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4 November 1998 A4-0402/98

REPORT

on 'Single Market Scoreboard No 2' (SEC(98)0889 - C4-0444/98)

Committee on Economic and Monetary Affairs and Industrial Policy

Rapporteur: Mr José Manuel García-Margallo y Marfil

PE 228.236/fin.

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By letter of 18 May 1998 the Commission forwarded to Parliament its document entitled 'Single Market Scoreboard No 2' (SEC(98)0889 - C4-0444/98).

At the sitting of 15 July 1998 the President of Parliament announced that he had referred this Communication to the Committee on Economic and Monetary Affairs and Industrial Policy as the committee responsible and the Committee on Legal Affairs and Citizens' Rights for its opinion.

At its meeting of 21 January 1998 the Committee on Economic and Monetary Affairs and Industrial Policy had appointed Mr José Manuel García-Margallo y Marfil rapporteur.

It considered the Commission document and the draft report at its meetings of 12 October 1998 and 28 October 1998.

At the last meeting it adopted the motion for a resolution by 46 votes, with 1 abstention.

The following were present for the vote: von Wogau, chairman; Garosci and Secchi, vice-chairmen; García-Margallo, rapporteur; Areitio Toledo, Argyros (for de Brémond d'Ars), Arroni, Barton (for Berès), Billingham, Bowe (for Caudron), Camison Asensio (for Carlsson), Cars (for Cox), Christodoulou, Donnelly, Ettl (for Harrison), Fayot, Friedrich, García Arias, Gasoliba I Böhm, Glante, Glase (for Fourçans), Goedbloed (for Larive), Hendrick, Herman, Ilaskivi, Konrad, Kuhne (for Imbeni), Langen, Lienemann (for Katiforis), Lulling, Mather, Mann T. (for Hoppenstedt), Metten, Miller, Murphy, Peijs, Pérez Royo, Randzio-Plath, Rapkay, Read, Riis-Jørgensen, Rübig, Skinner (for Kuckelkorn), Tappin (for Paasilinna), Theonas (for Ribeiro), Thyssen and Watson.

The Committee on Legal Affairs and Citizens' Rights decided on 2 September 1998 not to deliver an opinion.

The report was tabled on 4 November 1998.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

A
MOTION FOR A RESOLUTION

Resolution on 'Single Market Scoreboard No 2' (SEC(98)0889 - C4-0444/98)

The European Parliament,

- having regard to the Commission document entitled 'Single Market Scoreboard No 2' (SEC(98)0889 - C4-0444/98),
 - having regard to the Commission Communication entitled 'The impact and effectiveness of the single market' (COM(96)0520 - C4-0655/96),()
 - having regard to the Commission Communication on the Action Plan for the Single Market (CSE(97)0001, C4-0286/97),()
 - having regard to its resolutions of 29 May 1997() and 20 November 1997() on these Communications,
 - having regard to the report of the Committee on Economic and Monetary Affairs and Industrial Policy (A4-0402/98),
- A. whereas the Action Plan for the Single Market listed all of the measures which were essential if the Single Market was to be completed before the establishment of the single currency,
- B. whereas the second Scoreboard demonstrates the considerable progress that has been made in implementing this Action Plan,
- C. whereas, as the deadline for completion of the Plan approaches, some of its essential objectives have nonetheless not been achieved and clearly will not be between now and the end of 1998,
1. Congratulates the Commission on producing the Scoreboard, which is an excellent instrument for measuring the state of implementation of the Action Plan and, hence, the progress made in establishing the Single Market;
 2. Notes with satisfaction that a significant number of the Action Plan's legislative objectives have been achieved (in particular, liberalisation of gas supply and protection of biotechnological inventions) and that several others are in the process of being achieved (including the directives on collective investment funds and copyright and authors' rights in the information society);

(¹) OJ C 20, 20 January 1997, p.364.

(²) OJ C 222, 21 July 1997, p. 2.

(³) and 20 November 1997(⁴) OJ C 182, 16 June 1997, pp. 15-62.

(⁵) on these Communications,) OJ C 371, 8 December 1997, pp. 171-216.

3. Notes, however, that other measures will not be able to be adopted before the deadline, including the proposals on free movement of persons and tax harmonisation;
4. Notes with concern that 15% of the legislation adopted on the Single Market has not yet been transposed in all the Member States;
5. Calls on the Commission and Council, in their respective spheres, to do their utmost to ensure that as many of possible of the remaining objectives are met by 31 December 1998;
6. Calls on the Council in particular to adopt the directives pending on the European company statute;
7. Calls on the Commission to draw up by the beginning of 1999 a new Action Plan aimed at completing by the end of 2002, i.e. in parallel with the establishment of the single currency, a fully integrated Single Market with the characteristics of a national market;
8. Takes the view that this plan should comprise an initial phase of one year (1999) for the completion of all the objectives of the 1997 plan which have not yet been achieved, and a second, two-year phase (2000-2001), which would be used principally to establish a common VAT system based on harmonised rates and on the principles of payment at the place of origin, and full freedom of movement of persons;
9. Recommends, where the Treaty permits, that the use of majority decision-making procedures in the Council should be provided for in this plan in order to facilitate the adoption of legislative measures;
10. Recommends likewise, in order to avoid the difficulties created by the need to transpose the directives into national law, that the legislative form of the regulation be used in preference to that of the directive, again where the Treaty permits;
11. Calls on the Commission to draw up for each Member State a complete list of the directives which have not yet been transposed, with a note on the reasons for the delay, and to publish these lists;
12. Calls on the Commission likewise to draw up on the basis of these lists a plan to make good the transposal deficit in regard to directives concerning the single market, providing in particular for infringements to be systematically penalised and for proceedings to be initiated in the Court of Justice within a maximum period of six months, and to take the necessary measures to fulfill that commitment;
13. Calls on it, finally, to examine the possibility of fining States which have failed to meet their transposal obligations and to apply the concept of direct effect to certain provisions of directives not transposed by the expiry of the deadline;
14. Calls on its President to forward this resolution to the Commission and the Council.

B

EXPLANATORY STATEMENT

The 'Action Plan for the Single Market' of June 1997 provided for the progress made in implementing it to be measured every six months in a 'Scoreboard' presented by the Commission. Now that two of these Scoreboards have been published (November 1997 and May 1998), Parliament should take this opportunity to express an opinion on the progress made on the Single Market. Set against the Action Plan's objectives, the situation revealed by the second Scoreboard and the developments registered since its publication (which will be set out in a new Scoreboard, to be published shortly) suggest at one and the same time that significant success has been achieved and that there are still lacunae which call for fresh action to be taken.

I. THE ACTION PLAN FOR THE SINGLE MARKET

By 31 December 1992 the Single Market programme as presented in the 1985 White Paper had, in its essentials, been completed: most of the legislative measures provided for had been adopted by the Community institutions. But the measures not adopted related to some important areas; in addition, transposal into national law of the legislation adopted was considerably behind schedule; and finally, it had now emerged that some measures not envisaged in 1985 were necessary. These shortcomings explain the Commission's repeated moves since 1993 to complete the process of establishing the Single Market in reality.

The starting point for this 'post-92' assessment was the Commission Communication on Reinforcing the effectiveness of the Single Market (June 1993), followed by the Strategic Programme on Getting the most from the Single Market (December 1993). In these texts the Commission identified not only what remained to be done from the 1985 programme, but also measures not envisaged in this programme, but nevertheless necessary for the completion of the Single Market.

Since then the Commission has presented an annual report to Parliament and the Council on the state of progress of the Single Market. In 1996 this report took the form of a communication entitled 'The impact and effectiveness of the Single Market' (October 1996), which served in its turn as the basis for the 'Action plan for the Single Market' of June 1997. On the basis of the survey undertaken by the communication, the Action Plan made it its fundamental aim not only to complete the 1985 programme by implementing its unfinished components, but also to go beyond this programme to arrive at a 'truly integrated Single Market' by the launch of the timetable to establish the single currency, i.e by 1 January 1999.

A. The Action Plan divides this basic objective into four '**strategic targets**' under the headings:

- Making the rules more effective
- Dealing with key market distortions
- Removing sectoral obstacles to market integration
- Delivering a Single Market for the benefit of all citizens

To put it more clearly, the aims were:

(1) in the area of legislation:

(a) to make good the main deficits by adopting:

- the measures still missing from the 1985 programme: transport, energy

- others not provided for in 1985 but necessary for the establishment of a genuine internal market:
 - completely free movement of persons
 - integrated tax system
 - European company statute
 - protection of biotechnological inventions
 - (b) to simplify legislation in order to make it more effective and more easily applicable by operators
- (2) transposal and application of legislation at national level:
- stepping up action against delays and deficiencies in the transposal of directives
 - ensuring that legislation is properly applied, particularly by putting in place effective instruments to rectify infringements of the rules.
- B. In order to achieve these objectives, the Action Plan provided for well-defined '**actions**' to be implemented in accordance with a precise timetable of deadlines divided into three main stages:
- (1) Very short term (1 October 1997): urgent non-legislative measures to be taken by the Member States, including:
- (a) drawing up programmes to eliminate delays in transposing legislation
 - (b) setting up structures to receive complaints from individuals and businesses.
- (2) Quickly: adoption by the Community institutions of legislative proposals already at an advanced stage of discussion:
- European company
 - biotechnological inventions
 - information society services
 - liberalisation of the gas market
- (3) by 1 January 1999: agreement on the other important legislative measures:
- collective investment funds
 - distance selling of financial services
 - establishment of a common VAT system.
- C. Progress in implementing the Plan would be reported in a twice-yearly '**scoreboard**' presented by the Commission, and should be looked at at every meeting of the European Council and the Single Market Council.
- D. As we know, the Action Plan was approved by the European Council at the Amsterdam summit (June 1997) and was the subject of a European Parliament resolution (November 1997) adopted following a proposal from the Committee on Economic and Monetary Affairs and Industrial Policy. This resolution of course welcomed the Action Plan as an 'important step' in the completion of the Single Market, but took the view that it did not go far enough. It referred to an ambitious vision of the internal market set out in the report by Parliament's Economic Affairs Committee (von Wogau report). A truly integrated internal market should operate in the same way as a domestic or national market, i.e. have:
- a single currency
 - a harmonised tax system

- integrated infrastructure
- complete freedom of movement of persons
- legal instruments enabling businesses to act effectively at the level of the internal market, particular a common company statute

The resolution thus stressed the shortcomings of the Plan and called for vigorous action to achieve more ambitious goals.

II. THE SCOREBOARD

As compared to the first (November 1997), the second Scoreboard shows fresh progress in the execution of the Action Plan, but also continuing shortcomings both in the legislative process and in the transposal and implementation of legislation at national level.

A. Legislation

- (1) Bearing in mind the important legislative measures still pending at the time of presentation of the Action Plan, we note **completion or substantial progress** the following areas:
 - (a) adoption of directives on:
 - late payments (25 March 1998, i.e. some months later than the Action Plan deadline)
 - liberalisation of gas supply (22 June 1998)
 - supplementary pensions (29 June 1998)
 - protection of biotechnological inventions (6 July 1998)
 - (b) progress on:
 - collective investment schemes: proposal for a directive presented by the Commission in July 1998 (i.e. once again, 6 months later than the Action Plan deadline)
 - copyright and authors' rights in the information society: the Commission presented the proposal for a directive on time and it is currently under discussion in Parliament.
- (2) On the other hand, there are **serious delays** in some areas:
 - (a) the most serious, perhaps, concerns the European company statute: a great deal of progress had been made, but the agreement that had been hoped for was not reached at the Single Market Council of 18 May 1998. The draft regulations on European statutes for cooperative, association and mutual societies have suffered the same fate.
 - (b) The proposal for a directive on cross-border mergers has not yet been published. If the Commission presents it, as planned, at the end of September this will be nine months after the Action Plan deadline.
 - (c) As we know, the proposals needed to make possible full freedom of movement of persons are still pending:
 - as far as the abolition of internal border controls, restrictions on the right of establishment and the right to travel within the Union are concerned, consideration of the proposals for directives submitted to Parliament is dependent upon a resolution of the uncertainties surrounding incorporation of the Schengen arrangements in the Community system;

- for the same reason, the Commission has not yet presented the planned legislative proposals adapting the texts on the right of residence, but in this case the Action Plan deadline (end of 1998) has not yet been overrun.
- (d) A crucial area in which, as we know, a great deal still remains to be done is taxation. The adoption of the planned 'package' of measures is, it is true, under way. In December 1997 the ECOFIN Council gave its agreement in principle to most of the measures and, in particular, approved a code of practice on taxation of companies. **The Commission, for its part**, presented punctually the planned proposals for directives on the elimination of distortions linked to the taxation of interest income and on a common system of taxation applicable to interest and royalty payments made between associated companies.

It also presented proposals aimed at reducing variations in excise duties on petroleum products and tobacco. But no agreement was reached on these proposals in the Council. As for duty on alcoholic drinks, we have not even reached the proposal stage.

Most importantly, the fundamental fiscal problem in establishing a truly integrated market, namely the creation of a VAT system with harmonised rates based on the principle of payment at the place of origin, has not yet been resolved.

The Commission has presented proposals for preparatory measures: changing the status of the VAT committee; mutual assistance with recovery; reinforcing administrative cooperation (Fiscalis programme), which was adopted by the Council and Parliament in March 1998. But the proposals on changing to an integrated VAT system have not yet been published.

B. **Transposal of legislation into national law**

Delays in the transposal of Community legislation into national law was one of the weakest points in the process of completion of the Single Market reported by the Action Plan. The objectives it set with a view to rectifying the situation have mainly been met, but the situation is still unsatisfactory.

(1) Insufficient action by the Member States

- (a) **The overall transposal rate** has shown considerable progress, increasing from 65% when the Action Plan was published (June 1997) to 73% at the time of the first Scoreboard (November 1997), 82% at the time of the second Scoreboard and over 85% now. But this still means that almost 15% of the texts (i.e. about 220) have still not been transposed by all the Member States, sometimes in important areas such as telecommunications, intellectual and industrial property, transport and public works contracts.

The Member States did, it is true, comply with the obligation laid down by the Action Plan to submit by October 1997 **transposal timetables** for catching up on the legislative backlog and meeting the new deadlines. But not many of them succeeded in meeting the deadlines they had set for themselves in these timetables. Also, some of the timetables submitted were incomplete, so that the Commission had to ask the Member States concerned to repeat the process, which brought about an improvement. The

Commission is watching the situation carefully in the hope that the transposal process will be virtually complete by the end of 1998.

(2) Action against infringements

In the Scoreboard the Commission describes the procedures initiated in the event of failure to transpose legislation, and reports on the difficulties experienced.

- (a) Procedures for failure to transpose or incorrect transposal have increased in number, with the Commission having more frequent recourse to them than in the past and not hesitating to apply all the stages: letter of formal notice, reasoned opinion and referral to the Court of Justice.
- (b) But these procedures are undermined by lack of cooperation from the Member States, which
 - fail to respond to the Commission's communications (15% of cases) or, more often, do not reply within the time limit,
 - do not comply with the substance of the Commission's requests, so that it is often forced to make a referral to the Court of Justice,
 - do not always act even on the decisions of the Court of Justice, so that new infringement procedures have to be opened.

All of this lengthens the process, which, in the event of referral to the Court of Justice, often last between 5 and 8 years.

C. **Application of legislation**

Transposal of Community legislation, even if properly carried out, is not of course enough to ensure its correct application. The actions of the different parties involved (civil service departments, businesses, individuals) may cause problems or even involve infringements of the rules of the Single Market. The Action Plan therefore included measures to deal with these eventualities: better information for interested parties and problem-solving procedures, including appeals procedures and simplification of the rules. Most of these have been put into practice.

- (a) All the States have set up the **coordination centres** provided for in the Action Plan to deal with problems in implementing the rules of the Single Market.
- (b) They have also supplied the Commission with the necessary information on their **national structures and procedures for implementing the legislation**.
- (c) They have set up **contact points** where businesses and individuals can ask for help with problems.
- (d) On the other hand, the Commission has not yet set up the planned **Internet information centre** for businesses (July 1998 deadline).
- (e) The Commission had undertaken to **follow up infringements** more actively, whether in response to complaints or on its own initiative. And indeed it defined measures for this purpose in its communication 'Making Single Market rules more effective'. But here again it has run into the problems already described in connection with transposal infractions.
- (f) One way of improving compliance with legislation, whether at Community or national level, is to simplify it. The goals set out by the Action Plan to this end (as part of the 1996 SLIM project) have almost all been achieved. But the SLIM project itself is only progressing slowly: in particular, the proposals presented by the Commission with a view to lightening the administrative burden on businesses

(supplying statistics, product nomenclatures, etc.) met with a lukewarm reception from the Member States.

- (g) Another important project designed to remedy a serious problem encountered in applying the rules of the Single Market was the establishment of a **mechanism for intervention by the Commission to eliminate certain obstacles to trade**. The aim, as we know, is to give the Commission the means to take effective action to combat actions by national authorities or private individuals which seriously impede the free movement of goods and do major damage to economic agents. This mechanism was not provided for in the Action Plan, but is entirely in keeping with the objective of completing the Single Market. It was the subject of a proposal for a Council regulation presented by the Commission in November 1997. This text offered a very effective solution since it envisaged giving the Commission the power to impose measures on the Member States by decisions which would be immediately enforceable in domestic law. The Council unfortunately rejected this proposal, replacing it with a non-binding warning system. The amended text, which is currently being considered by Parliament, represents only slight progress.

III. CONCLUSIONS AND PROPOSALS

The Scoreboards are an excellent way of measuring progress in completing the Single Market in relation to the goals set out in the Action Plan. But the information it provides is not always entirely encouraging. The Action Plan is not being put into practice at the rate envisaged: two-thirds of the way through its implementation period, only 23 undertakings out of 62 have been met. The Member States, the Council and the Commission must all accept a share of the blame for these shortcomings. It is now clear that they cannot possibly all be made good by the target date of 31 December 1999. We must therefore envisage a new plan in a number of stages.

- A. **Immediately**, i.e. by the **end of 1998**, we can call on the Council to complete its work on the important pieces of legislation still pending but at an advanced stage:
- the European company and related texts
 - transparency mechanism for information society services
 - copyright and authors' rights in the information society
 - late payments.
- B. **From 1 January 1999 until 2002 a new action plan** is called for: this will be the period over which the single currency is being established and it is important that this should coincide with the completion of the Single Market in a fully integrated internal market comparable to a domestic market.
- (1) This plan would consist of two stages:
- (a) In 1999:
- adoption of all legislation provided for in the Action Plan (1997) and not yet adopted at 1 January 1999;
 - substantial progress on VAT and free movement of persons;
 - completion of transposal of legislation in all Member States.
- (b) In the next two years (2000 and 2001):
- establishment of an integrated VAT system based on harmonised rates and the origin principle;
 - the establishment of full freedom of movement of persons

- (2) If it is to succeed, this plan needs appropriate funding:
- (a) in the case of legislative proposals not yet, or very recently, presented by the Commission:
- ensure, where possible, that the legal base allowing a qualified majority Council decision is chosen;
 - choose the legislative form of the Regulation in preference to the Directive, where the Treaty permits, in order, of course, to eliminate the problem of transposal.
- (b) In order to guarantee national transposal of legislation:
- the Commission would draw up a full account of the situation in each country and industry, consisting of detailed information on delays and their causes and the quality of transposal measures. These national 'monographs' would be published;
 - on this basis the Commission would draw up an action plan based on maximum use of its Treaty powers
 - systematic legal action in the event of infringements
 - strict compliance with the timetable for each stage of the procedure
 - we might also envisage:
 - the possibility of fining offending States (on the basis of Article 100a);
 - invoking more frequently the direct effect of directives in the event of failure to transpose by the due date.