DRAFT MINUTES

of the 1652nd meeting of the Council
(Internal Market)

held in Luxembourg on Monday 5 April 1993
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1. Adoption of the agenda
   5709/93 OJ/CONS 17 (Internal market)

   The Council adopted the above agenda.

2. Approval of the list of "A" items
   5710/93 PTS A 18

   The Council approved the "A" items listed in 5710/93 PTS A 18.

   When approving items 4 and 6, however, the Council noted the following statements:

   (a) concerning item 4:

      Adoption in the official languages of the Communities of the Council Decision
      concerning the negotiation of customs co-operation procedures with the Community’s
      main trading partners
      5563/93 CID 10

      Statement by the German delegation:

      "With this Decision the Commission is receiving from the Council a wide-ranging
      negotiating mandate for the conclusion of customs co-operation agreements with
      certain named third countries.

      Because, on the one hand, draft treaties which have once been negotiated by the
      Commission with third countries can, in line with international conventions, only be
      altered in limited ways at the stage of adoption by the Council but, on the other hand,
      the customs administrations of the Member States are greatly affected by the
      contents of the agreements, Germany expects the Commission to involve the Member
      States’ experts in this sector in the negotiation process fully and at an early stage,
      and to take their opinions and wishes into account under a broad interpretation of
      Article 113(3) of the EEC Treaty."
(b) concerning item 6:

Adoption in the official languages of the Communities of the Council Directive on the harmonization of provisions governing the placing on the market and supervision of explosives for civil uses
5739/93 ENT 63
5736/93 ENT 62

Statement by the Italian delegation:

"The Italian Government requests that the Committee established by the Directive address as soon as possible the issue of the relationship between this Directive and the international conventions in this area.

The Italian Government believes that the agreement on this Directive does not preclude the application at national level, for reasons of public policy, of international conventions which lay down higher safety standards in this area."

3. **Completion of the internal market, including abolition of frontier controls**

The Council noted an oral report from the Commission representative emphasizing the slow progress recorded since the previous Council meeting as regards

- the adoption of measures necessary to ensure the completion of the internal market;
- the transposition of measures already adopted into national law.

The Commission representative thought it essential that any delays should be made up before the European Council meeting in Copenhagen and stressed the need to step up efforts particularly in the areas of intellectual property, indirect taxation, the Statute of the European Company and the Community trade mark.
The Italian delegation, which endorsed the Commission representative's view on the latter point, also reiterated the urgent need for progress in the area of precious metals, footwear and the flammability of furniture.

The Portuguese delegation emphasized the importance of a swift settlement of outstanding problems in connection with dual-use goods and technologies.

4. The internal market after 1992 - Future developments

- Political debate
  9837/92
  10813/92
  10127/92
  5753/93

The Council held an open general discussion on the follow-up to the completion of the internal market, i.e. the further measures which the Community and the Member States should take to guarantee that citizens (workers and consumers) and undertakings benefited in full from the single market.

The discussion focused on certain matters identified by the Presidency as key issues, as outlined in 5753/93, viz:

- the internal market - benefits

- economic efficiency and improved rights

- transparency

- information and communication
- the enforcement of internal market rules and administrative co-operation.

In the course of the discussion it was stressed that the following were key points:

- the role of the single market in the promotion of SMEs and measures to combat unemployment;

- the need to ensure monetary stability within the Community, both Economic and Monetary Union and economic convergence being seen as vital to the smooth operation of the internal market;

- the achievement of urgent progress on the question of freedom of movement for persons at Community level and in the context of the Schengen Agreement;

- observance of the principle of subsidiarity, which should lead to a drop in the number of new legislative proposals and, at the same time, ensure continuing efforts to prevent the creation of new barriers to trade;

- consideration of the problems created by the geographical isolation of certain parts of the Community and the development of trans-European networks;

- the need to prevent the introduction of bureaucratic structures in internal market management by favouring a pragmatic co-ordinating approach.
Several delegations announced steps taken at national level to ensure access to information on Community law and to deal with any problems in connection with the implementation of the internal market.

In conclusion, the Council agreed to resume the discussion once the Commission had submitted a formal communication on the subject to it at its next meeting.


5269/93 SE 7
5270/93 SE 8
5735/93 SE 10

The Council tackled discussion of this question on the basis of the report from the Permanent Representatives Committee, focusing more especially on the initial key question of the need to create the SE.

Two opposite approaches were voiced:

- the German and United Kingdom delegations thought that the SE was not vital to the completion of the internal market and emphasized that firms in their respective countries displayed no special interest in this instrument. The German delegation suggested that the discussions be suspended for a certain period at least and emphasized the considerable difficulty which it would have in agreeing to any Community proposal which would jeopardize its "Mitbestimmung" system. The United Kingdom delegation stated that the appropriate legal basis for both the Regulation and the Directive would be Article 235 of the Treaty and that any compulsory system of employee involvement...
would be unacceptable to it. It also reaffirmed the problem which it had with the provisions on the transfer of the registered office. In conclusion, the United Kingdom delegation said that an alternative to continuing the discussions on the SE would be to resume talks on the company law Directives, which were currently in abeyance, although it did not deny that similar difficulties to those affecting the SE could arise in connection with the said Directives.

- The Spanish, French, Italian, Greek, Belgian and Danish delegations emphasized that there were major and unwarranted gaps in company law in the single market context. A company coming under one Community Member State could not transfer its registered office to another Member State without first being wound up, with resultant heavy tax implications for it, nor did any Community legal instrument exist which enabled two or more firms from different Member States to merge, which meant that free movement of undertakings was not guaranteed in a single market which should already have been completed. The alternative indicated by the United Kingdom delegation had no credibility since it would result in an impasse; consequently the most rational solution was to press ahead with the discussions on the SE, which had already reached a much more advanced stage.

Three other delegations (NL/L and IRL) were less categorical in their views, inasmuch as they thought that the SE represented a most useful contribution towards the completion of the internal market, but considered that:

5864/93 che/JM/ac

- 9 -
greater flexibility should be provided in the operation of the Statue of the SE so as to make the instrument more attractive, particularly as regards the question of the registered office/head office (NL and L);

- the Directive needed to be thought about in detail (IRL).

Commissioner Vanni d'Archirafi told the Council that the Commission still regarded the SE as fundamental to the completion of the internal market, as several European Councils had already affirmed. He expressed support for the arguments put forward by the second group of delegations, regarding the gaps in company law, and emphasized that the Commission's view for the idea of the SE encompassing a system of employee involvement did not mean the extension of any particular national system to the whole of the Community.

The positions of the delegations on the other questions referred to in the Permanent Representatives Committee report were confirmed, except on the problem of the registered office and the head office having to be located in the same place, on which the Luxembourg delegation expressed its support for the Netherlands delegation.

In conclusion, the President of the Council, noting that the great majority of delegations had expressed views in favour of the need for the SE, said that the Presidency would conduct bilateral talks in order to establish whether possible solutions could be formulated in time to be referred to the Internal Market Council meeting in June.
6. **Amended proposal for a Council Directive harmonizing the term of protection of copyright and certain related rights**

4483/93 PL 9 CULTURE 8

5702/93 PL 25 CULTURE 22

The Council held a political discussion on the matters referred to in Parts B, C and D of the Presidency's report (5702/93 PL 25 CULTURE 22).

On the question of the term of copyright protection,

- the Belgian, German, Greek, Spanish, French and Italian delegations confirmed their support for a term of 70 years pma (post mortem auctoris), as proposed by the Commission;

- the Danish and United Kingdom delegations, while not convinced of the need to harmonize the term at 70 years pma, were willing to examine the solution with a favourable eye as part of a satisfactory overall compromise;

- the Irish, Luxembourg, Netherlands and Portuguese delegations still saw no real need for harmonization of the term; if it were to be harmonized, these delegations questioned the need for a term of 70 years pma, the Irish delegation suggesting 50 years pma, coupled with a provision allowing the Member States currently operating a longer term to maintain the latter in respect of existing works;
- the Netherlands delegation submitted a document (5895/93 PL 26 CULTURE 26) proposing mutual recognition instead of harmonization; the Luxembourg and Portuguese delegations expressed interest in examining this alternative at the appropriate level; the Danish and German delegations were opposed to such an alternative;

- the Commission representative outlined the arguments in favour of harmonization at 70 years pma;

- the President noted in conclusion a certain drift of opinion towards the solution proposed by the Commission, along with the call by some delegations for a closer scrutiny of the alternative advanced by the Netherlands delegation.

For related rights, the Council noted a consensus in favour of the 50-year protection term proposed by the Commission, the Luxembourg delegation voicing a reservation.

On the matter of cinematographic and audiovisual works:

- the great majority of delegations favoured the solution contained in Annex II to 5702/93 as part of an overall compromise and subject to the following remarks:

  = The Irish delegation stood by a reservation regarding the 70-year period laid down in paragraph 2;
the Luxembourg and United Kingdom delegations would consider the Directive as a whole unacceptable in the absence of such a solution;

the Italian delegation thought that the term "other persons" in paragraph 1 should read "other natural persons" in the interest of greater clarity;

the French delegation indicated a strong preference for the amended Commission proposal and underlined the contradiction which it thought existed between the possibility of recognizing more than one co-author and the requirement to calculate the term of protection with reference to the decease of the principal director only; it advocated at the very least a provision allowing the Member States to provide for the term to be calculated with reference to the decease of the last surviving co-author;

the Commission representative said that the Commission was prepared to review its position if an overall solution could be found for the Directive as a whole.

The Council noted that the great bulk of delegations favoured the exclusion of moral rights from the scope of the Directive, the Italian delegation for its part supporting the Commission proposal. The Commission representative said that, as part of an overall compromise, the Commission was willing to consider the solution advocated by the great majority of delegations.
Finally, several delegations stressed the need for satisfactory solutions to other problems, in particular the protection of posthumous works and works of criticism, the protection of legal persons and the restoration of rights.

The Council instructed the Permanent Representatives Committee to continue examination of the Directive proposal with a view to the adoption of a common position.

7. Amended proposal for a Council Directive on the co-ordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission

10808/92 PI 122 CULTURE 138
5600/93 PI 22 CULTURE 20 + COR 1 (f)
5695/93 PI 24 CULTURE 21 + COR 1 (en)

The Council confirmed its political agreement, with one abstention (F) and subject to finalization in the official languages of the Community in accordance with the customary procedure, to the proposal for a Directive as contained in 5600/93 PI 22 CULTURE 20 + COR 1 (f), with the date of 1 January 1998 referred to in Article 7(2) being replaced by 1 January 2000.

The Council also noted the following Commission statement:

"The Commission notes that, within the framework of Community law, one of the tasks of the bodies provided for as an option under Article 12(2) will be to promote the negotiation of agreements between cable operators and broadcasting organizations, with a view to achieving equitable results."
8. **Amended proposal for a Council Regulation on the Community trade mark**

8896/84 PI  19 (MARCA)
9355/92 PI  101 (MARCA) + ADD 1 + ADD 2 + ADD 3
10994/92 PI 129 (MARCA)
5535/93 PI  19 (MARCA)

The President of the Council said that, following the informal discussion on the language arrangements for the Office, during which the German delegation advanced a number of compromise proposals, the Presidency would continue to work on a compromise solution, taking as a basis, however the compromise proposal submitted by the United Kingdom Presidency in December 1992, with certain details amended where necessary and possibly a review clause added. The Presidency would discuss the matter with the German delegation.

The German delegation stressed that it had not agreed to the December 1992 compromise proposal.

The Spanish delegation also wished to discuss the matter with the Presidency, while the Portuguese delegation said that it would like to be fully involved in any developments.

9. **Proposals for Council Directives**

7726/92 AGRILEG 208
5748/93 AGRILEG  71


(b) on sweeteners for use in foodstuffs
10451/92 AGRILEG 342 ADD 1 + COR 1 (en, dk)

Following a discussion, which confirmed the link between the two proposals, the Council instructed the Permanent Representatives Committee to continue discussing the matter once the European Parliament had delivered its Opinion on the first of the two proposals.

4352/93 ENT 11
5727/93 ENT 61

Subject to examination of the European Parliament’s Opinion on the first reading and to the parliamentary scrutiny reservation maintained by the United Kingdom delegation, all Member States’ delegations were able to agree to:

- the compromise drafted by the Presidency and contained in the Annex to 5727/93,

- the entry of the following statements in the Council minutes:

"The Council agrees that, pending the adoption of Community regulations for helmets intended for the users of two- or three-wheeled motor vehicles, Member States shall have the right to prescribe, in conformity with the Treaty, the use of helmets which are in compliance with UN/ECE Regulation No 22 or the standards of other Member States".

"The Council and the Commission agree that the special treatment of motorcycle helmets shall not be treated as a precedent for the exclusion of items of personal protective equipment from the Directive".

- the addition of the following sentence to the statement on page 8 of 5727/93:

"The Commission undertakes to submit this proposal within the next six months.".
The Commission representative was against the exclusion of motorcycle helmets from the scope of the Directive on the grounds that such exclusion would amount to not only a distortion of the Commission’s proposal but also a violation of the Commission’s right of initiative under the terms of Article 100a of the Treaty. Protesting against the approach formulated by the Council, he asked that the following statement be entered in the minutes:

"The Commission states that the exclusion of helmets from the field of application of the PPE Directive was not a part of its original proposal on the extension of the transitional period. The Commission has no intention of making a proposal to exclude helmets. The political decision taken by the Council would therefore lead to a violation of the Commission’s right of initiative, as contained in Article 100a of the Treaty.

In addition the Commission recalls that the Parliament has not yet given its opinion on the Commission’s proposal.

The Commission states that it is ready to make a proposal specifically dealing with the question of motor cycle helmets during the next six months, within the framework of the PPE Directive.

The Commission further states that only if such an approach were followed would there be grounds for allowing a Member State to apply, during the transitional period, the provision of UN/ECE regulation No 22 or the standards applied by other Member States."
11. Affixing and use of the CE mark of conformity on industrial products


- Proposal for a Council Decision amending the Council Decision of 13 December 1990 (90/683/EEC) concerning the modules for the various phases of the conformity assessment procedures, supplementing it with provisions relating to the arrangements for affixing and using the CE conformity marking

5540/93 ENT 49
5692/93 ENT 59

The Council:

- reached unanimous political agreement on the draft Directive and the draft Decision contained in Annexes A and B respectively to 5540/93 ENT 49, amended in accordance with Annex I to 5692/93 ENT 59;

- confirmed its agreement to the draft statements for the Council minutes which accompanied the drafts, as contained in Annex 2 to 5692/93, with the German delegation dissociating itself from statements Nos 3, 6 (iii) and 6 (iv);

- instructed the Permanent Representatives Committee to have the texts of the Directive and the Decision finalized with a view to the formal adoption of a common position as an "A" item at one of its forthcoming meetings.

The German delegation tabled the following unilateral statement for the Council minutes:
"The Federal Government does not consider that Directive 89/106/EEC relating to construction products and Directive 73/23/EEC relating to electrical equipment designed for use within certain voltage limits should be reviewed and, if appropriate, amended as stipulated in statements Nos 3 and 6 (iii) and (iv). The Federal Government therefore cannot support statements Nos 3 and 6 (iii) and (iv)."


The Council discussed in detail the question of limiting the maximum power of 2- or 3-wheel vehicles.

The United Kingdom delegation stood by its reservations on the limit of 74 kW contained in the draft Directive and reaffirmed that studies on this question were not, in its view, conclusive, that the proposed step would amount to discrimination against motorcycles as opposed to high-performance cars, for which no such limit was proposed, and, finally, that the effect of limiting power would be to weaken the position of Community industry vis-à-vis competition from Japan. It upheld its request for a derogation to be provided for in the case of vehicles registered within a country’s own territory.

The Commission representative stated that:
small series vehicles could in any case be exempted from the requirements of the separate Directives,

the Member States would have 24 months in which to transpose and implement the Directive and that approvals issued at a national level prior to the date of implementation could preserve their validity for a period of 4 years as of that date.

The United Kingdom delegation thought that the limit of 200 vehicles a year on small series production runs was likely to prove insufficient and that setting a time-limit for nationally issued approvals would in the long run result in restricting the consumer’s freedom of choice.

It called on the other delegations and the Commission to reconsider the reasoning behind the imposition of a maximum power limit.

The Commission representative, while stressing the need for such a limit on road-safety grounds, was willing to give further thought to the matter

- in order to assess the effect on each manufacturer’s overall production of the planned limit on small-series production runs

- in order to consider whether an extension of the validity period for national approvals was advisable.

The Council accordingly instructed the Permanent Representatives Committee to resume examination of these various points, without prejudice to the positions of the great majority of the delegations, in order to enable the Council to adopt the common position at its next meeting.
13. **Other business**
- **Commission communication on trans-European telematic networks between administrations**
  5521/93 ECO 58

Vice-President Bangemann submitted the above communication on behalf of the Commission. Concern was expressed by certain delegations over the potential financial repercussions for the Member States and the Commission was requested to submit more realistic proposals in this area.