their more rapid development in an integrated manner, and would give a clear lead not only to citizens but also to the investors and financial markets concerned.
11. The Committee intends to comment periodically on the overall operation of the Internal Market to ensure that the objectives are being achieved.
12. The Committee recommends that the Commission and the Council should conclude an agreement with the Committee regarding working procedures on the legislative consultative process.

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<sup>1</sup> COM(93) 256 final

<sup>2</sup> See Communication on Reinforcing the Effectiveness of the Internal Market COM(93) 256 final, point 6 "Collectively defining a strategic programme".

<sup>3</sup> Consumer Protection and the Completion of the Internal market, OJ No. C ....  
The Consumer and the Internal Market, OJ No. C ....

<sup>4</sup> B: 89%; DK: 94%; D: 79%; EL: 75%; E: 81%; F: 84%; IRL: 80%; I: 89%; L: 83%; NL: 82%; P: 84%; UK: 90%  
(EC Commission data)

<sup>5</sup> See More democracy for Europe and its institutions; better information for citizens and socio-economic operators; role of the European Parliament's Ombudsman (CES 534/93 of 8 June 1993).

<sup>6</sup> COM(93) 258 of 2 June 1993.

<sup>7</sup> ESC Opinion on Trans European Networks - O.J No. C 14 of 20 January 1992

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