

# **WHITE PAPER PREPARATION OF THE ASSOCIATED COUNTRIES OF CENTRAL AND EASTERN EUROPE FOR INTEGRATION INTO THE INTERNAL MARKET OF THE UNION**

## **Executive Summary**

The present White Paper forms part of the pre-accession strategy for the associated countries of central and eastern Europe which was adopted by the Essen European Council in December 1994. Its purpose is to provide a guide to assist the associated countries in preparing themselves for operating under the requirements of the European Union's internal market. Alignment with the internal market is to be distinguished from accession to the Union which will involve acceptance of the *acquis communautaire* as a whole.

The White Paper identifies the key measures in each sector of the internal market and suggests a sequence in which the approximation of legislation should be tackled. However a merely formal transposition of legislation will not be enough to achieve the desired economic impact or to ensure that the internal market functions effectively after further enlargement. Accordingly, equal importance is attached to the establishment of adequate structures for implementation and enforcement, which may be the more difficult task. The inclusion of legislation in the fields of competition, social and environment policy, parts of which are essential to the functioning of the internal market, will ensure a balanced approach.

The associated countries themselves have the main responsibility for alignment with the internal market and will establish their own sectoral priorities. But the Union is already providing assistance, notably through PHARE, for the approximation of legislation and this should now be enhanced and adapted to the White Paper's recommendations.

Additional help will be provided, notably through a new technical assistance information exchange office, managed by the Commission and supported by a multi-country PHARE programme. This office will facilitate the provision of assistance, by setting up a database on alignment with the internal market and related assistance, which will be accessible to all interested parties, and by acting as a clearing house to match requests for assistance with advice and expertise available in the Union. Such assistance will come from the Commission, the Member States and private bodies. The White Paper provides for the coordination of assistance and the monitoring of progress in implementing its recommendations.

Alignment with the internal market is expected to reinforce economic reform and industrial restructuring and to stimulate trade and commerce. The White Paper outlines the steps to be taken by the Commission, the associated countries and the Member States to ensure that these benefits are achieved.

## **1 Introduction**

### **The pre-accession context**

1.1 To help meet the challenge for the associated **countries of Central and Eastern Europe (CEECs)** of preparing their accession to the European Union, the Essen European Council of

December 1994 adopted a broad pre-accession strategy. The Council identified the preparation of the associated countries for integration into the internal market as “the key element in the strategy to narrow the gap” and invited the Commission to prepare a White Paper. From the Union’s point of view, the importance of this process lies in the need to create the conditions that will allow the internal market to function properly after enlargement, to the benefit of all members.

1.2 The White Paper represents only one strand of the pre-accession strategy set out in the Essen conclusions. That strategy relies on two main instruments: the Europe agreements and the structured relationship between the associated countries and the institutions of the European Union. The associations established by the Europe agreements will, in the view of the contracting parties, help the CEECs achieve the final objective of becoming members of the Union. The agreements include the objective of progress towards realising between the parties the economic freedoms on which the Union and in particular its internal market is based. They foresee specific efforts towards alignment with the EU and include provisions concerning the approximation of legislation.

1.3 The structured relationship with the institutions of the Union complements the bilateral association agreements with a multilateral framework for strengthened dialogue and consultation. The Essen European Council underlined that the structured dialogue should help to develop practical cooperation between the Member States and the associated countries. Such cooperation and the opportunities for sustained dialogue which it offers will be important in supporting the process of preparing the CEECs for integration into the internal market.

### **Background and purpose of the White Paper**

1.4 A White Paper on preparation for the internal market was first proposed in two Commission Communications of July 1994<sup>1</sup>. The purpose was to set out a programme for meeting the obligations of the internal market which could be followed by each associated country and monitored by the Union. It was emphasised that this would be done in partnership with the associated countries and that each associated country would need to draw up its own programme of priorities and timetable. The Commission further stressed the magnitude of the task of approximation and the need for close co-ordination and for technical assistance. The Member States could contribute their expertise, including those who had most recently undergone the process of approximation of laws in preparation for accession to the Union.

1.5 The task of approximation can only be carried out by the associated countries themselves. In seeking to assist them with this task, the White Paper recognises the progress that has already been made in all the CEECs, in particular under the impulsion of the Europe agreements. The CEECs are establishing co-ordinating mechanisms that will push forward and oversee the approximation process and comprehensive legislative strategies that reflect their own interests and priorities. To assist their planning and programming, the White Paper goes beyond a simple listing of the relevant legislation. It identifies the key measures in each sector and suggests the sequence in which approximation could be tackled. This is the White Paper’s first specific contribution to facilitating the task of approximation in the CEECs.

1.6 In endorsing the proposal for a White Paper on preparing the CEECs for integration into the internal market, the European Council recognised that this involves more than the approximation of legislation. The Essen conclusions refer to “the creation of the conditions for establishing a

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<sup>1</sup> Documents: 13 July 1994 (COM(94) 320 final)  
26 July 1994 (COM (94) 361/3)

single market” and describe the tasks faced by the associated countries, including putting into place “legislation and regulatory systems, standards and certification methods compatible with those of the European Union”. Beyond the approximation of legislation, the White Paper therefore highlights and describes the structures which will be necessary to make the legislation effective. This is the White Paper’s second contribution.

1.7 It was further recognised at Essen that the CEECs would need assistance to accomplish this task. Assistance with the approximation of legislation is already being provided by the Union to the associated countries through PHARE, within the framework of the Europe agreements. The White Paper shows how this assistance can now be enhanced and adapted to support the pre-accession process and to reflect the recommendations of the White Paper. It provides guidelines for the content and organisation of an intensive and coherent programme, in which the Member States are invited to play their full part. This is the White Paper’s third specific contribution.

### **The legal context**

1.8 As an element in the pre-accession strategy, the White Paper is not part of negotiations for accession and does not prejudge any aspect of such negotiations, including possible transitional arrangements. Accession negotiations will cover the whole field of Community legislation and policy, whereas the White Paper’s focus is on those Community measures which create and maintain the internal market.

1.9 Nor does the White Paper change the contractual relationship between the Union and the CEECs, which is based on the Europe agreements. As provided for in the agreements, the approximation of legislation is monitored by a specific Sub-Committee. The agreements are dynamic, with some steps towards closer integration taking place automatically after a specified period and others which could be negotiated, including for example mutual recognition agreements.

### **The economic context**

1.10 The European Council also emphasised that sound macro-economic policies are essential to the success of reform and of the pre-accession strategy. Progressive alignment with the Union’s internal market policies will reinforce the competitiveness of the CEECs’ economies and increase the benefits of transition thus contributing to the achievement and consolidation of macro-economic stability. The immediate requirement is to adjust the sequence and pace of legislative approximation in each associated country so that it reinforces economic reform.

1.11 Economic reforms in Central and Eastern Europe are developing the institutions which provide the foundations of a market economy. They include a system of legal and commercial rules (for example commercial code, property law, bankruptcy legislation, contract law, consumer law) which ensure both legal security and transparency for economic operators. They also include the institutions such as firms, markets and regulatory bodies which make possible decentralised financial intermediation through private agents. Further progress with privatisation is crucial in this context. Efforts to create a better qualified workforce are also a key element for the success of economic reform and the transition to a market economy.

1.12 Aligning with the Union’s internal market legislation goes further than the economic reforms necessary to put in place a market economy. It aims to facilitate the integration of the economies of the CEECs, which are at different stages of development, but which are all still in transition, with the industrial market economies of the Union. It will require more time both for legislating

and for building the institutions needed to ensure the actual implementation of new laws and to monitor progress. Consolidation of judicial reform in the CEECs is also part of this process. Without the necessary institutional changes, the adoption of internal market legislation could result in a merely formal transposition of rules. This would not be an adequate basis for the mutual confidence between all participants on which the internal market depends. Nor would it achieve the real economic impact and benefits which the associated countries are seeking.

1.13 The sequence and pace of the strategy adopted by each CEEC for its gradual alignment with the Union's internal market legislation will need to be regularly reviewed to maintain coherence with its economic reform efforts. More transparent competition and trade policies harmonised with the Union's policies over the medium term will also be needed to support the progressive integration of the EU and CEECs' economies and, at the same time, favour economic reform.

### **The approach and structure of the White Paper**

1.14 The White Paper is focused on the legislation which is essential for the functioning of the internal market. It presents this legislation in a way which shows the key measures in each sector and those measures which should be tackled first, but it does not attempt to establish priorities as between sectors. It also describes in some detail the administrative and organisational structures which are required in each sector if the legislation is to be effectively implemented and enforced.

1.15 The White Paper is addressed to the six countries which already have association agreements (Poland, Hungary, the Czech Republic, Slovakia, Bulgaria and Romania) and will apply equally to those which are negotiating Europe agreements with the Union (currently the three Baltic Republics, which have initialled agreements, and Slovenia). The White Paper is a general reference document which does not adjust its recommendations to the requirements of any particular country. Each CEEC will establish its own priorities and determine its own timetable in the light of its economic, social and political realities and of the work it has achieved so far.

1.16 The White Paper is presented in two parts. The first part analyses the purpose, context and nature of the exercise in political terms, and indicates how it may be followed up. The second part in Annex is the detailed presentation of Community legislation in the internal market area.

**Chapter 1:** the present chapter describes the context, scope and approach of the White Paper.

**Chapter 2** provides a background picture for the exercise. It identifies the essential characteristics of the internal market and explains its importance. It describes how Community law has tackled the dismantling of various kinds of barriers to free movement; and it discusses the fundamental role of competition policy in relation to the internal market

**Chapter 3** describes how legislation relevant to the creation and maintenance of the internal market has been selected and prioritised for the purposes of the White Paper. The chapter explains how the sector by sector fiches in the Annex have been prepared and their purpose.

**Chapter 4** describes in broad terms the situation in the CEECs, in relation to both legislation and structures and identifies some particular difficulties they face in achieving alignment with Community rules and practices.

**Chapter 5** concerns the continuing assistance which the Union will provide to the CEECs to support their efforts to prepare for the internal market and indicates a new delivery framework within which existing EU measures could be strengthened, supplemented and made more coherent. Particular attention is given to achieving closer co-ordination with Member States' technical assistance activities.

**Chapter 6** indicates the benefits which implementing the White Paper's recommendations can be expected to bring; and the action to be taken by the Commission, the associated countries and the Member States to ensure that these benefits are realised.

## **Annex**

This larger volume contains the sector by sector analysis of the key items of relevant Community legislation, explaining the purpose and development of legislation in each sector, describing the structures that are necessary to ensure its implementation and enforcement and suggesting the sequence in which legislation in each sector might be tackled. The Commission believes that the emphasis on how to ensure that the legislation is made effective is an important message for the associated countries and one which will be helpful to them and ultimately to an enlarged Union in achieving real rather than simply formal alignment.

## **2 The Internal Market and the Pre-Accession Phase**

### **The importance of the internal market in realising the objectives of the Union**

2.1 The Community's internal market is not an objective in itself, but rather one of the principal instruments for achieving a whole series of objectives: balanced and sustainable growth respecting the environment, high levels of employment and social protection, better standards of living and quality of life and economic and social cohesion.

2.2 The internal market serves these objectives by enhancing the economic performance of the participating economies in the Community. It achieves this by promoting a more efficient allocation of the factors of production; allowing a larger scale of production and the exploitation of resulting economies; improving economic performance through greater competition; and providing a stimulus to investment.

2.3 Economic integration achieved in a frontier-free internal market goes further than other forms of cooperation, such as free trade areas, customs unions and common markets which retain their physical frontiers. It thereby maximises its positive economic impact. The legislation which, taken globally, provides the legal framework for achieving these economic effects has therefore been chosen as an area to which the associated countries should give particular attention in their preparations for accession.

2.4 An internal market without internal frontiers relies on a high level of mutual confidence and on equivalence of regulatory approach. Any substantial failure to apply the common rules in any part of the internal market puts the rest of the system at risk and undermines its integrity. This is another reason for making particular efforts to establish the right conditions for such legislation to be applied.

2.5 The goal of alignment with internal market rules and practices does not preclude a selective and gradual approach, to reflect the conditions in each CEEC and to safeguard their efforts to complete the process of economic transition and achieve macro-economic stability. Indeed, it is essential that the associated countries should adapt the pace of their approximation programmes to the process of economic reform.

## Principles

2.6 The internal market of the Union is defined by Article 7a of the Treaty as an area without internal frontiers in which the free movement of goods, persons services, and capital is ensured. It is also a market with a social dimension and one in which active competition is encouraged. Any systematic checks and controls that are necessary to ensure compliance with the rules take place within the market and not when national borders are crossed. The Treaty lays down the basic rules which ensure that these conditions can be achieved:

- **Article 6** prohibits any discrimination on grounds of nationality as between Member States and their nationals;
- **Article 8a** establishes the right of citizens to move and reside freely within the territory of the Community;
- **Articles 9-12** require the abolition of customs duties and taxes having equivalent effect on exchanges between the Member States;
- **Articles 30-36** prohibit quantitative restrictions and measures having equivalent effect on trade in goods and establish the conditions for exceptions;
- **Article 37** forbids discrimination by State monopolies;
- **Articles 48-51** establish the principles which ensure the free movement of workers, Articles 52-57 ensure freedom of movement and freedom of establishment for self-employed people and Article 58 for companies;
- **Articles 59-66** provide for the freedom to offer services;
- **Article 67**, later replaced by **Article 73b**, provided for the abolition of restrictions on the free movement of capital;
- **Articles 85/86** prohibit anti-competitive behaviour by undertakings which could otherwise negate the effects of the internal market; **Article 0** ensures that the competition rules apply to public undertakings and undertakings granted special or exclusive rights;
- **Article 92** establishes strict conditions for aids granted by states to their undertakings to protect the integrity of the internal market;
- **Article 95** concerns the obligation of Member States not to discriminate infiscal matters.

2.7 Also fundamental to the evolution of the Union's legal structure are the principles established by the European Court of Justice in its rulings interpreting the Treaty. One such principle was established by the Court in its landmark "Cassis de Dijon" ruling of 1979: the **principle of mutual recognition**. Any good circulating legally in one Member State must also be free to circulate in any other part of the Community, except where a Member State can demonstrate that the rules of the Member State of origin do not afford equivalent protection of the essential public good. The application of this principle ensures the free movement of many types of goods and services within the Community without recourse to legislation at the Community level.

2.8 Rulings of the Court have also been important in interpreting certain terms in the Treaty, such as measures having an "equivalent effect" to quantitative restrictions (Article 30 et seq) and the prohibitions, restrictions or limitations on free movement allowed on various public policy grounds (Article 36, Article 48.3 etc). Such interpretations have facilitated the creation and maintenance of the internal market without further legislation in a large number of non-harmonised sectors.

2.9 The application of these principles has involved the removal of physical, technical, fiscal and tariff barriers. The Treaty itself provides that the creation of the internal market must be a gradual process. The removal of physical controls at internal frontiers (itself not yet complete in relation to the free movement of persons) only became possible once Member States had agreed on arrangements to carry out by other means and in other places the controls which had been applied in many cases at the frontiers themselves.

2.10 The creation of the conditions for the free movement in the Community of goods and services, and to a lesser extent of persons and capital, could not be fully achieved only by applying the Treaty, the Court's interpretations of the Treaty and the principle of mutual recognition. More detailed secondary legislation has also been required where wide differences between rules and practices in the Member States represent obstacles to free movement. The Community legislator must respect the principle of subsidiarity, only legislating at the Community level where the same or better effect cannot be achieved at the national or regional level.

2.11 National rules generally pursue legitimate public policy goals shared by all Member States, for example public security (which includes combatting crime, fraud and illicit trade), the protection of public health and safety, the protection of the environment, consumer protection, the preservation of public confidence in the financial services sector and the guarantee of suitable qualifications for the performance of certain specialised professions. These policy goals must continue to be served and in most cases, national rules can be harmonised to create a single set of Community rules, or approximated to a level where Member States are prepared to apply the principle of mutual recognition. Achieving this through legislation at the Community level has meant challenging many national rules and practices.

2.12 The Commission is required, under Article 100a.3 of the Treaty, when preparing its proposals for harmonisation of national legislation concerning health, safety, environmental protection and consumer protection, to take as a base a high level of protection. Nevertheless, some Member States may wish to retain even higher national standards after harmonisation and Article 100a.4 allows this. In this and in other exceptional cases limitations on free movement may be justified, provided these are not disguised restrictions to trade and are proportionate and adequate to their purpose.

2.13 Another reason for legislating at the Community level has been the need to create and maintain equal conditions for economic operators. Competition could be distorted if undertakings in one part of the Community had to bear much heavier costs than in another and there would be a risk of economic activity migrating to locations where costs were lower. Such costs include those imposed on governments and economic operators by measures of environmental, social and consumer protection. The implementation of high common standards of protection is among the Union's objectives and at the same time helps to ensure this "level playing field".

2.14 The internal market is also closely linked with other policy areas. The internal market could not have been created without the reinforcement, in successive revisions of the Treaty, of the provisions concerning other important policy areas. This is particularly the case for policies strengthening economic and social cohesion and for the environment and consumer protection. Concentration on the purely economic or market aspects of integration would have created an unbalanced Community unacceptable to a majority of Member States. The relationship between the internal market and other policy areas is further discussed in chapter 3.

## **Secondary legislation as a means of removing barriers**

2.15 Legislation at the Community level has thus been necessary where differences in the Member States have been too great for the basic principles of the freedom of movement and mutual recognition to apply directly. This White Paper is mainly concerned with presenting and clarifying for the associated countries the resulting large body of secondary legislation. The way in which this is done is described in chapter 3 and the detailed presentation is in the Annex.

2.16 In accordance with the Treaty articles on which it is based, most internal market legislation is in the form of Directives. These are binding on the Member States, who take the necessary measures to put them into effect. (Where the Member States fail to take the necessary implementing measures in the time given, or do so in a way which is incomplete or inadequate, citizens can enforce their rights by invoking a Directive directly, provided the latter is worded clearly enough to leave the Member State no discretion, as several rulings of the Court of Justice have shown.) Directives are sometimes relatively detailed and leave only a limited amount of room for manoeuvre for the national legislator. In other cases, they establish only broad aims or essential conditions, with the result that national law may incorporate their requirements in different ways. This technique ensures to the greatest possible extent the preservation of traditional and preferred national approaches.

2.17 Regulations, which are Community acts directly applicable in the Member States, also form part of the body of the legislation on the internal market especially in the agriculture area and also for example concerning the coordination of social security provisions for migrant workers. There are also some Decisions, instruments which are binding on those to whom they are addressed.

## **Legislation ensuring the free movement of goods**

2.18 The largest amount of internal market secondary legislation concerns the production and marketing of goods. These laws concern areas where the principle of mutual recognition could not apply because the divergences in national legislation were too wide and thus had “an equivalent effect” to tariffs or quantitative restrictions, so-called technical barriers to trade. Early Directives tend to establish a detailed set of Community rules which replace national rules. The more recent approach to technical harmonisation- the “New Approach” – has been to establish a limited number of essential requirements and leave more detailed rules to be made by other standard-making bodies on a voluntary basis.

2.19 In certain product areas, especially food and medicines, as well as products which are potentially hazardous but are in general use, such as motor vehicles, the old approach of full harmonisation is still considered the more appropriate. This legislation also establishes rigorous testing and certification requirements, as well as market surveillance measures in some cases. Another problem addressed by Community legislation concerns the harmonisation of differing national rules on matters such as the denomination of certain products, their labelling and/or their packaging.

2.20 These rules, taken together with the principle of mutual recognition, ensure that a producer, manufacturer or importer anywhere in the Community can introduce a product on to the market and can confidently market it anywhere else in the EU without falling foul of local rules. A Member State forming part of the internal market must not only be able to create the conditions for the production of goods which correspond to Community standards (this applies to any countries which export to the EU), but must also be able to guarantee that all goods on its market

meet those standards. It must also be able to guarantee free movement within its territory for all goods from other Member States. The system thus requires not only the right legislation in all the Member States, but also the full framework of technical and other structures necessary to ensure the effective implementation of such legislation. Those structures – be they testing laboratories, metrology institutes, or customs posts at the external border of the Community – all need to win the confidence of the Community as a whole if the principle of mutual recognition is to be applied.

### **Legislation ensuring the free movement of services**

2.21 A further major category of secondary legislation concerns the conditions under which certain services can be offered. It was necessary because Member States' legislation – even if it did not overtly discriminate against non-nationals – varied too much to allow free movement to be achieved by applying the principle of mutual recognition. Much of this legislation concerns the financial services sector, laying down minimum prudential requirements, for example, for the authorisation of banks or insurance companies. It also serves to open up national markets in areas which have traditionally been dominated by national monopolies, such as telecommunications and certain parts of the transport and energy sectors.

### **Legislation ensuring the free movement of persons**

2.22 Article 8a of the Treaty enshrines the large concept of “free movement and right of residence of persons” as a fundamental right which is not linked to an economic objective pursued by the citizen, but which is subject to the relevant secondary legislation. This legislation is divided into rules which ensure harmonious development of the labour market and prevent distortions of competition and those which establish the conditions of access for citizens from other Member States. Most of the relevant Community legislation deals with the latter aspect, dealing with matters such as residence permits, right of entry, restrictions on extradition and family allowances. (This part of the Community “acquis” cannot be considered as part of the present exercise of progressive alignment, although its importance for the establishment of the internal market after accession is beyond doubt.)

2.23 Parts of the legislation concerning the free movement of persons is closely linked to the freedom to provide services, especially those services which require minimum professional qualifications. As with goods, the Community started by seeking close harmonisation, so that Community rules could replace national rules for professions such as architects, doctors and nurses. More recent Directives take a horizontal approach and lay down general conditions which permit the principle of the mutual recognition of diplomas to operate.

2.24 Legislation is also necessary to ensure that a worker moving in the Community can continue to enjoy full social rights. This does not mean just pecuniary rights, but also rights in the fields of education and health. The social security systems of the Member States have not been harmonised, but under Article 51 of the Treaty they have to be coordinated to ensure that migrant workers are not deprived of their acquired rights as a result of their mobility.

2.25 Company law also falls under this chapter. Article 58 of the Treaty requires that companies should be treated in the same way as natural persons for the purposes of free movement. Community law ironed out some of the major differences in national laws about the way companies are set up and run. Community law does not, however, yet ensure full “free-movement” for companies in matters such as cross-border mergers and takeovers and transfers of seat.

## **Legislation ensuring the freedom of capital movements**

2.26 The free movement of capital is not only justified in economic terms, but also because it is a condition for the free movement of financial services and of persons. Full liberalisation of capital movements, however has only been achieved recently within the Community, controls having been an instrument of macro-economic policy for most Member States. Articles 67-73, which governed this area up to the end of 1993, are couched in more cautious language than other free movement provisions and Article 73 provided for a safeguard mechanism in case of disturbances of the capital market. Secondary legislation allowed the progressive removal of controls in the Member States. As of 1994, Articles 73b- 73g, imposing a broader prohibition on restrictions, replace the original provisions and are of direct application.

## **Competition policy**

2.27 Competition policy is fundamental to the establishment of the internal market. Without “the institution of a system ensuring that competition in the common market is not distorted” (Article 3g) , the internal market would be unworkable.

2.28 The removal of barriers to trade requires the establishment and enforcement of a new set of transparent rules to regulate competition. In the absence of such rules, the desired optimal allocation of resources would be frustrated by anti-competitive behaviour. Competition rules need to regulate both company and state behaviour in four main areas:

- where state barriers to trade fall, there may be a temptation for companies to get together in market sharing and other restrictive agreements, or to abuse their dominant positions, to ward off competition. This deprives the economy of the benefits of free trade and active competition. The benefit of the barriers, however, which previously accrued to the state (for instance through import duties), is now appropriated by the private partners of the agreement. Hence the importance of effective rules to prevent this type of abusive company behaviour.
- the internal market brings new challenges to companies which they may better be able to face by concluding strategic alliances in the form of mergers and acquisitions. While this is in principle a legitimate business strategy, care must be taken that market structures stay competitive. Absence of regulation may lead to the creation and abuse of dominant position, reducing global welfare.
- where borders are opened, governments may also be tempted to award state aids to protect their industry against increasing competition. Where state aids are granted to promote general objectives such as research and development, environmental protection or ensuring regional cohesion, they may be accepted to the extent that the investment undertaken generates a positive effect for society which cannot be appropriated by the company itself. However, other forms of aid that have the effect of distorting competition without accompanying benefits must be condemned. This justifies strict state aid monitoring in the internal market.
- state monopolies of a commercial character, public undertakings and undertakings with special and exclusive rights also present a risk for free and open competition. There is deliberate creation of economic rents for certain players based on the assumption that the benefit is used for delivering public services or will accrue to the state as revenue. Whilst

this is basically unobjectionable, it is a delicate task to constrain the market distortion to what is strictly necessary in the general interest, for instance with a view to the provision of public services in remote areas.

2.29 An active competition policy helps create healthy economic structures and avoid abnormal profits. It is essential to the creation of the internal market in policy sectors such as energy, transport and telecommunications. In competition policy as in other areas, the requirement is not confined to the adoption of laws and structure building. There has to be a continued effort to enforce the policy, to make it widely known and accepted and to create the expectation that it will be applied. Only then does the market realise its full potential.

### **Implementation and enforcement**

2.30 At the Community level, it is the responsibility of the Commission and of the Court of Justice to ensure the enforcement of Community law, but the actual implementation and enforcement on the ground of Community law, whether it is directly applicable in the Member States or transposed into national legislation, is based on the existence of appropriate judicial and administrative machinery in the Member States. Constitutionally, the Member States are states subject to the rule of law, with a separation of public powers guaranteeing the independence of the judiciary. The judicial system needs to guarantee access to justice for the individual citizen, in particular with regard to decisions of the public authorities. The decentralised economic system which is characteristic of market economies also requires that access to justice be reasonably rapid. Ensuring that Community law is effectively applied also depends on a variety of specific administrative structures and technical and professional bodies in the private sector.

### **Conclusion**

2.31 The principles governing the internal market are in essence simple, but the rules and structures required to make them a functioning reality are numerous and complex. They dismantle the barriers to free movement, ensure that other important public policy goals are not neglected in the process, prevent the creation of new obstacles and ensure that neither public authorities nor private bodies take short-sighted or self-serving actions which interfere with fair and active competition. While the resulting picture is still marked by imperfections, the Union is committed to the completion of the internal market and to maintaining it in good working order.

## **3 Community Legislation concerning the Internal Market**

3.1 The Annex of this White Paper provides a comprehensive and detailed presentation of current Union legislation relating to the Internal Market. Twenty three different areas of legislative activity are examined in turn. The present chapter explains the Commission's approach and draws attention to certain aspects of the presentation of the information in the Annex.

3.2 The Commission's presentation of the detailed legislation covered in the White Paper has been based on four principles:

- the White Paper should focus on the Internal Market and not attempt to cover the whole *acquis communautaire*;

- within the selected areas legislation should be presented not as a single list or block, but showing which measures are more fundamental and which should logically be tackled first;
- the White Paper should serve as a reference document for present and future associated states and its recommendations are not fine-tuned to the needs of any one of them;
- the legislation should be presented to the CEECs in a way which makes clear the measures and structures which are required to make the legislation effective.

### **Delimitation of internal market legislation**

3.3 In preparing the White Paper, it was necessary to decide on the limits of the “internal market” in legislative terms. As explained in the preceding chapter, the successful operation of the internal market not only rests on a comprehensive framework of detailed legislation to remove formal barriers, but also assumes the fulfilment of a wide range of basic economic conditions. These include in particular the existence of open and fair competition between economic operators. This depends on the introduction of formal and transparent competition rules and also on a common framework which ensures that minimum social standards and adequate protection of the environment apply across the whole territory of the Union.

3.4 The Treaty itself represents a careful balance between different objectives and policies with the result that no part of the *acquis communautaire* can be separated in practice from the rest. The Treaty expressly underlines this interdependence, for example in Article 130r which provides that environmental protection requirements must be integrated into the definition and implementation of other Community policies. Eventual accession negotiations with the CEEC will cover the entire body of Community legislation. Work to approximate legislation across the board is therefore important. The Europe agreements already provide for approximation and identify a large number of areas, including competition policy, environmental protection, social policy and consumer protection, for particular attention.

3.5 The White Paper adopts a focused approach to describe the relevant legislation. The Treaty articles and secondary legislation referred to in the Annex are those which directly affect the free movement of goods, services, persons or capital. It is legislation without which obstacles to free movement would continue to exist or would reappear. Other legislation which indirectly affects the operation of the single market, for example because it affects the competitive situation of firms, has not been covered in the detailed presentation.

3.6 This approach offers practical advantages, in particular given the volume of secondary legislation involved. It will allow approximation to be more systematically organised within a coherent work programme and supported by specialised technical assistance. Approximation in other areas will continue to be the subject of separate initiatives within the pre-accession strategy.

3.7 In identifying the legislation which is essential to the the functioning of the internal market, it has been necessary to look particularly closely at social policy and environment policy in order to strike the right balance. In other areas too the dividing line requires some explanation.

3.8 The social dimension is an essential element of internal market policy. This is explicit in the Treaty. Moreover, much social legislation has an internal market reasoning among its justifications. An uneven approach in national legislation concerning workers’ rights or health and safety in the work place could result in unequal costs for economic operators and threaten to distort competition. For this reason, much social legislation adopted before 1985 has Article 100 of the Treaty as its legal base.

3.9 At the same time, certain social legislation is not aimed exclusively at achieving a level playing field. High levels of social protection are a fundamental aim of the Union. They are served by, among other things, the economic benefits arising from the internal market. The White Paper's presentation of internal market related legislation includes those parts of social legislation which affect the functioning of the internal market or which are a necessary complement to other measures identified as key instruments, in particular in the area of company law. Previous European Councils have made clear that approximation in the social area must not be neglected by the associated countries and forms an essential part of their preparations for accession to the Union.

3.10 Similar considerations apply to legislation concerning the environment. Environment policy and the internal market are mutually supportive. The Treaty aims at sustainable growth and high levels of environmental protection and provides that environmental requirements be integrated into the definition and implementation of other policies. An integrated approach to allow a more sustainable path of social and economic development is not only vital for the environment itself, but also for the long-term success of the internal market.

3.11 The White Paper includes legislation that directly affects the free movements of goods and services, leaving out legislation which relates to pollution from stationary sources and to processes rather than products and which therefore relates only indirectly to the internal market. The result is that most environmental legislation is not covered. Important legislation concerning quality standards for air and water and nature protection is not included at all and waste strategy is only covered to a limited extent. The present exercise concerning the internal market will therefore need to be complemented by a more comprehensive approach in the environment field, which is an important objective in its own right.

3.12 So far as the energy sector is concerned, approximation in this field, cannot be disconnected from the application of competition rules. For example, the Community framework concerning state aids is essential if distortions of competition are to be avoided in an integrated energy market. The legislation in the field of price transparency also needs to be accompanied by the application of competition rules, including sanctions. Energy policy is also closely linked with environmental and other policies. It will be difficult, for example, to accept electricity import if electricity production in the exporting country does not respect the same levels of environmental protection or nuclear safety.

3.13 Agriculture is another important area, in terms both of the extent of legislation and of its place in the economy in many of the CEECs. Many aspects of agricultural policy and legislation have not been covered in this White Paper, because they relate to market support arrangements rather than the free movement of goods. Although the extent and means of support for agriculture have an impact on the internal market for agricultural products, they are not essential for the purposes of achieving and maintaining free movement. The Commission will present a separate communication on agriculture in the framework of the pre-accession strategy before the end of the year. The White Paper therefore covers the fields of veterinary, plant health and animal nutrition controls, as well as marketing requirements for individual commodities. The purpose of such legislation is to protect consumers, public health and the health of animals and plants.

### **Presentation of internal market legislation in the Annex**

3.14 Information concerning the relevant Community legislation is presented in a series of analyses under 23 sector headings in the Annex. Some sectors represent broad policy areas which have

been divided into sub-sectors. Each policy area is preceded by a general introduction to the sector, describing the underlying objectives and methodology of the legislation. This explains why the legislation is necessary and, in most cases, how it has evolved over time. The relationship between national and Community law is also explained.

3.15 The more detailed presentation in each sector is designed to guide the associated countries in planning their strategy for progressive alignment with Community law and its implementation and enforcement. In particular, each analysis contains indications on the sequence in which the associated countries could tackle approximation and a section on conditions necessary to operate the legislation.

### **Indicative priorities for approximation**

3.16 Although every piece of Community legislation is important in principle, and while accession to the Union can only be achieved by taking over the entire body of Community legislation, the Commission considers that it is appropriate in the pre-accession phase to propose an appropriate sequence in which the associated countries could take over the legislation for each major area. Resources for the approximation exercise are limited in both the Community and the associated countries, whether in terms of legal or technical expertise, Parliamentary time, or the availability of training. These resources should be focused on areas where they will have the greatest effect.

3.17 The Commission has therefore presented the legislation for each area in a way that distinguishes “key measures” from the total number of measures applicable and which then proposes a further breakdown of key measures into two stages. The division into Stage I and Stage II measures shows the indicative priorities which emerge from the logic of the legislation itself and provides a guide to the associated countries for the most effective sequencing of their work programmes for the approximation, implementation and enforcement of legislation.

3.18 Stage I measures have usually been selected using one or more of the following criteria:

- the measures concerned provide the overall framework for more detailed legislation,
- the measures concerned address fundamental principles or provide for the basic procedures which govern the sector concerned;
- the measures are a pre-condition for the effective functioning of the internal market in that sector.

In some areas Stage I measures may also include measures that require a particularly long lead-time for effective implementation.

3.19 The following general points should also be noted in respect of the Commission’s approach. First, key measures include in some sectors those which have not yet been adopted by the Community, but which are in the legislative pipeline. Many measures are also included, sometimes in Stage I, which have only been adopted recently. The fact that the Community adopted these measures or will only adopt them at a relatively late stage in the internal market’s evolution does not necessarily reduce their importance for the CEECs. Measures in the process of being adopted are likely to form part of the “acquis” to be accepted by future Member States.

3.20 Second, the criteria used for establishing the recommended sequence for approximation within each area of legislation are based on a coherent approach to the legislation itself, without reference to the economic costs or benefits of its adoption. The economic dimension is one which each associated State will need to judge for itself in laying down its strategy for approximation.

3.21 Third, the indicative priorities are internal to each analysis or area of legislation. No attempt has been made to produce a global order of priorities, incorporating judgements about the value of early action in different areas of legislation. This is to some extent the logical consequence of the approach described in the previous paragraph. In the absence of an overall economic analysis, there is no evident set of objective criteria that could be used to determine priorities between sectors. Some of the legislation covered by this exercise, however, such as basic company law, must be considered as essential “building-blocks” for the operation of a market-economy and as such has already been tackled by the associated countries in the earlier stages of their economic transition. The priority given by the CEECs to different sectors will depend on the political and economic situation of each associated country. The choice has to be made by those countries rather than by the Union.

3.22 Fourth, in a limited number of areas it is not possible to establish distinct phases because the legislation concerned represents a whole and the adoption of any single part of it could yield no benefit without the rest.

3.23 Fifth, it should be noted that legislation is listed regardless of what has already been accomplished by the associated countries, even in cases where they may all be considered to have enacted the legislation concerned. This is in line with the Commission’s approach of producing a general reference document which can be used by all prospective Member States. Moreover, it is not the task of the White Paper to deliver judgements about the conformity of specific national legislation.

3.24 Finally, no timetables have been set. These will be decided by each associated country in the light of its own situation and strategy.

### **Conditions necessary to implement and enforce the legislation**

3.25 The main challenge for the associated countries in taking over internal market legislation lies not in the approximation of their legal texts, but in adapting their administrative machinery and their societies to the conditions necessary to make the legislation work. This is a complex process requiring the creation or adaptation of the necessary institutions and structures, involving fundamental changes in the responsibilities of both the national administrative and judicial systems and the emerging private sector. To help guide the CEECs in this task, the introduction to the Annex gives a summary of the different types of structures which ensure the effective operation of Community legislation. Each analysis identifies the relevant national (or international) structures in its sector, based on relevant experience in the Union.

3.26 The presence of the necessary enforcing authorities is crucial to provide certainty to other members of the Community that legislation is properly implemented. The proper operation of these administrative, judicial or private sector structures in turn depends on training and education facilities for the personnel concerned. The provision of such training and the transfer of relevant Community experience in this area will be one of the main tasks of the approximation exercise and is considered further in chapter 5.

### **Conclusion**

3.27 The Annex contains a set of detailed recommendations to the associated countries on how to proceed with legislative approximation and implementation in each area of Community law governing the internal market. The recommendations are not prescriptive. There may be sound

reasons, of a political, economic or commercial kind, for individual associated countries to take a different view about the order in which approximation is to be carried out. The analyses are in any case useful in showing the key measures to be covered and what is needed to make them effective.

## **4 Position in the Countries of Central and Eastern Europe**

### **Introduction**

4.1 The Commission has maintained regular contacts with the associated countries during the preparation of the White Paper. It first convened a meeting of six CEECs in November 1994, at which it explained its proposed approach and received presentations from each associated country about the state of its own work on approximation, as well as comments on the approach to be taken by the White Paper. In February and March of this year, in accordance with the Essen conclusions, the Commission consulted the CEECs on a bilateral basis. Commission officials visited each capital and conducted sector-by-sector discussions, as well as bringing the CEECs' authorities up-to-date on the preparation of the White Paper. Discussions focused particularly on Stage I measures and the need to create structures for implementation and enforcement.

4.2 In addition, the Commission has a continuing dialogue with each associated country in the approximation of law Sub-Committees of the Europe agreements. These provide an opportunity to gather information on the progress being made in the CEECs. Despite these contacts, the information at the Commission's disposal remains incomplete. Much of the new legislation has not been translated into any Community languages. Its scope often does not coincide precisely with the relevant Community legislation, making comparisons difficult. This chapter will not therefore attempt to present a detailed analysis of the legislation already in place in each country.

4.3 However, in planning future technical assistance in this area, it is necessary to understand in general terms the extent to which the CEECs have harmonized their legislation with that of the Community and have created the structures required to implement and enforce such legislation and to examine in broad terms where their problems lie. This chapter provides such an overview.

### **Progress with legislative approximation**

4.4 The associated countries are in the process of preparing and adopting a large amount of new legislation and it is their general aim that this should be in conformity with that of the Community. Indeed, they have an obligation to use their "best endeavours to ensure" this under the Europe agreements. In approaching the task of approximating legislation, however, each CEEC has made its own choices about priorities.

4.5 Their choices reflect economic and political realities, particularly the CEECs' growing trade relations with the Union, as well as their judgements about which legislation is important in the context of economic transition and/or preparation for accession to the Union. They have also responded to the list of priorities for approximation specifically mentioned in the Europe agreements. Some of them have also assumed other international obligations which affect their priorities. Moreover, certain associated countries started their processes of legislative harmonization with a view to Community membership well in advance of others. The overall result is that there are wide divergences among the CEECs in the amount and type of legislation that has been enacted and the order in which they are approaching the task.

4.6 In all cases, the CEECs have begun to make a systematic effort to draw up programmes for legislative approximation, to set priorities and to verify conformity with relevant Community law. Most already have an overall coordinating machinery in place within their administrations. They are also at different stages in their programming and setting of priorities. For most countries some degree of national priority setting will have taken place before the publication of the White Paper. The indicative priorities set out in the Annex of this document should therefore lead to a process of comparison and reassessment in each associated country.

4.7 The general picture is one in which old legislation, sometimes dating back many years, exists alongside new. In a limited number of sectors, the new law is almost complete, while in others legislation may be scheduled but not yet drafted. A very large amount of new law is being drafted, or is awaiting adoption by national Parliaments. The state of progress in a given sector does not necessarily reflect its economic importance.

4.8 In some areas, the CEECs themselves recognise that enacted or prepared legislation does not conform fully with the relevant EU texts, either as a deliberate choice (step by step approximation) or as a result of amendments introduced during the passage of the legislation through Parliament. In certain cases, there has been a deliberate decision to suspend new legislation awaiting new or modified Community legislation in the field.

4.9 In most areas, the CEECs have sought outside advice, often through PHARE programmes. They tend to look for models in one or more Member States. Advice on preparing and drafting legislation is sometimes given by Community and national officials, but also often by consultants.

4.10 In most but not all associated countries, parliamentary timetables are over-charged and delays result. The legislative burden is huge, the changes are often radical, the subject matter is sometimes unfamiliar, amendments to texts are numerous and progress is slow. Moreover, in the CEECs, as elsewhere, governments and political priorities change, which can also complicate and prolong the approximation process.

### **Legislative approximation and economic reform**

4.11 The associated countries have not yet fully resolved the intricate problem of adjusting their alignment programmes to the need to consolidate economic reforms. The difficulty which the CEECs face can be illustrated by a few examples:

- in the field of financial services, internal market legislation strengthens prudential requirements and leads to more deregulated markets. Such a regulatory change made too soon could seriously weaken financial entities in Central and Eastern Europe, since most of them still have to cope with a legacy of bad loans;
- in the area of taxation, the pace of tax harmonization will have to be related to the development of the different tax bases and may have to take into account the need for temporary tax incentives to correct inherited allocative distortions;
- the liberalization of capital flows will be conditional on the attainment of overall macroeconomics stability, in order to avoid the danger of unmatched capital flight and balance of payments difficulties. Of course, such a stable macro-economic environment is intimately related to several key aspects of the transition process, such as the soundness of public finances or success in the restructuring process.

## Specific sectors

4.12 It is not intended to review all sectors, but a number of specific achievements or problems are worth mentioning.

4.13 All the CEECs have put in place a basic form of **company law** as part of their transition to market economies. This has usually followed the model of one or other of the Member States and is therefore broadly in line with Community requirements, but coverage is in most cases incomplete. The non-discriminatory treatment of foreigners and foreign companies has in most cases been dealt with satisfactorily, given the interest in attracting foreign investment. The picture is broadly the same for **financial reporting** where many of the requirements of the three principal EU directives are in place, but the task remains to be completed.

4.14 For similar reasons, priority has been given to putting in place the basic legislation in the **financial services** sector. Banking is generally ahead of insurance, but there are limits on how far the CEECs can go, as long as restrictions on capital movement remain necessary for macro-economic reasons and banks remain burdened by bad loans from the past. A great deal of legislation is in the pipeline in this sector.

4.15 Two areas in which much progress has been made are **indirect taxation** and **customs**. All the CEECs have introduced value added tax and in several cases this appears to be broadly in conformity with Community requirements. This is an example of a sector in which more has been achieved precisely because the system had the advantage of starting from scratch. On excise taxes, most CEECs cover the principal product ranges covered by Community legislation. Some rates will need to be lowered, but this will be tackled cautiously in view of the revenue considerations.

4.16 In the customs field, harmonisation has followed the rapid development of trade with the EU. National nomenclatures based on the Harmonised System have been adopted and closer harmonisation with the Community's Combined Nomenclature is taking place gradually in the framework of the Europe agreements. Close contacts between customs authorities are already established, both under the auspices of the Sub-Committees on customs cooperation under the Europe agreements and as a result of technical assistance actions under the PHARE programme. Full alignment is in any case unnecessary before accession.

4.17 Trade considerations have also spurred harmonisation efforts in the area of **industrial standards**. The legislative requirements in this area appear to be well-known and all the CEECs have begun the process of adapting to EU standards, but the way this is achieved is often through existing mechanisms originally set up for the purpose of elaborating compulsory technical regulations rather than voluntary standards. Much work remains to be done, especially at the level of industry itself, before full convergence is achieved. Attempts to take over a large body of legislation in a single instrument are slowing progress in many cases. In addition, the considerable gaps still existing in the field of conformity assessment are tending to frustrate alignment efforts. The possibility of the conclusion of Mutual Recognition Agreements held out by the Europe agreements will encourage further efforts in this field. (Further consideration of this area is in the section below concerning progress with creating implementation and enforcement structures).

4.18 Progress in the area of **agriculture** (where the legislation relevant to the internal market concerns the veterinary, plant health and animal nutrition fields and agricultural commodities subject to specific marketing standards, such as wine) reflects the importance of the sector in the economy of the associated country concerned, as well as following closely its specific product interests. In several associated countries, the immediate priorities are basic questions such as land

reform, although legislative approximation which will affect conditions for trade is also generally recognised as a high priority. Privatisation has started in all the CEECs, including upstream and downstream activities linked to agriculture, but needs to be carried through. Most of the CEECs are supporting their agriculture to some extent, but border protection is still low. This may change when the GATT agreement is implemented. All the CEECs have to differing extents been conducting discussions with the Commission designed to lead to equivalence agreements in the fields of veterinary, plant health and animal nutrition controls. While still falling far short of what is required in the context of a frontier free internal market, such agreements will mark important progress in the right direction. The Community is negotiating the adaptation of the Europe agreements to take account of enlargement and of the results of the Uruguay Round.

4.19 In the **transport** area, the impetus given by the Europe agreements is particularly marked. Specific mandates to conclude bilateral agreements with certain CEECs in one or other transport sector have been presented to the Council and in one case agreed. These will offer the prospect of market access and lay down conditions under which international transport services can be offered. They will thus offer strong incentives for legislative harmonisation prior to accession. The CEECs' participation in various international agreements tends to help the approximation process.

4.20 The picture in the **energy** sector varies from country to country, but it generally remains heavily dominated by public sector monopolies. Although a great deal of legislation is scheduled or in draft, much work remains to be done in this sector and the restructuring of existing legal and industrial structures will have major economic and social implications.

4.21 This is less true in the **telecommunications** sector, where separate regulatory bodies have been set up and a certain measure of liberalisation has already been introduced, at least in some of the associated countries. The practice of investors seeking and in many cases obtaining both sovereign loan guarantees and generous government assurances about the duration of special or exclusive rights may inhibit early conformity with Community competition rules. Efforts to achieve conformity with Community legislation are often helped by participation in international bodies. A similar amount of progress has been made towards approximation in the **audiovisual sector**.

4.22 **Competition policy** is of particular importance during the period of economic transition. The basic rules are laid down in the Europe agreements. The Europe agreements also contain deadlines for agreeing on implementing rules and a provision that the associated countries will further adapt their laws on competition to those of the Union. In this context the CEECs are obliged to take over the principles of Community policy, but they can adopt the monitoring and enforcement structures that best serve their purpose. On accession certain tasks that will for now remain the responsibility of the associated countries will be taken over by the Commission.

4.23 In the area of **intellectual property** the advances are uneven, even if the CEECs have shown interest in legislative developments in the Union and are keen to modernise their legislation. Significant progress has been made on industrial property, especially patents and trademarks. Some work has also been done on copyright and neighbouring rights legislation.

4.24 The overall picture on legislation concerning the **environment** is very uneven and the associated countries are acutely conscious of the likely costs of bringing their levels of protection up to those of the Community. In some cases, however, including on specific products, their preparatory work on new legislation is relatively well advanced.

4.25 In the area of **social policy**, the associated countries believe that much of their legislation is close to meeting EU standards and they appear to attach considerable importance to this sector.

Emphasis is put on legislation on health and safety in the workplace in most of the CEECs. The question of costs is once again a determining factor, however, and it remains to be seen to what extent even legislation which is already in place can be effectively implemented.

4.26 All the CEECs have recognised that **consumer protection** requires some legislative intervention as part of their transition to market economies. The functioning of the internal market is, at least in part, linked to the approximation of rules in this sector. Moreover, this new recognition of the rights of consumers, ensuring their participation in decision-making, is also perceived as a contribution to the consolidation of democratic societies in the associated countries. Specific consumer legislation has been adopted or is under preparation in all the CEECs and consumer policy aspects are often also covered in other sectoral or horizontal legislation.

### **Implementation and enforcement structures**

4.27 It is particularly difficult to obtain a complete picture of progress in the CEECs with creating the necessary implementation and enforcement structures. The Commission has placed considerable emphasis on this aspect of the pre-accession process in its contacts with the associated countries. Improving this knowledge will be an important part of the tasks to be pursued after the publication of the White Paper and in the context of preparing and delivering the related technical assistance package.

4.28 It is possible at this stage, therefore, only to make a number of general points about what the CEECs have achieved so far and some of the difficulties they have encountered. The overall picture is that the process of establishing, staffing and making operational all the necessary administrative structures is lagging behind the legislative process itself. The situation varies between the associated countries and from sector to sector, but there is a widespread need for more effort in this respect.

4.29 The particular difficulty faced by the CEECs which was not shared by existing Member States is the transition to a market economy. In mature market economies, many of the structures required to ensure that obligations arising under Community legislation are fully met already exist. Individuals are generally aware of their rights and access to justice is assured. For the associated countries, on the other hand, new or adapted structures, including changes in the judicial system, are often required.

4.30 As far as the building blocks of the market economy are concerned, all the CEECs began putting new structures in place in the early 1990s. Constitutional changes created independent judiciaries and their entire judicial systems are gradually being reformed. In some cases, further changes are needed to ensure the independence and quality of judicial appointments and all the CEECs face the problem of a shortage of resources in the judiciary, with the result that courts and administrative tribunals are severely overloaded and speedy access to justice is far from being assured. Judiciaries in the associated countries also face new tasks. Intellectual property is often cited as an area which will create new requirements, both in terms of training and of adapting judicial processes to allow cases to come to court more quickly. Some CEECs' administrations also recognise that they need to change their rules regarding access to courts, to implement legislation in such areas as consumer protection.

4.31 As to basic economic structures, all of the CEECs have public registers of companies and gazettes in which information about companies is published. Some also have banking supervisory bodies, offices for registering intellectual property rights and so on, but the picture is uneven and even where the institutions themselves have been created, the trained staff to run

them cannot always be found. In general, they inevitably suffer from a lack of experience. In this context, assistance through TEMPUS, the activities of the European Training Foundation and participation by the CEECs in the LEONARDO and SOCRATES programmes will help them develop the relevant skills.

4.32 In some cases, existing structures can be used. Veterinary and plant health inspectorates are a case in point. Several of the associated countries are fairly well served in this respect. Even here, however, there is a need to modernise equipment and services and to make them country-wide. Laboratories for testing and measuring industrial goods also exist, but are equally often in need of more modern equipment. For existing exports to the EU, identified structures have already been verified as meeting Community standards – for example, abattoirs for the export of meat and meat products – but preparing for integration into the internal market means bringing all such structures up to the required level.

4.33 In the area of industrial standards, the change from a compulsory to a voluntary system based on legislation establishing essential requirements may cause difficulties, as may schemes requiring producers to attest conformity on their own responsibility. These changes require not only new structures, but also new thinking. Changes will remain formal and not have the required impact if attitudes do not change, both among regulators and among economic operators.

4.34 Ensuring that the new arrangements are widely understood will in any case be an important part of the challenge in a number of areas. In the public procurement area, for example, markets are not being opened in practice despite the basic legislation being put in place, because firms have not yet accepted that they have a genuine chance of winning contracts, or alternatively, old monopolies have not yet accepted that they may lose contracts. In both cases, they fail to enter bids. Similarly, consumer legislation has begun to be put in place, but tends to remain a dead letter where consumers do not understand their rights and/or the mechanisms do not exist for exercising them.

## **Conclusion**

4.35 All the associated countries are making a serious effort to organise a concerted approximation and implementation exercise, especially in the internal market area. The task before them is far-reaching and complex, however, and it will require an exceptional effort of coordination and an unwavering commitment to the task. There is room for strengthening the role of the various inter-ministerial coordinating mechanisms that have been set up and for a more rigorous approach to programming and priorities.

4.36 The Union needs to enhance and adapt its technical assistance response to the challenge of preparing the CEECs for integration into the internal market. For this reason in particular, the Community needs to improve its knowledge of the situation on the ground. This will require a coordinated effort, drawing on the full range of available inputs both from the CEECs themselves and from the Commission and the Member States. These questions are considered further in the next chapters.

## **5 Specialised Technical Assistance**

### **Introduction**

5.1 The particular contribution of this White Paper, through its presentation of the relevant body of Community legislation, is first to provide guidance of the organisation of the legislative task and second to describe and explain the functions of the structures necessary for the effective implementation of national legislation. This will help the CEECs to sharpen the focus of their preparations for integration into the internal market and to ensure that legislative changes have a real impact in the economy. The associated countries have expressed their wish to take the White Paper's recommendations into account in finalising their national alignment strategies in the internal market area and fixing priorities.

5.2 Another contribution of the White Paper, as indicated in Chapter 1, is to provide guidelines for the content and organisation of technical assistance. Ensuring that the White Paper's analytical contribution is translated into coherent and effective technical assistance covering both legislation and structures, in response to the needs emerging from the CEECs' national strategies, is the subject of this Chapter.

### **Strategies for the associated countries**

5.3 The task of enacting, implementing and enforcing laws which meet the requirements of the internal market can only be carried out by the associated countries themselves. Individual work programmes for the adoption and implementation of internal market legislation are being developed by the associated countries within their pre-accession and approximation strategies. Such work programmes need to be consistent with each country's economic policies and reform programme and with other aspects of the pre-accession strategy. They should take account of the recommendations of the White Paper, cover all sectors relevant to the functioning of the internal market and pay attention to the administrative and organisational aspects of applying and enforcing the legislation.

5.4 It is the responsibility of each associated country to coordinate its requests for assistance and to provide information about progress made in implementing the White Paper, so as to ensure that assistance from the Union, Member States and other bodies is consistent and mutually reinforcing.

### **A coordinated Union response**

5.5 On the Union side, the key objective must be to organise technical assistance in this wide and diverse field in a way which makes the best possible use of scarce resources. Finance is not unlimited and the expertise on which the associated countries need to draw is concentrated in a relatively small number of officials and practitioners, mainly in the Member States. The Union is already providing technical assistance, notably through PHARE, and this should now be enhanced and adapted to the White Paper's recommendations. Other Community programmes open to the associated countries, as well as assistance from the Member States and private bodies also have a useful contribution to make. Special attention needs to be given to ensuring that all these efforts are mutually reinforcing and well focused. Improved information exchange and transparency concerning developments in the associated countries and the assistance on offer

will help match supply and demand and provide common services where common needs are identified.

### **Specialised technical assistance**

5.6 Technical assistance from the Union should cover the programming and drafting of legislation and its implementation and enforcement. Assistance could include the following:

- assistance with appraising the costs and benefits of different sequences of approximation;
- direct and rapid access to complete and up-to-date EU legislative texts and jurisprudence, as well as translation services;
- a “one stop shop” on the Union side to which requests for help with specific problems relating to legislation and its application can be addressed;
- advice from legal and technical experts, on the Union’s legal system and, sector by sector, about the interpretation of Community texts and the drafting of national laws;
- information concerning implementation and enforcement mechanisms in the Member States and first-hand experience of their functioning through participation in exchange programmes;
- access to administrative, language and specialised technical training;
- information about the functioning of the internal market for economic operators in particular sectors and for the public at large.

Assistance measures should take into account the need to reach national Parliaments as well as administrations. Parliamentarians and parliamentary officials require information about the structures required to implement and enforce the new laws as well as about the Community laws that have to be transposed.

5.7 It would also be appropriate for the Union to provide for existing Community programmes which are specifically designed to reinforce the operation of the Internal Market, such as KAROLUS (dealing with exchanges of officials responsible for implementation of Community law), MATTHAEUS (a similar programme concerning customs), MATTHAEUS TAX (dealing with indirect tax) and others, to be opened to participation from the CEECs. The precise modalities for this and its budgetary implications will be indicated in separate Commission proposals. Training projects developed in the context of the Leonardo programme and in the framework of the European Training Foundation will also contribute to the preparation of the CEECs for the internal market.

### **Delivery mechanisms**

#### **National programmes**

5.8 For each associated country, national framework programmes for the approximation of internal market legislation could be established which would ensure complementarity among all PHARE programmes relevant to the objectives of the White Paper.

5.9 These national programmes in each associated country should be placed under the authority of a body responsible for assistance and coordination in the framework of the pre-accession strategy. Regular reports on the work of the national programmes should be made to the Association Council and the competent structures of the Europe agreements.

5.10 PHARE programming for the five year period starting this year is already well advanced. The Commission will invite each associated country to hold discussions with it as soon as possible after the publication of the White Paper, to help clarify each country's programme and priorities in the light of the White Paper. Existing national framework programmes for the reform and approximation of law can be adjusted accordingly.

*A technical assistance information exchange office*

5.11 Certain assistance needs are common to all associated countries. To respond to these needs, the Commission intends to establish a Technical Assistance Information Exchange Office supported through a multi-country PHARE programme. The Office will be located in Brussels and managed by the Commission. It will provide for the exchange of information and will help ensure the adequate delivery of services to the associated countries. It will facilitate the provision of the highest possible quality of assistance in the most cost effective way from a variety of public and private sector bodies.

5.12 The assistance covered by the Office will include Community legislation, its transposition into national legislation, legal terminology, translation, training and exchanges, including short-term placements in the Commission's services and relevant bodies in the Member States. In addition, the Office will serve as a "one-stop-shop" or clearing house to which requests for assistance with the recruitment of specialist advisors can be addressed.

5.13 The Office will be the focal point for advice and expertise on legislation and implementing structures, mainly through a PHARE framework agreement establishing a panel of experts from the Commission and the Member States with relevant expertise in different policy sectors. Its services will also be at the disposal of nationally delivered programmes.

5.14 A data base, drawing on information from the Commission, Member States, the associated countries and the private sector will be developed, to achieve transparency and to avoid duplication of effort. It will be accessible to all interested parties.

5.15 The Commission will make available through the database all relevant information about assistance available under PHARE and other Community programmes open to the CEECs. The Commission will also provide the database with information about the CEECs' progress in implementing the White Paper, especially in areas where technical assistance is being provided. The Commission invites the associated countries, the Member States and other providers of assistance to provide similar information.

### **Coordination and Monitoring**

5.16 The Commission will report regularly on the activities of the Office to the association committees or subcommittees established by the Europe agreements.

5.17 Taking into account reports on the Office's activities and information gathered in the database, coordination and monitoring of assistance will take place with the Member States through the PHARE Management Committee, with the associated countries bilaterally through the competent structures of the Europe agreements, and where questions concern several or all of the associated countries in the framework of the structured relationship.

## 6 Conclusions

6.1 Transition in central and eastern Europe to political and economic systems compatible with those in the European Union is a complex process. It involves the strengthening of democracy and civil society, the implementation of sound macro-economic policies, privatisation and industrial restructuring, legal and institutional changes, and trade liberalisation, aiming at free trade with the Union and with neighbouring countries. Although the situation varies from country to country, this process of transformation is now well underway.

6.2 The primary responsibility for the success of this process lies with the associated countries themselves. But the strategy agreed at Essen provides for additional support from the Union, including a closer working relationship with its own institutions, the adaptation of PHARE priorities to changing needs, and a major new effort to prepare the associated countries for their future integration into the internal market.

6.3 The present White Paper marks the beginning of a process and provides a guide for the associated countries in adapting their legal structures to those which are needed for future participation in the internal market. It sets out a logical sequence for adopting the necessary measures and will enable associated countries to draw up internal market work programmes adapted to each country's own economic and reform priorities. It will also enable the Union to provide the kind of support which is most needed, drawing on the necessary expertise in the Union's own institutions, in the Member States and in the private sector. The proposed Technical Assistance Information Exchange Office will greatly facilitate the provision of well targeted assistance from PHARE and from sources of expertise in the Member States.

6.4 The progressive adoption by the associated countries of internal market legislation and the establishment of the structures needed for its implementation and enforcement will support the economic reform process. Significant economic advantages to business and commerce in the associated countries and in the Union are expected. The progressive elimination of barriers will increase competitiveness and allow business to expand. At the same time, the inclusion in the White Paper's recommendations of legislation in the fields of competition, social and environmental policy, which are essential to the functioning of the internal market, will ensure that alignment takes place in a balanced way. Alignment with the internal market is to be distinguished from accession to the Union which will involve acceptance of the *acquis communautaire* as a whole.

6.5 Besides the specific process which it will set in motion, the White Paper will give a fresh impetus to the wider process of integration between the associated countries and the Union and will stimulate trade. As the Commission indicated in its Communication of 13 July 1994 on the pre-accession strategy, "once satisfactory implementation of competition and state aids policies (by the associated countries) has been achieved, together with the application of other parts of Community law linked to the wider market, the Union could decide to reduce progressively the application of commercial defence instruments for industrial products from the countries concerned, since it would have a level of guarantee against unfair competition comparable to that existing inside the internal market."

6.6 The White Paper process will also facilitate trade by creating favourable conditions for the conclusion of agreements on the mutual recognition of tests of the conformity of products with established industrialised standards. The purpose of such agreements would be to secure mutual acceptance of certificates, marks of conformity and test reports issued by technical bodies concerned with industrial standards in the associated countries and in the Union. It should be possible

to begin negotiations on mutual recognition when the procedures followed by certification institutes, testing laboratories and similar bodies in the associated countries have been brought into line with those in the Union. The White Paper provides guidance on how this is to be achieved. It will be followed up by enhanced technical assistance from PHARE in these specialised fields.

6.7 The progressive alignment of the associated countries with the internal market will strengthen economic reform and help create a favourable environment for economic integration. Costs for public administrations and businesses in the countries concerned and in the Union will also be reduced. The Commission intends to make an analysis of these potential benefits and to present the results of this analysis to the institutions of the Union and to the associated countries.

6.8 The process of integration with the internal market has already been launched through consultations, cooperation and assistance in the framework of the Europe agreements, PHARE and in the preparation of this White Paper. Following publication of the White Paper and its consideration by the European Council, the Commission considers that the following actions should be taken to implement its recommendations.

6.9 The Commission will:

- transmit to the associated countries the White Paper, in their own languages, and the conclusions of the European Council
- hold consultations with each associated country on national work programmes to implement White Paper recommendations, on the adaptation and enhancement of technical assistance, and on internal coordination within each associated country on all questions related to the White Paper
- set up the Technical Assistance Information Exchange Office, referred to in Chapter 5, with support from a new multi-country PHARE programme
- arrange for the coordination of technical assistance and monitoring of progress in implementing White Paper recommendations within the Union through the internal market advisory committee and the PHARE management committee
- keep the associated countries informed about changes in internal market legislation
- pursue preparations for extending the Karolus and Matthaëus programmes to the associated countries and examine the extension to them of other relevant programmes
- recommend ways to involve the associated countries in the work of sectoral advisory bodies to improve their understanding of the functioning of the internal market
- maintain an economic policy dialogue with the associated countries on the interaction between alignment with the internal market and the wider transition process, within the framework of the structured relationship with the institutions of the Union
- report regularly on progress to the Internal Market Council, the General Affairs Council and the European Council, after preparatory meetings with representatives of the associated countries.

6.10 The associated countries are invited to

- identify a single coordinator for all matters related to the implementation of White Paper recommendations
- draw up national work programmes for the implementation of these recommendations; advice and assistance for this is available through PHARE

- review, together with the Commission, existing work on the approximation of legislation and related assistance, with a view to adapting these to the requirements of the national work programmes
- take full advantage of the facilities provided by the proposed Technical Assistance Information Exchange Office to enhance their work on the approximation, implementation and enforcement of internal market legislation

6.11 The member states are invited to

- make available expert advice on the transposition of Union internal market legislation into national law, and on the structures needed for its implementation and enforcement
- provide information on their own assistance efforts and on the availability of expert advice through the PHARE management committee and the Technical Assistance Information Exchange Office
- coordinate planned assistance efforts through the mechanisms referred to above to ensure that support from different sources is effective and mutually reinforcing

## **Annex**

This larger volume contains the sector by sector analysis of the key items of relevant Community legislation, explaining the purpose and development of legislation in each sector, describing the structures that are necessary to ensure its implementation and enforcement and suggesting the sequence in which legislation in each sector might be tackled. The Commission believes that the emphasis on how to ensure that the legislation is made effective is an important message for the associated countries and one which will be helpful to them and ultimately to an enlarged Union in achieving real rather than simply formal alignment.