



Europa



# Business Support Programme

Phare Business Support Programme - SMECA

## **Internal Markets : Free movement of goods**

Customs Union



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# 1. Background

*The history of the European Union covers a period of more than half a century. Here we present a short background. We will focus on the free movement of goods and in particular the most important developments with regard to this subject.*

## 1.1 Constitutional basis of the EU, the EC Treaty

The *constitutional basis* of the European Union (EU) is formed by the the Treaty of Paris (establishing the European Coal and Steel Community in 1951), the Treaties of Rome of 1957 (establishing the *European Economic Community (EEC)/EC Treaty*' and the European Atomic Energy Community), which were amended by the Single European Act (1986), the Maastricht Treaty on the European Union (1992) and the Amsterdam Treaty of 1997.

The *EC Treaty* was signed in 1957 and entered into force on January 1<sup>st</sup> 1958. It set the *tasks/objectives* for the Community and gave - in general terms - the *means/instruments*.

The *tasks* of the Community are:

*'promoting the harmonious development of economic activities, continuous and balanced expansion, increased stability, a rapid rise in living standards and closer relations between its Member States'* (EC Treaty, Article 2).

The means by which to accomplish these objectives are described in Article 3c of the EC Treaty:

*'an internal market characterised by the abolition, as between Member States, of obstacles to the free movement of goods, persons, services and capital'*.

## 1.2 The early years

### *Successes*

In 1958 the EU consisted of six countries (the founding countries): Belgium, France, Germany, Italy, Luxembourg and The Netherlands. In the seventies, eighties and nineties other European countries joined the EU. The EC Treaty set a deadline of twelve years for the removal of *all barriers* to a common market. This deadline was not met. But, a tariff union was completed in 1968. This means that *all customs duties among the six founding Member States were eliminated* and a *Common Customs Tariff* was introduced. This is an external tariff which applies to third countries.

The abolition of internal tariffs gave a boost to the economies concerned. Intra-Community trade grew enormous and consumers benefited from lower prices and the availability of a wider range of goods.

### *Problems*

But in the seventies it became apparent that a lot of *other barriers still existed*, for instance different standards in the Member States. As a result there was in fact *no real free movement of goods*. The European Commission and the Council had the power to remove barriers, but only if the Council acted unanimously. Because more countries had joined the EU and Member States were protecting vested interests of their industries, it proved practically impossible to remove barriers.

Fortunately *Article 30 of the EC Treaty* offered practical relief for companies which had problems exporting from one Member State to the other.

Article 30 states: '(...) quantitative restrictions on imports and *all measures having an equivalent effect shall (...) be prohibited* between the Member States.'

Several cases were brought for the Court of Justice in Luxembourg. The Court's role is to ensure that Community law is interpreted and implemented in line with the Treaties. Famous cases are the

*Dassonville case (1974)* and the case of *Cassis De Dijon (1979)* (for an extensive description: see box 1). The court ruled in these and other cases that such non-quantitative restrictions were not allowed. But in several other cases it confirmed the validity of specific regulations in some of the Member States.

### 1.3 The White Paper and the Single European Act

So it became clear that the power of the court alone would not lead to a single market with really free movement of goods. As a response to this huge problem the Commission brought out the *White Paper 'Completing the Internal Market'*. This document identified some **300 obstacles** (physical, technical and fiscal). It also contained the legal measures that were needed to remove these obstacles in order to create a real internal market. Most of the ideas in the White Paper were not new, but it gave **a new political momentum** to the process of integration, which almost had come to a halt in the first half of the eighties.

On the basis of this important document the *Single European Act* (SEA) was formulated. It was signed in 1986 and came into force in 1987. From that moment on there **was no need for unanimity**. Measures relating to a common market in goods (and services) could be adopted by a qualified majority. This accelerated the process of integration.

Furthermore the SEA stated that: *'The Community shall adopt measures with the aim of progressively establishing the internal market over a period expiring on December 31<sup>st</sup> 1992. (...) The internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured.'*

***On the 1<sup>st</sup> of January 1993 the single market was introduced.***

Since then **goods** crossing the Community's internal borders were **no longer subject to customs controls at the borders**. In stead of this administrative checks in the Member States are now in place at company level.

For trade in goods between businesses in Member States **value added tax** (VAT) is levied in the Member State to which the goods are transported (the **principle of country of destination**) at the rates and under the conditions of that Member State. The business supplying the goods applies the zero rate.

**Customs duties** of the European Union - the Common Customs Tariff - have only to be paid when goods are brought from outside into the free circulation within the customs territory of the EU. When customs duties have been paid, the goods are entitled to circulate freely within the internal market of the EU.

The European Union's single market - with 370 million consumers and millions of businesses - is now the largest in the industrial world.

Box 1

***Free movement of goods: two important court rulings***

**Dassonville**, July 11<sup>th</sup> 1974, 8/74

In Belgium, the recognition of designations of origin was subject to a declaration by the Belgian Government. In addition, Belgian law prohibited the importation of spirits bearing a recognised designation of origin unless they were accompanied by a document certifying their right to such a designation.

The Belgian government had officially recognised 'Scotch Whisky' as a designation of origin. Gustave Dassonville, a wholesaler doing business in France, and his son, Benoit Dassonville, who managed a branch of the business in Belgium, imported into Belgium from France some 'Johnnie Walker' and 'Vat 69' Scotch Whisky. Since France had not required a certificate of origin for Scotch Whisky, the Dassonvilles did not have a certificate from British authorities. In expectation of importing the whisky into Belgium, the Dassonvilles attached printed labels with the words 'British Customs Certificate of Origin', and added in a hand-written note the number and date of the French excise bond, which was all that was required by French rules. The Belgian authorities considered the documents insufficient and brought action against the Dassonvilles for violations of Belgian law charging them with the failure to have the appropriate documents. The two exclusive importers of 'Johnnie Walker' and 'Vat 69' also brought a civil action. The Tribunal de Premiere Instance de Bruxelles requested a preliminary ruling pursuant to Article 30 of the EC Treaty.

The Court ruled: *'All trading rules enacted by Member States which are capable of hindering, directly or indirectly, actually or potentially, intra-Community trade are to be considered as measures having an effect equivalent to quantitative restrictions.'*

Since it is very difficult for a trader, wishing to import into Belgium Scotch whisky which is already in free circulation in France to obtain such a document, unlike for the importer who imports directly from the producer country, the Court found that this Belgium demand hindered intra-Community trade.

Source: [www.law.nyu.edu/weilerj/unit9/eu97905.htm](http://www.law.nyu.edu/weilerj/unit9/eu97905.htm). New York University School of Business, prof. Weiler, 1997

**Cassis de Dijon**, February 20<sup>th</sup>, 1979, 120/78

In the 'Cassis de Dijon' case, the European Court of Justice struck down a German import prohibition.

The prohibition disallowed the import, sale and/or marketing of liqueurs in Germany that didn't meet minimum German alcohol standards. The case involved Cassis de Dijon, a French liqueur. Cassis contains 15-20% alcohol and the German standards prescribed 25%.

The German government argued the validity of its regulation primarily on health grounds, claiming that the law existed to avoid the proliferation of alcoholic beverages within the German market. It argued that beverages with low alcoholic content induce a tolerance toward alcoholism more so than highly alcoholic beverages.

After the case was brought against the German courts, the European Court of Justice ruled that because Cassis met French standards, it could not be kept out of the German market (Article 30). After rejecting the German defense claims, the Court spelled out the general principle, which is now the most famous part of the ruling:

*'There is (...) no valid reason why, provided that they have been lawfully produced and marketed in one of the Member States, alcoholic beverages should not be introduced into any other Member State.'*

The Court ruled that barriers to trade were allowed only to satisfy mandatory requirements relating to the: (1) effectiveness of fiscal supervision, (2) the protection of public health, (3) the fairness of commercial transactions and (4) the defense of the consumer. When these conditions are threatened and import prohibitions are found to be valid, the Commission would provide minimum standards in the form of a directive. Member States would then be obliged to harmonise their standards to meet the criteria set out in Commission directives.

Source: [www.american.edu/ted/cassis.htm](http://www.american.edu/ted/cassis.htm). Trade and Environment Database (TED)

## 1.4 Removal of technical barriers: 3 instruments

Technical barriers to trade are now the most prevalent impediment for the free circulation of goods in the EU-market (see also Chapter 4, paragraph 4.2). The trade-restricting impact of these national regulation barriers stems from the need to reconfigure products to comply with partner country specifications. It has been estimated that over 100.000 different national specifications co-existed in the EU in 1985. At present 76% of the value of intra-EU trade is subject to mandatory technical specifications. If all of this economic activity were to be regulated solely at national level it could be expected that much of it would be exposed to the risk of technical barriers.

*Three instruments* are used within the EU to deal with the technical barriers:

- prevention of new technical barriers to trade
- mutual recognition
- technical harmonisation (the ‘New Approach’).

### *Preventing new technical trade barriers*

There is an ever present tendency for regulatory authorities to expand or change the set of national technical regulations as a result of new technological developments and product development and product innovation. In practice Member States continue to concentrate much of their regulatory energy on precisely those sectors where EU-legislation has been adopted (e.g. foodstuffs, transport equipment, chemicals and pharmaceuticals, telecoms equipment, construction products, mechanical engineering).

A mutual information procedure (*Directive 98/34/EC, amended by Directive 98/48/EC*) has been instituted which offers the Commission and Member States:

- the opportunity to consider any national regulatory proposals, and
- to object to any potentially trade-restricting provisions before they become law.

Furthermore, a requirement came into force (January 1<sup>st</sup> 1997) for Member States to notify all products where they withhold the benefits of mutual recognition. In doing so, it paves the way for systematic analysis of all products where Member States consider that national rules embody qualitative different levels of regulatory protection with a view to:

- determining whether this assessment is objectively supported, and
- whether appropriate action is required.

### *Mutual recognition*

Member States usually regulate risks for the same product in different ways. In general, products manufactured in accordance with different national technical regulations dealing with the same product risks are ‘equivalent’ in terms of the level of protection which they embody.

Recognising this, *Member States must allow market access to products manufactured in accordance with partner country specifications embodying ‘equivalent’ levels of protection for prescribed objectives*, in conformity with the Court of Justice ruling in the ‘*Cassis de Dijon*’ case (see box 1). Where regulations in force in the country of production offer equivalent guarantees for the attainment of the regulatory objective in question in the Member State of destination, importing Member States may not require the product to be adapted to their own regulatory specifications. *Mutual recognition tends to apply where products are new, specialised or fall outside the scope of EU-harmonising legislation*. Mutual recognition can be relatively effective for equipment goods and consumer durables. But it encounters difficulties where the product risk is high (e.g. pharmaceuticals) and consumers or users are directly exposed.

There are also other outstanding concerns:

- where national *approaches to technical regulation are so divergent* as to preclude smooth application of the principle - e.g. where consumers are directly exposed to the underlying risk - the

mutual recognition principle can play only a limited role in providing for free circulation. If free circulation throughout the EU is to become a reality for such products, some **harmonisation** of permissible products and their composition and labelling may be needed

- where mutual recognition is the chosen approach, **health and safety inspectorates in the importing country may be unable to assess the reliability of proof of conformity of products with corresponding specifications of the exporting country**. More exchange of information on national regulations and related conformity assessment procedures is needed. Including development of universally recognised accreditation systems for authorisation of testing and certification bodies
- even when regulatory obstacles for the free movement of goods have been overcome, **customer preference** in the importing Member State for products manufactured in accordance with local (voluntary) specifications may constitute an additional non-regulatory technical hurdle for imported products.

Currently there is **dissatisfaction** with the capacity of the mutual recognition principle to create the conditions for free movement of goods. One of the main problems is the **limited scope for taking action against infringements**.

### **Technical harmonisation**

Where equivalence between levels of regulatory protection embodied in national regulations cannot be assumed, the only viable way to remove the technical barrier in question is to reach agreement (under qualified majority voting) on a **common set of legally binding requirements**. Once such agreement is reached, no further legal impediments can prevent the market access of complying products anywhere in the Community. EU-legislation harmonising technical specifications has involved two distinct approaches:

- ‘old approach’ (detailed harmonisation)
- ‘new approach’ (essential requirements).

#### Old approach: detailed harmonisation measures

For certain products, the **nature of the risk requires product-by-product or even component-by-component legislation**. If EU-measures are required to give effect to the free movement of these goods, then these EU-regulations must be sufficiently **detailed** to protect against this risk.

Where registration with a national authority or formal authorisations are required before placing products on the market, a coordinated approach to product testing, a centralised approach (motor vehicles) towards procedures or a combination of both (pharmaceuticals) has to be used.

The adoption of programmes of detailed harmonising legislation seems to overcome deeply entrenched technical trade barriers affecting sectors accounting for over 30% of the value on intra-EU trade (e.g. motor vehicles, chemicals, pharmaceuticals, foodstuffs).

#### New approach: regulation of essential requirements

A so-called ‘new approach’ to technical harmonisation was introduced in **1985** based on a division of responsibility between public authorities on the one hand and producers, testing and certification and standardisation bodies on the other hand. The **key components of the new approach** are:

- legislation confines itself to **requirements which are ‘essential’** for quaranteeing a high level of protection for the collective interest at issue
- **standardisation bodies** have the task of defining the detailed technical solutions which remain voluntary in character
- application of these solutions (harmonised **standards**) endow presumption of conformity with the ‘essential requirements’
- **producers are legally responsible** for ensuring that all marketed products comply with the essential requirements
- **conformity assessment is carried out by testing and certification bodies**. These are designated by the Member State authorities and act under their responsibility. The Member States mutually

recognise the certificates of conformity issued by bodies designated by other Member States  
(*'notified bodies'*)

The new approach has been applied in a wide range of sectors, including both consumer goods and equipment goods.

***For further information***

- list of standards being developed to implement new approach directives:  
<http://www.newapproach.org.directivelist.asp>
- general information: [http://europa.eu.int/comm/enterprise/new\\_approach/standardization/](http://europa.eu.int/comm/enterprise/new_approach/standardization/) **and:**  
<http://www.newapproach.org>
- adopted New Approach directives are published in the L series of the Official Journal of the European Communities. Proposals for New Approach directives are published in the C series of the Official Journal.

## 2. Free movement of goods: definition of the subject matter

*The free movement of goods is one of the **four basic freedoms** of companies and citizens in the EU and a cornerstone of the internal market. But what are 'goods'? What means 'free movement'? And are all goods allowed to move freely within the EU?*

### 2.1 Goods

Everything produced within the EU is either a good or a service. They represent the two categories into which all products are divided. They can be categorized as consumer or industrial and as final or intermediate. Goods are the **tangible** products. 'Tangible' means: the product can be felt, and/or seen, and/or smelt and/or stored. Goods can be divided into **durables** (e.g. cars, toys, washing machines) and **nondurables** (e.g. foodproducts).

### 2.2 Free movement of goods: the general scope

In Article 9 and 10 of the EC Treaty the **scope** - with reference to the goods and countries concerned - of the principle of the free movement of goods is described:

The Community shall be based upon a customs union which shall cover **all trade in goods** and which shall involve **the prohibition between Member States of customs duties on imports and exports and of all charges having equivalent effect**, and the adoption of a common customs tariff in their relations with third countries (EC Treaty, Article 9).

The provisions (...) shall apply to products originating in **Member States AND** to products coming from **third countries** which are in free circulation in Member States (EC Treaty, Article 9). Products coming from a third country shall be considered to be in free circulation in a Member State if the import formalities have been complied with and any customs duties or charges having equivalent effect which are payable have been levied in that Member State, and if they have not benefited from a total or partial drawback of such duties or charges (EC Treaty, Article 10-1).

### 2.3 Exceptions

So, all goods are allowed to move freely between Member States? Not quite. There are some exceptions, which are mentioned in **Article 36 of the EC Treaty**.

Article 36 states: 'The provisions of Article 30 (...) shall not preclude prohibitions or restrictions on imports, exports, or goods in transit justified on the grounds of:

- **public morality, public order or public security**
- **the protection of health and life of humans, animals or plants**
- **the protection of national treasures possessing artistic, historic, or archaeological value, or**
- **the protection of industrial or commercial property.**

Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between the countries.'

A good and topical subject is the embargo the Commission declared on products in the supply chain of beef as a result of the 'mad cow disease' (BSE). In this case the health of humans and animals is at stake, and therefore an exception is made with reference to the free movement of goods.

In box 2 we present two examples of how these exceptions are worked out in legislation

Box 2

***Free movement of goods: two examples of exceptions***

**RADIOACTIVE WASTE AND SUBSTANCES**

**COMMUNITY MEASURES**

Council Directive 92/3/Euratom of 3 February 1992 regarding the supervision and control of transfers of radioactive waste between Member States coming in and out of the Community.

**OBJECTIVE**

To lay down a system of prior authorization for all movements of radioactive waste in order to increase protection against the dangers arising from ionizing radiation.

**EXPORT OF CULTURAL GOODS**

**COMMUNITY MEASURES**

Council Regulation (EEC) No 3911/92 of 9 December 1992 on the export of cultural goods.

Amended by the following measure:

Council Regulation No 2469/96 of 16 December 1996.

**OBJECTIVE**

Harmonized export controls for cultural goods at the Community's external frontiers.

### 3. European Union legislation

*The legal system in the EU is complex. But each SME should have a general understanding of the various legal sources because they influence the daily operations of companies more and more. In this chapter we give an outline of the legal system in the EU and present the most important legislation with respect to the free movement of goods.*

#### 3.1 The legal system in the EU: an overview

In box 3 we present a summary of the legal sources of community law.

Box 3

##### **Community Law: summary of legal sources**

###### **Primary community law**

Treaties

###### **Secondary community law**

regulations, directives, decisions, recommendations and opinions (and: standards)

###### **Other sources**

agreements under international law, general legal principles, agreements between individual member states

All the Treaties (e.g. the EC Treaty and the European Act) together are called '**primary community law**'. The Treaties are the foundation of the Communities.

'**Secondary community law**' puts the primary legislation into concrete terms and offers the framework for implementation of legislation. Besides these main sources of community law, there are other sources. They are mentioned in box 3 without further explanation.

The secondary community legislation includes several types of **legal instruments**. Because they (mostly) have the largest and most direct effect on SMEs, they are discussed in brief.

**Regulations** are law in each Member State: binding for the country and all citizens.

**Directives** are binding - for each Member State to which it is directed - regarding the objective to be reached. They leave the form and means for implementation and enforcement to the discretion of internal institutions of the Member State. The Member State has to integrate the directive into national law. Directives are mostly detailed and can therefore have a large practical impact on SMEs.

**Decisions** are binding for those to whom it is directed. They are often used to supplement the details to directives or to update directives. Therefore their impact on SMEs can be substantial.

**Recommendations and opinions** are instruments with an advisory character (for instance an advice to change practices that hinder the free movement of goods).

With reference to the free movement of goods, **standards** have become very important for SMEs. Standards are no legal instrument, but the results of regulations and directives.

Standardisation is a **voluntary process** based on consensus amongst different economic actors. It is carried out by independent standardisation bodies, acting at national, European and international level. Under the 'new approach' (see Chapter 1) the Community has made an increasing use of standards in its policies. First in the fields of technical harmonisation, ICT and public procurement, later also in areas such as environment, transport, energy, competitiveness and consumer protection.

##### **For further information**

The ABC of Community Law, European Commission, 115 pages. Catalogue number: PD-25-99-221-EN-C

*'The purpose of this publication is to explain the European legal order. It is addressed primarily to non-lawyers and tries to describe the Treaties in terms intelligible to the layman'* (Source: EU).

## 3.2 Free movement of goods: most important legislation

It is impossible to mention all legislation with reference to the subject of the free movement of goods in this training tool. Therefore in this paragraph a selection of the most important legislation is presented.

### *General legislation*

**Commission Directive 66/683/EEC of 7 November 1966 eliminating all differences between the treatment of national products and that of products which, under Articles 9 and 10 of the Treaty, must be admitted for free movement, as regards laws, regulations or administrative provisions prohibiting the use of the said products and prescribing the use of national products or making such use subject to profitability**

*Official journal NO. 220 , 30/11/1966 P. 3748 - 3750*

**Objective:** establish a system of free movement of products, without differences of treatment.

**Amendments:**

*Amended by (OJ L 013 19.01.1970 p.1)*

**Commission Directive 70/50/EEC of 22 December 1969 based on the provisions of Article 33 (7), on the abolition of measures which have an effect equivalent to quantitative restrictions on imports and are not covered by other provisions adopted in pursuance of the EEC Treaty**  
*Official Journal L 013 , 19/01/1970 p. 0029 - 0031*

**Objective:** abolish measures which make importation more difficult or costly than the disposal of domestic production.

**Council Directive 83/643/EEC of 1 December 1983 on the facilitation of physical inspections and administrative formalities in respect of the carriage of goods between Member States**  
*Official Journal L 359 , 22/12/1983 p. 0008 – 0011*

**Objective:** facilitate the carriage of goods between member states by laying down the rules concerning physical inspections and administrative formalities.

**Amendments:**

*Amended by (OJ L 024 27.01.1987 p.33)*

*Amended by (OJ L 187 13.07.1991 p.47)*

**Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products**  
*Official Journal L 210 , 07/08/1985 p. 0029 - 0033*

**Objective:** clarify regulation concerning liability of producers for defective products.

**Amendments:**

*Incorporated by (OJ L 001 03.01.1994 p.263)*

*Incorporated by (OJ L 001 03.01.1994 p.321)*

*Amended by (OJ L 141 04.06.1999 p.20)*

**Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts**

*Official Journal L 209 , 24/07/1992 p. 0001 - 0024*

*Finnish special edition....: Chapter 6 Volume 3 p. 139*

*Swedish special edition....: Chapter 6 Volume 3 p. 139*

**Objective:** lay down the rules concerning the coordination of procedures for the award of public service contracts.

**Amendments:**

*See (OJ L 199 09.08.1993 p.1)*

*Amended by 194N*

*Amended by (OJ L 328 28.11.1997 p.1)*

**Council Directive 92/59/EEC of 29 June 1992 on general product safety**

*Official Journal L 228 , 11/08/1992 p. 0024 - 0032*

**Objective:** ensure that products placed on the market are safe, as there are no specific provisions in rules of Community law governing the safety of the products concerned.

**Council Directive 93/5/EEC of 25 February 1993 on assistance to the Commission and cooperation by the Member States in the scientific examination of questions relating to food**

*Official journal NO. L 052 , 04/03/1993 P. 0018 - 0021*

*Finnish special edition....: Chapter 15 Volume 12 P. 87*

*Swedish special edition....: Chapter 15 Volume 12 P. 87*

**Objective:** ensure that the competent authorities and bodies of the Member States cooperate with the Commission and lend it the assistance it needs in the scientific examination of questions of public interest relating to food.

**Amendments:**

*Amended by (OJ L 024 27.01.1987 p.33)*

*Amended by (OJ L 187 13.07.1991 p.47)*

**Directive 98/6/EC of the European Parliament and of the Council of 16 February 1998 on consumer protection in the indication of the prices of products offered to consumers**

*Official Journal L 080 , 18/03/1998 p. 0027 – 0031*

**Objective:** stipulate indication of the selling price and the price per unit of measurement of products offered by traders to consumers in order to improve consumer information and to facilitate comparison of prices.

**Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations**

*Official Journal L 204 , 21/07/1998 p. 0037 - 0048*

**Objective:** put in place a procedure for the provision of information in the field of technical standards and regulations.

**Amendments:**

*Amended by (OJ L 217 05.08.1998 p.18)*

**Council Directive 2000/47/EC of 20 July 2000 amending Directives 69/169/EEC and 92/12/EEC as regards temporary quantitative restrictions on beer imports into Finland**

**Objective:** establish temporary quantitative restrictions on beer imports into Finland.

## ***Specific legislation***

### New approach

The 'new approach' represents an innovative way of technical harmonization. It introduces - among other things - a clear separation of responsibilities between the EC legislator and the European standards bodies CEN, CENELEC and ETSI in the legal framework allowing for the free movement of goods.

Since 1987 some 20 directives, adopted on the basis of the New Approach and Global Approach, have progressively come into force. These directives - mentioned in the frame below - have the dual purpose of establishing a level playing field for free circulation of goods in the internal market, and of guaranteeing a high level of protection. The common element in this legislation is that it is limited to the adoption of mandatory essential requirements, the definition of appropriate conformity assessment procedures and the introduction of the CE marking (see also Chapter 1). Under this concept, businesses are given the greatest possible choice of how to meet their obligations. The European

standardisation bodies have the task of drawing up technical specifications which offer one route to complying with these obligations.

<b>Directive (as referred to in this Guide)</b>	<b>Number of Directive, Amendment</b>	<b>Date of application</b>	<b>End of transitional period</b>
1. Low voltage equipment <sup>1</sup>	73/23/EEC 93/68/EEC	19/8/74 1/1/95	1/1/97 1/1/97
2. Simple pressure vessels	87/404/EEC 90/488/EEC 93/68/EEC	1/7/90 1/7/91 1/1/95	1/7/92 1/1/97
3. Toys	88/378/EEC 93/68/EEC	1/1/90 1/1/95	1/1/97
4. Construction products	89/106/EEC 93/68/EEC	27/6/91 1/1/95	1/1/97
5. Electromagnetic compatibility	89/336/EEC 92/31/EEC 93/68/EEC (98/13/EC) <sup>2</sup>	1/1/92 28/10/92 1/1/95 6/11/92	31/12/95 1/1/97
6. Machinery <sup>3</sup>	98/37/EC   98/79/EC	1/1/93 1/1/93 1/1/95 1/1/95 7/6/00	31/12/94 31/12/94 31/12/96 1/1/97
7. Personal protective equipment	89/686/EEC 93/68/EEC 93/95/EEC 96/58/EC	1/7/92 1/1/95 29/1/94 1/1/97	30/6/95 1/1/97
8. Non-automatic weighing instruments	90/384/EEC 93/68/EEC	1/1/93 1/1/95	31/12/02 1/1/97
9. Active implantable medical devices	90/385/EEC 93/42/EEC 93/68/EEC	1/1/93 1/1/95 1/1/97	31/12/94 14/6/98
10. Gas appliances	90/396/EEC 93/68/EEC	1/1/92 1/1/95	31/12/95 1/1/97
11. Hot water boilers	92/42/EEC 93/68/EEC	1/1/94 1/1/95	31/12/97 1/1/97
12. Civil explosives	93/15/EEC	1/1/95	31/12/02
13. Medical devices	93/42/EEC 98/79/EC	1/1/95 7/6/00	14/6/98 30/6/01
14. Potentially explosive atmospheres	94/9/EC	1/3/96	30/6/03
15. Recreational craft	94/25/EC	16/6/96	16/6/98
16. Lifts	95/16/EC	1/7/97	30/6/99
17. Refrigerator appliances	96/57/EC	3/9/99	
18. Pressure equipment	97/23/EC	29/11/99	29/5/02
19. Telecommunications terminal equipment <sup>4</sup>	98/13/EC	6/11/92 1/5/92 1/1/95	
20. <i>In vitro</i> diagnostic medical devices	98/79/EC	7/6/00	7/12/03 7/12/05
21 Radio and	99/5/EC	8/4/00	7/4/00

telecommunications terminal equipment <sup>5</sup>			7/4/01
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Packaging and packaging waste	94/62/EC	30/6/96	31/12/99
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(1) This directive - drawn up in 1973 before the concept of New Approach and Global Approach was established - was, to some extent, aligned in 1993 with other New Approach directives.

(2) This is not a modification of the directive relating to electromagnetic compatibility, but it has an impact on its application.

(3) This directive codifies into one single text Directive 89/392/EEC as modified by Directives 91/368/EEC, 93/44/EEC and 93/68/EEC. The date of application is based on the original directives.

(4) This directive codifies into one single text directive (91/263/EEC, as modified by Directive 93/68/EEC and the supplementary Directive 93/97/EEC. The date of application is based on the original directives.

(5) This directive will replace the directive on Telecommunications terminal equipment.

New approach on internet: [www.europa.eu.int/comm/enterprise/regulation/index.htm](http://www.europa.eu.int/comm/enterprise/regulation/index.htm)

## ***Standards***

### **Council Resolution of 1999-10-28 on "The Role of Standardisation in Europe"**

The Resolution is published in the OJ C 141 of 2000-05-19

### **Report of the Commission of 1998-05-13 to the Council and the European Parliament on "Efficiency and accountability of European Standardization under the New Approach" - COM (98) 291**

This Report describes the relationship between the New Approach and standardisation, and emphasises the need for accountability in standardisation. It then indicates how efficiency can be assessed, and formulates a number of proposals for improving efficiency.

### ***For more information***

#### **Study on the impact of standardisation**

to analyse quantitatively and qualitatively which aspects of the economy and of society have been affected by standards and to what extent

#### **The New Approach to technical harmonisation and standardisation**

an overview of Standardisation and Harmonised Standards under the New Approach.

#### **New Approach Standardisation**

represents the joint efforts of CEN, CENELEC and ETSI in delivering information on standards and routes into the standardisation process.

### ***European standards organisations***

CEN	European Committee for Standardisation.
CENELEC	European Committee for Electrotechnical Standardization.
ETSI	European Telecommunications Standards Institute

### **Old approach**

The 'old approach' includes legislation on several sectors of industry. This is set out in the 'Pink Book' of DG Enterprise. This structural list of the acquis sets out the references of existing Community legislation and other measures which are under the management of DG Enterprise.

This directorate general includes SME policy. Currently the book is not available on the internet but it should be there in 2001. It contains EU-legislation in the following areas:

- Motor Vehicles
- Foodstuffs
- Chemicals
- Pharmaceuticals
- Cosmetics
- Legal Metrology and Pre-packing
- Electrical risk and Electrical Equipment
- Consumers
- Other Product Groups
- Horizontal and Procedural measures
- Industry Policy

The legislation with regards to these sectors is enormously extensive and detailed. For instance with respect to motor vehicles there are hundreds of relevant regulations. Therefore we only present this list of product groups.

## 4. Influence on SMEs

*The European Union's single market - with 370 million consumers and millions of businesses - is the largest in the industrial world. The abolition of internal tariffs gave a boost to the economies concerned. Consumers benefit from lower prices and the availability of a wider range of goods. But what were the effects on companies? And what are the most important barriers for SMEs existing at present?*

### 4.1 Access to the European market

Europe changed in about forty years from a severely fragmented market into an internal market, in which the free movement of goods is possible. Companies that operate in EU benefit from the following characteristics of the internal market:

- all customs duties among the Member States are eliminated
- goods crossing the Community's internal borders are no longer subject to customs controls at the borders
- for trade in goods between businesses in Member States value added tax (VAT) is levied in the Member State to which the goods are transported at the rates and under the conditions of that Member State
- a Common Customs Tariff applies to imports from third countries.

Because of the internal market it has become *much easier to export*. Furthermore it is *more cost efficient* to sell goods in other Member States because of the elimination of customs duties and customs controls at the borders. Companies that export benefit from *economies of scale*, which results in lower production costs. Because of this they can compete better with American and Japanese companies, which already have large integrated home markets for a long time. Especially SMEs that produce and market goods for niche markets can benefit from the internal market, because the size of their home market is limited.

According to a survey by Intrastat *two out of three companies benefit from the single market*.

The EOS Gallup Business Surveys shows clearly that the satisfaction index with respect to the operation of the internal market grows steadily. On a scale from zero to 100 the index was 64 in 2000, while it was 52 in 1997. In these surveys various important aspects of the internal market are also investigated. Box 4 shows that the internal market is on the average functioning properly.

Box 4

#### ***How do companies rate the internal market on a scale from 0-100? (EU-average)***

Buy and sell products and services without hindrances	70
Competition is free and fair	67
Legal framework favours commercial activities	64
Rules are applied in an efficient and impartial way	63

Source: EOS Gallup Survey, 2000.

## 4.2 The main barriers for SMEs

Although there is free movement of goods in the EU, SMEs still encounter problems on the internal market. In box 5 the top ten of most important problems SMEs encounter is presented.

Box 5

***Most important obstacles in the internal market for SMEs (SMEs with more than 20 employees), ranked in order of importance***

1. Additional costs to render products compatible with national specifications
2. Unusual testing, certification or approval procedures
3. State aids favouring competitors; difficulties related to the VAT system and VAT procedures
4. Inappropriate legal appeal mechanisms (breaches of contract)
5. Discriminatory tax treatment; lack of legal security of cross-border contracts/transactions
6. Restrictions on market access/existence of exclusive networks
7. Lack of protection against piracy and counterfeiting
8. Costly financing arrangements for cross border transactions
9. Discriminatory practices of awarding authorities in public procurement markets
10. Requested rights or licenses in hands of local competitors.

Source: Single Market Scoreboard.

This ranking is rather stable compared to previous surveys.

Obstacles affect businesses differently. On average SMEs tend to report ***fewer obstacles*** than large companies. This is probably due to their flexible attitude. On the other hand the obstacles they encounter are much more difficult to overcome because they lack the means (e.g. staffs of lawyers and other specialists) larger companies do have.

Big firms (employing over 250 persons) perceive more difficult obstacles related to state aid and restrictions to market access due to rights and licenses in the hands of local competitors.

The following obstacles are more important for SMEs than for large companies:

- lack of legal security of cross-border contracts/transactions
- inappropriate legal appeal mechanisms to resolve breaches of contract
- lack of protection against piracy and counterfeiting.

## 5. Outlook

*The Internal Market Strategy endorsed at the Helsinki European Council (November 1999), outlines the **strategic objectives for the European Union's Internal Market** over the next five years and set up mechanisms for tracking and updating target actions.*

### 5.1 Internal market strategy

The strategic objectives are broadly defined as:

- *enhancing the efficiency of the EU's product and capital markets*
- *improving the business environment*
- *exploiting the achievements of the Internal Market in a changing world*
- *improving the quality of life of citizens.*

The 2000 Review of the Internal Market Strategy helps focus minds on what needs to be done and re-targets the efforts towards the goals set out by the Lisbon European Council in 1998.

The priorities for action of the 2000 Review are:

#### *Enhancing the efficiency of Community capital and product markets*

- rapid agreement on a regulation creating a *community patent* is vital to stimulate investment, research and innovation
- *further liberalisation* in areas such as gas, electricity, postal services and transport is needed because competition produces lower prices, innovative services and new jobs. In particular Member States need to complete liberalisation of European energy markets, electronic communications markets and agree on the next steps in the liberalisation of postal services
- *fully integrated financial markets*. A deadline of 2005 has been set for completion of the Financial Services Action Plan and of 2003 for full implementation of the Risk Capital Action Plan.

#### *Improving the business environment*

- *promoting competition*. Member States must work to reduce the overall level of State Aid
- *improving the integration of services*. The Commission will establish a new strategy for removing remaining barriers to trade in services with a view to securing 3% year-on-year growth in this sector. A key element will be completion of the regulatory framework for electronic commerce
- *reducing the burden*. The Commission will propose by end June 2001 a new integrated regulatory and simplification initiative
- *liberalising public procurement markets*. The rapid adoption of new, streamlined rules to be contained in a legislative package to be proposed imminently is essential to the creation of a genuinely liberalised market for public procurement
- *eliminating tax distortions*. Unfair tax competition continues to distort the free trade of goods and services.

#### *Exploiting the achievements of the internal market in a changing world*

- the internal market should be *streamlined and geared up to servicing an enlarged Union*. Available instruments - in particular twinning, technical assistance and investment provided by Phare - should now focus on improving the quality of the administrative infrastructure, especially in banking, insurance and securities supervision.

#### *Improving the quality of life of citizens*

- *enforcing internal market rights and deepening dialogue with citizens and business*. Dialogue with citizens and business uses the internet as a channel. Not only to make available information

but also to harvest views and experiences on how the internal market works in practice, which in turn informs policy making. This tool will be further developed. In particular it is important to find effective, fast and simple solutions for citizens and businesses who encounter problems enforcing their rights. The Commission, acting on the European Parliament's suggestion, will hold an Internal Market Forum to examine the concerns of citizens and business and improve the existing redress mechanisms.

## **5.2 Proposed new rules**

Proposals for directives based on the principles of the New approach:

<b>Articles of precious metal</b>	COM/93/322 final and COM/94/267 final
<b>Cableway installations designed to carry passengers</b>	COM/93/646/final
<b>Marking of packaging</b>	COM/96/191 final
<b>Noise emission</b>	COM/98/46 final

## 6. How to benefit from the internal market: checklist

*The internal market has made it much easier to export. But of course it is the entrepreneur - and only the entrepreneur - who decides whether or not to export. The first step to export is a thorough preparation. Here we offer a checklist that can be of use for every SME that has plans for export.*

This is a **basic checklist**. That means it contains the most important questions you have to answer. The six main elements of the checklist are:

- preparation and general orientation
- market research
- product
- distribution channel
- price
- promotion

### A. Preparation and general orientation

Formulate your 'mission statement'.

A mission statement has four important elements:

- Vision:** what do we want to **accomplish** in the very long run?  
**Mission:** which problems do we want to **solve** for our customers?  
**Strategy:** **the way** we want to accomplish our vision and mission (long run)  
**Targets:** what do we want to accomplish in the **next three years?** (short run)

Is there a necessity to export which follows from your mission statement?

Are there other necessities for export for your company?

Are you aware that exporting has large consequences for your business?  
(e.g. training of personnel, financial consequences)

Do you have the time to prepare yourself for export?

Do you have the financial means to prepare yourself for export?  
For instance: it might be necessary to change your product (fundamentally).  
Can your company afford the cost of specific product development?

Could your efforts perhaps better be targeted at your home market?

Which markets?

Make a shortlist of exportmarkets that are most suitable for your company.

Make a choice: confine yourself to **one** target market.

### B. Market research

Collect *general information* on the selected **country** with respect to:

- (business) culture
- language
- laws

etcetera

Are there regulations in the target country which form obstacles for export of your product?

Collect *specific information* of the **target market**.

How large is it?

What is the annual growth rate?

What are the main developments/trends that influence this market and the market growth?

Collect *specific information* with respect to the **users/consumers** in your target market.

Do the needs of the consumers in the target market differ fundamentally from those in your home market?

If this is the case, what are those specific needs and wants?

Collect *specific information* with respect to the **competitors** on the target market.

What are the main competitors on the target market?

What is their market share?

What are the main competing products?

Make a short analysis of the strengths and weaknesses of these products.

What do you learn from this analysis?

### ***Sources of market information***

Get in contact with one or two companies in your country that export to your target market.

This is one of the fastest ways to collect a lot of important practical information.

#### ***Website of the EU Directorate-General ('DG') Enterprise***

Very useful, because it offers lots of practical information.

**[http://europa.eu.int/comm/enterprise/index\\_en.htm](http://europa.eu.int/comm/enterprise/index_en.htm)**

It has for instance a direct link to 'Dialogue for business', the 'One stop internet shop for business'.

This internet shop can answer many specific questions with respect to export.

#### ***Website of the EU Directorate-General ('DG') Internal Market***

You will find the so-called 'Single Market Review Series'. The Series is co-published by the Office for Official Publications of the European Communities and Kogan Page-Earthscan on behalf of the European Commission. The volumes listed on this website give a detailed overview of all aspects of the Single Market. For instance: insight to specific industry sectors.

**[http://europa.eu.int/comm/internal\\_market/studies.htm](http://europa.eu.int/comm/internal_market/studies.htm)**

#### ***Economist Intelligence Unit***

An important source of information is also the ***Economist Intelligence Unit***. This research unit from the international magazine The Economist makes the so-called 'Country Reports' from EU and other countries. These Country Reports contain lots of general information on the country concerned (also addresses).

#### ***Celex***

This is the multi language databank of the EU. Here you will find all the EU-legislation and other important information.

**[http://europa.eu.int/celex/htm/celex\\_en.htm](http://europa.eu.int/celex/htm/celex_en.htm)**

### ***Euro Info Centers***

Some 300 Euro Info Centers ('EIC') in 37 European countries help businesses with information on for instance the regulations with respect to the internal market.

<http://europa.eu.int/comm/enterprise/networks/eic/eic.html>

Furthermore their task is to promote cooperation by means of the ***Business Cooperation Network***.

### ***Business Cooperation Network (BC-net)***

This network consists of some 600 advisors. They are linked to each other by the Business Cooperation Center in Brussels. BC-net offers assistance to SMEs in Member States and some third countries to find business partners.

<http://europa.eu.int/comm/represent/be/neder/vademecum2/vadenlprog.htm>

### ***Other sources of information***

Reports on the specific target market

Reports on the industry

Trade fairs in the country of destination

International industry trade fairs

## **C. Product**

Which product(s) are you planning to export?

Are your products (in general) suitable for export?

Or are they fine tuned to local demands?

Make a short analyses of the strenghts and weaknesses of the product(s) you selected for export.

Can the product itself (with regard to technical specifications) compete on the export market?

Does your product have to be adapted to the target market? (conformity with EU-regulations)

Check with the 'old' and 'new approach' legislation presented in Chapter 3 of this training tool.

Important: your product can be subject to more than one EU-directive and standard!

CE-marking (CE=Conformité Européenne) is compulsory for a large number of industrial products.

The ***Euro Info Centers*** can help you find out if CE-marking is compulsory.

There are four exceptions to the free movement of goods.

Does your product belong to one of the four product groups mentioned in Chapter 2?

If your product is a 'high risk' product it might be examined by a 'notified body'.

This is an organisation which examines if the product meets the demands of the relevant directive (see Chapter 3).

Is testing necessary?

Testing procedures cost money and a lot of time. Do you have the financial resources and the time?

Is your product no imitation?

Is your product not conflicting with patents?

Does your packaging meet the local regulations?

Do you think it is necessary to apply for a patent?

Brands and models can also be protected.

Is it necessary to protect them?

Does the quality of the product meet the demands of the users/consumers in the target market?

## **D. Pricing**

What are the prices of the most important competing products in the target market?

Can your product - with respect to price - still compete on the target market when all costs are included?

Additional costs as a result of export are:

- testing procedures
- packaging
- transport
- storage
- insurance (e.g. export credit insurance, insurance for goods transport)
- costs of your bank
- export documents
- commission of agent(s).

## **E. Distribution channel(s)**

Are you distributing the product yourself (direct distribution), or do you outsource the distribution (indirect distribution)?

If the target market has a limited number of potential clients it is probably cheaper to choose for the direct approach.

There are several ways for direct and indirect distribution.

### Direct distribution

- your own office in the target market
- direct sale to for instance a large retail chain
- export combination (= group of exporters)
- internet.

### Indirect distribution

- piggy back distribution: your product is sold by a firm from your country that already exports to the target market
- importer
- wholesaler.

Your choice for either direct or indirect distribution depends on a lot of factors. For instance your budget.

If your marketing budget is limited, indirect export is probably the best way.

If you are planning to work with an agent or importer, how reliable is this partner?

Does the agent or importer has sufficient knowledge of your product?

Does the agent or importer has sufficient knowledge of the target market?

Does your partner have a professional organisation for sales?

Does your partner have a professional organisation for after sales service?

Doesn't your partner have conflicting obligations with suppliers of competing products?

Are the agreements with your partner written down in a contract?

What country laws are applicable to the agreement?

Under which of the so-called 'INCO-terms' can you best deliver the goods?

INCO is a system of ways to deliver goods that was put up by the International Chambers of Commerce. It is internationally accepted for the trade of goods.

## **F. Promotion**

What promotional means are needed to reach the potential users/customers?

How large is the promotional budget?

With respect to this budget, what are the most effective promotional instruments we can use?

- direct marketing
- advertising (newspapers, magazines, tv, radio)
- trade fairs
- website

Do you need the help of an advertising agency?

Or can you do the promotion yourself?

***Have your ideas for export - or better your detailed exportplan - analysed by an expert. For instance an international trade consultant, a bank or an export specialist from your Chamber of Commerce.***

Contact Points for Business

***In each of the Member States and some EEA countries there is a Contact Point for Business. They offer assistance when an exporter encounters a problem within the national administration of a Member State. This service is free of charge.***

***The Contact Points can be found on the website:***

[http://europa.eu.int/comm/internal\\_market/cp/bus/intro.htm](http://europa.eu.int/comm/internal_market/cp/bus/intro.htm)