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Green Paper on commerce

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I — Introduction

1. Every day, almost 370 million EU citizens consume and use goods — food, clothes, furniture, books, cars, computers — produced by the 58 million people employed in agriculture and manufacturing throughout the EU, as well as millions more beyond. But it is thanks to the 22 million people employed in commerce within the EU that its citizens are able to access this vast range of products where and when they want, at affordable prices and accompanied by service. Commerce is the gate through which a wealth of goods from other countries enters the domestic market and thus expands the variety of items on offer. This applies not only to goods from third countries but also to goods from other Member States which have benefited from the development of the internal market.

2. This vital economic sector, the second largest in the Community, approaches the millennium facing several challenges which must be addressed immediately if it is to maintain its contribution to the economic and social well-being of our citizens.

3. These challenges include the increased competition arising from opportunities to trade across the whole territory of the single market; the constraints on developing the full potential of the single market from heterogeneous regulations on a national, regional or local level; the introduction of a single currency which will provide immediate advantages but offer also several practical challenges specific to the sector; the evolving relationship between consumers and suppliers; the continuing restructuring of the sector in order to adjust to the competitive environment and its effect on communities dependant on or served by the existing structures; the need to provide an environment in which enterprises can flourish; the rapid expansion of the use of existing technology and the exploitation of new technology to streamline service and facilitate new forms of direct trading; the need to maintain a competitive European industry in the light of globalization of commerce via the information society revolution (electronic commerce).

4. Despite its place at the heart of the economy, the sector suffers from a lack of readily available information and analytical data. Since

rapid transfer of information is fundamental to maintaining competitiveness and adjusting to market trends this gap must be filled.

5. For activities which impinge so directly on the everyday lives of people, the commerce sector appears to have been taken for granted. The time is right to initiate a full consultation on the challenges facing commerce and the possible options for meeting these challenges. This Green Paper is designed to launch the consultation process.

6. The terms 'commerce' and 'distribution' are often used as synonyms although the former is sometimes regarded as referring more to the selling aspect and the latter more to the logistical angle. In this paper the term 'commerce' is used to refer to both kinds of activities and in particular to wholesale and retail trade. The commerce sector dealt with in this paper covers all trading activity from the purchase of goods from the producer to the delivery of these goods to the final consumer. The paper does not deal specifically with the trade in services, although mention is made of some services which are directly concerned with traded products e.g. tourism/crafts.

Objectives of the Green Paper

7. The aim of this Green Paper on commerce is to stimulate considered discussion on the importance of this sector of the economy and the challenges that face it on the eve of the 21st century:

- it examines the structure and development of commerce;
- it describes the actions of Member States and the EU and their respective roles;
- it identifies the challenges facing the sector and raises issues which require public consultation.

8. The discussion arising from the Green Paper should lead to the identification of actions by the enterprises themselves, by public administrations in the Member States or by the EU, which will assist the sector to meet the challenges while remaining competitive and contributing to employment and social cohesion.

II — Structure and development of commerce

1. Economic and social importance of commerce

9. Commerce is the second largest area of economic activity within the European Union. It is an essential component in measuring the level and strength of a national economy and a key sector for generating employment opportunities and growth. Yet, alongside its purely economic functions, commerce has important social functions. It is a point of contact between citizens and their local community and provides the latest information on lifestyle, cultural patterns and community activity. As a major determinant on social and cultural patterns, lifestyles and physical planning, commerce is pivotal to the European socio-economic model. The social integrating function of commerce might gain further importance in the future due to the progressive ageing of the European population.

10. The prosperity of commerce has important ramifications for jobs throughout the EU: over 22 million people in the EU work in commerce — almost 16% of total EU employment. In 10 years, between 1982 and 1992, commerce created about 2.3 millions jobs in the 15 Member States, a growth of 12%. In the same period, total employment in the EU increased by 7%. Commerce thus created a significantly higher proportion of jobs than the total economy. The growth of trade employment, i.e. the rate of creation of new jobs, has differed between the Member States:¹ Spain +25%, Netherlands +23%, Austria +20%, Italy +15%, Germany +14%, United Kingdom +10%, France +1%. The figures vary greatly from one Member State to another, and one of the points for debate following publication of this Green Paper will be to analyse the reasons for such variations.²

¹ Eurostat data.

² A 1994 report on employment performance by McKinsey Global Institute identifies weak performance in job creation in Europe *vis-à-vis* the US and concludes that the reasons are entry barriers. These conclusions merit further reflection.

11. Commerce's contribution to the GDP of the EU economy remained stable from 1982 to 1992, at about 13%. During this period, the average GDP and the value added of the commerce sector grew at the same pace, by about 25%. Productivity in commerce increased around 13%, in these 10 years.

Commerce, second largest employer in the EU³ in 1994

- 4.5 million commercial enterprises
- one third of all EU enterprises, 95% of which contain fewer than 10 employees
- 22 million jobs
- 16% of the EU workforce
- 55% of persons employed in retail trade are women
- 3.4 million retailing enterprises employing 15 million people
- 1.1 million wholesaling enterprises providing 7 million jobs
- 13% on average of added value in the EU economy

12. Women represent a significant proportion of the labour force in the retail sector, making up 55% of those working in the retail trade. This has been instrumental in providing entry to the labour market for many women. The distributive trades also contain a high number of part time jobs. However, whilst many women are willing to accept part-time work as a means of reconciling work and family responsibilities, one third of women working part-time do so because the full-time job opportunities which they would prefer are not available. It is worth noting that in recent years there has been an increase in part-time work in many Member States, in the retail sector as in others. Greater use of part-time work can be beneficial to employers and employees: it can enable

³ Eurostat data: see Annex A.

employers to be more flexible, while shorter working hours suit many employees. However, it is important to ensure that those who work shorter hours are given comparable treatment to those in full-time employment. Negotiations at European level have recently begun between the social partners on flexibility of working time and security of employment. These are expected to cover part-time work.

13. Commerce also offers the opportunity to European citizens to create and run their own enterprise, usually after first gaining experience in a commercial firm. The small amount of capital necessary to set up a commercial enterprise relative to that required by other economic activities contributes greatly to this opportunity afforded by commerce.

14. Commerce covers all trading activity from the purchase of goods from the producer to the delivery of these goods to the final consumer. Traders have a crucial task of responding to consumer demand and thus enhancing their profitability. Developments in recent years have resulted in a marked increase in the influence of commerce on manufacturers, with competing operators joining forces in order to negotiate with manufacturers from a position of strength.

15. The daily contact between traders and their clients enables the former to adapt to and better satisfy demand by keeping to a minimum unsold goods and therefore any waste of factors of production. Commerce has therefore an important contribution to make in promoting the efficient use of resources and accordingly encouraging sustainable development. In addition, through their intermediate position the commerce sector is able to influence both manufacturers and consumers. They can encourage manufacturers to develop and produce 'greener' products, while they can play a significant role in providing environmental information to consumers. This involves the development of flexible partnerships with both consumers and suppliers and a constant evolution of the regulatory framework aimed at ensuring an acceptable balance between the legitimate interests of the traders and the legitimate interests of the consumers.

16. There is growing recognition of the pivotal role played by commerce in maintaining a balanced community life, be it in city centres, or local, neighbourhood shops in both urban and rural areas. A lively local commercial

centre often doubles up as the cultural centre of a community, giving commerce an important socially cohesive function. Shops, be they large or small, bring life to town centres and inhibit the growing problem of urban desertification, which encourages the spread of crime.

17. Commerce also performs an important socio-economic function by serving as a medium through which people meet, communicate, socialize and interact. It serves as an interface not just between different sectors and groups within societies but between different nations, cultures and countries. At a personal level, for many people, shopping is not merely a chore but an enjoyable, social activity, not least because of the efforts made by traders to make it so and to stimulate demand. For many, especially the elderly or those living alone, shops, in particular local stores, may provide their only regular source of contact and conversation with other people and the outside world.

2. Concentration and competition in commerce

18. With the aim of modernizing, commerce has placed much emphasis on concentration and internationalization. In its 1991 communication 'Towards a single market in distribution'¹ the Commission drew attention to concentration as one of the phenomena likely to be accelerated by the creation of the internal market and which affects wholesaling, retailing and wholesaling to industrial consumers alike. This is confirmed in the Commission's recent study 'Effectiveness and impact of internal market integration on the organization and performance of distribution'.²

19. Concentration in commerce appears to be irreversible in all Member States but is much more developed in those in the north compared to those in the south, particularly as regards the food sector. For example, in 1994, the six major retail self-service food outlets in each Member State accounted for a significant market share in general food sales: 57% in

¹ Commission communication 'Towards a single market in distribution' COM(91) 41 final of 11.3.1991.

² 'Effectiveness and impact of internal market integration on the organization and performance of distribution', European Commission, Directorate-General XV, 1996.

Germany, 61% in Belgium, 35% in Spain, 67% in France, 39% in Greece, 28% in Italy. In Finland, the major retail food group accounts for 40% of the market share, and the three big retail food groups account for 80%. These trends are also influenced by factors such as the increase in the number of women in paid employment, private car ownership and the development of infrastructure.

20. The negative effect of this development could be the possibility of establishing *de facto* vertical integration or the dependency of the manufacturer on retaining a single client. This in turn prevents the manufacturer seeking other clients or new distributors competing for supplies. For smaller distributors with an insignificant market share this also prevents them purchasing similar goods at similar prices. Concentration might also encourage manufacturers with market power to exploit weaker buyers by raising prices, thus diminishing their competitiveness and accelerating the process of concentration on the retail level.

21. This process of concentration is only part of the larger debate concerning relations between commerce and industry and the competition rules existing between them. This debate is now open in many Member States and will be developed at EU level. The result of this trend towards concentration has reinforced the hand of major distributors *vis-à-vis* their suppliers and encouraged the development of distributor own brands. Another important indication is the creation, since the early 1980s, of buying alliances at national, European or even global level, which have led to a growth in the power of large distribution groups, integrated or otherwise, and to sometimes rather strained relations between producers and traders.

22. Ensuring competitive markets within commerce, as in other parts of the economy, is an important tool in the battle against rising prices and benefits the consumer. On the other hand concentration of market share in the hands of a few firms can reduce the potential influence of the consumer as regards, e.g. product range, choice of outlet (location of stores), or market signals. Competition rules play an important role for commerce. Of special interest are the rules concerning franchising, exclusive purchasing and selling and on selective distribution.

3. The development of independent organized commerce

23. In order to remain competitive on the market and maintain their market share, commercial small and medium sized enterprises (SMEs) are increasingly working together in associated networks in the form of cooperation between retailers, such as buying groups and voluntary chains of one or more wholesalers and several retailers or in franchise chains. This phenomenon is more marked in the non-Mediterranean Member States. Concentration is no stranger to these forms of commercial cooperation. This form of supply, known as independent organized commerce, is becoming increasingly widespread in the EU. Organization along these lines combines the flexibility and service of small shops whilst offering the benefits of efficient logistics associated with larger structures. However, the form in which such concentrations arise may give rise to questions about their compatibility with competition rules inside the Union.

24. Cooperation enables heads of a small firm to enter a decision-making forum, to have contacts with other sole traders confronted by the same issues, to benefit from training and the support of similar professionals based on a real common interest, notably within a common buying structure and sales and marketing policy, which allows them to attain a sufficiently critical mass. These competitive advantages compensate for the partial loss of autonomy by the head of a small firm, in particular as regards the upstream part of the distribution chain, that is their suppliers.

25. It would be wrong to believe that independent commerce is condemned to disappear in the face of competition from large integrated firms. Certainly, the commercial revolution unleashed in the northern Member States has been accompanied by a trend towards concentration and the development of large integrated firms, but the overall trend is not that of the disappearance of independent traders who are often associated with them through various forms of contracts such as franchising.

26. The emergence of independent organized commerce is arguably the most important development to have taken place in the commercial world since the advent of large scale

distribution. Today, this kind of commerce represents 22% of retail sales in Germany and 40% in the Netherlands. Franchise networks alone account for 8% of retail turnover in France (30% in the United States).

4. The development of the single market and internationalization

4.1. Cross-border trading in the single market

27. The most obvious characteristic of the retail trade is its dependence on local outlets and its need to take account of local preferences and prejudices. This explains the very important part played in maintaining a healthy enterprise environment of national, regional or local regulations. It also explains to a large extent the mechanisms used by commerce to supply customers directly in other Member States.

28. The principal mechanism for establishing a presence in other Member States used by retail companies is by becoming majority shareholders in local distribution companies. This has been especially prevalent during the last 10 years in the southern Member States: by 1994, virtually all Spanish hypermarkets were in the hands of companies mainly or partially controlled by capital based in other Member States. A similar situation prevails in Portugal and Greece and takeover and merger activity is continuing. Some large retail enterprises have also established a direct presence by opening stores but this is still relatively rare. Another mechanism is by the establishment of voluntary chains supported by wholesalers, franchise chains and buying groups, uniting large numbers of commercial SMEs.

29. On the wholesale side the picture is different because wholesalers are not so tightly linked to local outlets. A study undertaken by the Commission¹ in 1993 demonstrated this and underlined that a distinction must be made between the internationalization of wholesaling and that of retailing. As regards wholesaling, the cross-border dimension is an integral part of strategies implemented in response to struc-

tural changes in distribution channels. Internationalization of wholesaling is occurring in all sectors (food, non-food, inter-industry) and has important consequences for producers, acting as a counterweight to the trend towards concentration in production brought about by the need to supply larger markets, and enabling SMEs involved in production to access markets beyond their national frontiers.

30. The internationalization of retailing, as far as the establishment of shops is concerned, is currently more limited to certain large retail groups which are big enough, and possess the techniques necessary, to take advantage of international markets and adapt to their particular characteristics. Indeed one of the spin-off developments is the acquisition of know-how on servicing different consumption patterns. This move is likely to continue, given that the attainment of a critical mass achieved as a result of cooperation of SMEs or concentration, the globalization of markets and the relative saturation of domestic markets encourage operators to internationalize. Opportunities should remain available for smaller companies looking for niche markets through interactive websites on the Internet.

31. Though some retailers have expanded outside their home market to other Member States, the large majority stays within the home market as far as Europe is concerned. Cultural differences are likely to persist and will continue to restrict the organic expansion of firms and retail formats outside national territories. Franchise chains, however, which link local traders to an international concept, continue to develop and are certainly an important element in the Europeanization of commerce. Nevertheless, significant price differences continue to exist between the Member States which implies that the internationalization of brand names does not necessarily lead to internationalization of supply, nor does it produce convergence in prices for the consumer.

The localization of retail outlets will become less important to cross-border trading when transport across frontiers becomes a significantly smaller element in the cost of products. The Commission proposals on improving transport infrastructure particularly as regards the Trans-European Network is important in this respect².

¹ 'Foreign investments in retailing and wholesaling in the EC', 1993. Commerce and distribution series, DG XXIII.

² See Annex D: 'Transport policy'.

4.2. Cross-border trading with countries outside the EU

32. The same general trends as can be observed in cross-border trading inside the EU can be observed for selling outside the Union. In effect wholesaling has shown an immediate move into establishing a presence in European non-Member States and even into the US and Asia whereas export of the retail function has not followed this expansion. On the other hand easier access to information and the availability of goods on the international market via audio-visual and information networks is stimulating local demand which often can only be supplied from outside the consumers' home territory. This is a challenge for electronic commerce which must be faced urgently by the EU.

33. The modernization of commerce in the Central and East European countries (CEEC), is important for promoting the economic integration of the countries. On the proposal of the Committee on Commerce and Distribution, three panels of professionals were created in 1995 and visited Russia, Ukraine and Hungary, to identify the main problems facing commerce in these countries and to determine the areas in which the professionals and their federations could help them. New missions will be set up in 1996, as far as possible in liaison with the PHARE and TACIS programmes, in particular, to co-finance management training and technical assistance to develop logistical distribution structures adapted to local needs.

34. A similar method could be used in order to reinforce historical links between the distribution systems of the Mediterranean littoral States. Such actions for training and technical assistance could be inserted into the framework of the 'Barcelona Declaration' adopted at the Euro-Mediterranean Conference of 17 and 18 November 1995.

35. A number of questions arise about the consequences of internationalization for commercial enterprises. It is notably the case of the influence of national regulations on commerce, guarantee and after sales service. Commercial enterprises established within the Community will be subject to them and their differences might lead to internal market barriers that will hamper the development of these European-based commercial enterprises when compared with their international competitors. On the other hand the dynamics of internationalization may force revision of these national rules particularly when suppliers are situated outside the European Union. This is also the case for equal access by enterprises to communication networks.

36. Here it is essential to allow firms of all sizes access to communications and sales networks, by ensuring that the principle of the freedom of establishment and competition policy are effectively applied. Cross-border commerce will require both retailers and wholesalers to adjust to competition from non-traditional sources. The internal market principle of the free circulation of services could give rise to conflict between local enterprises subject to local regulations and non-domestic suppliers subject to less restrictive regulations in their home countries. Clearly the possibility that internal market barriers will appear to prevent such conflicts is significant and therefore such regulatory differences need to be thoroughly examined and will form an aspect of the consultation arising from the Green Paper. In particular, the reasons why commerce remains relatively under-Europeanized should be further examined and solutions should be sought to enable the internal market to work for the benefit of the consumer, notably as far as price variations are concerned.

III — The role of and action undertaken by the Member States and the EU relating to commerce

37. The flexibility and competitiveness of commerce cannot be maintained if the sector is too firmly constrained by regulation. It works best on local knowledge of markets and individual initiative not on centralized regulation. Nevertheless, as with other economic sectors, the global market place sometimes requires a global response and global standards just as the internal market offers special challenges for EU enterprises which require to be dealt with at the European level.

1. Actions undertaken by the Member States

38. Commerce within the EU is characterized by disparate national economic, demographic, legal, fiscal, structural and cultural characteristics of each Member State. The market, although part of a larger entity, is, above all, local. Commerce is very flexible in adapting to socio-economic structures and the differences between commercial structures in the EU reinforce varying consumption and behaviour patterns.

39. The single market provides new opportunities for traders to enter new markets with products universally in demand and to introduce new products from regional markets into other localities of the Union. What is important is that the opportunities for entering local markets are not inhibited by regulations which unfairly restrict competition and that the retail trade is not discouraged from sourcing from non-traditional suppliers or subjected to restrictive trading conditions by dominant local enterprises.

40. The regulation of commercial activities is a competence of the Member States, subject to the respect of Community law as set out in the Treaties, in particular as concerns competition, freedom of establishment, free movement of goods and services.

41. There are differing national rules relating to the creation of enterprises (such as registration

and various fiscal and social obligations), the siting and rental of commercial premises, opening hours, consumer protection (such as lotteries, discounts, special reductions and sales, as well as the involvement of consumers in product distribution, such as pyramid sales, home parties and sponsorship gifts) and unfair practices (such as refusal to sell, conditions of sale and purchase, imposed, recommended or maximum prices). Some of the practices, e.g. opening hours, are deemed by the Court of Justice to be the competence of the Member States; some, e.g. consumer protection, are subject to EU directives as well as national regulations. Annex B provides more information on the differences in national regulations.

2. Role and actions of the EU

42. Aware of the importance the creation of the internal market has for distribution, the Council of Ministers of 14 November 1989 adopted a Resolution¹ inviting the Commission to present concrete proposals. On 11 March 1991 the Commission then adopted a communication entitled 'Towards a single market in distribution',² supported by the Council of Ministers in its conclusions of 30 June 1992,³ which underlines the fact that the success of the internal market is dependent upon the creation of a single market in distribution.

43. Many EU legislative measures have an impact upon commerce.⁴ It is also vital to ensure that conditions for fair competition between economic actors exist, whilst guaranteeing the same market opportunities. The Commission will continue to examine how to allow

¹ Council Resolution on commerce in the context of the internal market (89/C 297/02).

² Commission communication 'Towards a single market in distribution' COM(91) 41 final of 11.3.1991.

³ Council conclusions of 30.6.1992, Bull. EC 6-1992, point 1.3.58.

⁴ See Annex C: Detailed list of Community legislative measures.

