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WHITE PAPER

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

(presented by the Commission)

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EXECUTIVE SUMMARY

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

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

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

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

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

1. INTRODUCTION

The pre-accession context

1.1 To help meet the challenge for the associated countries of Central and Eastern Europe (CEECs) of preparing their accession to the European Union, the Essen European Council of December 1994 adopted a broad pre-accession strategy. The Council identified the preparation of the associated countries for integration into the internal market as "the key element in the strategy to narrow the gap" and invited the Commission to prepare a White Paper. From the Union's point of view, the importance of this process lies in the need to create the conditions that will allow the internal market to function properly after enlargement, to the benefit of all members.

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

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

Background and purpose of the White Paper

1.4 A White Paper on preparation for the internal market was first proposed in two Commission Communications of July 1994¹². The purpose was to set out a programme for meeting the obligations of the internal market which could be followed by each associated country and monitored by the Union. It was emphasised that this would be done in partnership with the associated countries and that each associated country would need to draw up its own programme of priorities and timetable. The Commission further stressed the magnitude of the task of approximation and the need for close co-ordination and for technical assistance. The Member States could contribute their expertise, including those who had most recently undergone the process of approximation of laws in preparation for accession to the Union.

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

1.6 In endorsing the proposal for a White Paper on preparing the CEECs for integration into the internal market, the European Council recognised that this involves more than the approximation of legislation. The Essen conclusions refer to "the creation of the conditions for establishing a single market" and describe the tasks faced by the associated countries, including putting into place "legislation and regulatory systems, standards and certification methods compatible with those of the European Union". Beyond the approximation of legislation, the White Paper therefore highlights and describes the structures which will be necessary to make the legislation effective. This is the White Paper's second contribution.

¹ 13 July 1994 (COM(94) 320 final)

² 26 July 1994 (COM (94) 361/3)]

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

The legal context

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

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

The economic context

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

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

1.12 Aligning with the Union's internal market legislation goes further than the economic reforms necessary to put in place a market economy. It aims to facilitate the integration of the economies of the CEECs, which are at different stages of development, but which are all still in transition, with the industrial market economies of the Union. It will require more time both for legislating and for building the institutions needed to ensure the actual implementation of new laws and to monitor progress. Consolidation of judicial reform in the CEECs is also part of this process. Without the necessary institutional changes, the adoption of internal market legislation could result in a merely formal transposition of rules. This would not be an adequate basis for the mutual confidence between all participants on which the internal market depends. Nor would it achieve the real economic impact and benefits which the associated countries are seeking.

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

The approach and structure of the White Paper

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

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

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

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

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

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

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

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

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

Annex

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

2. THE INTERNAL MARKET AND THE PRE-ACCESSION PHASE

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

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

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

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

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

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

Principles

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

- **Article 6** prohibits any discrimination on grounds of nationality as between Member States and their nationals;
- **Article 8a** establishes the right of citizens to move and reside freely within the territory of the Community;
- **Articles 9-12** require the abolition of customs duties and taxes having equivalent effect on exchanges between the Member States;
- **Articles 30-36** prohibit quantitative restrictions and measures having equivalent effect on trade in goods and establish the conditions for exceptions;
- **Article 37** forbids discrimination by State monopolies;
- **Articles 48-51** establish the principles which ensure the free movement of workers, **Articles 52-57** ensure freedom of movement and freedom of establishment for self-employed people and **Article 58** for companies;
- **Articles 59-66** provide for the freedom to offer services;
- **Article 67**, later replaced by **Article 73b**, provided for the abolition of restrictions on the free movement of capital;
- **Articles 85/86** prohibit anti-competitive behaviour by undertakings which could otherwise negate the effects of the internal market; **Article 90** ensures that the competition rules apply to public undertakings and undertakings granted special or exclusive rights;
- **Article 92** establishes strict conditions for aids granted by states to their undertakings to protect the integrity of the internal market;
- **Article 95** concerns the obligation of Member States not to discriminate in fiscal matters.

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

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

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

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

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

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

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

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

Secondary legislation as a means of removing barriers

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

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

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

Legislation ensuring the free movement of goods

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

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

2.20 These rules, taken together with the principle of mutual recognition, ensure that a producer, manufacturer or importer anywhere in the Community can introduce a product on to the market and can confidently market it anywhere else in the EU without falling foul of local rules. A Member State forming part of the internal market must not only be able to create the conditions for the production of goods which correspond to Community standards (this applies to any countries which export to the EU), but must also be able to guarantee that all goods on its market meet those standards. It must also be able to guarantee free movement within its territory for all goods from other Member States. The system thus requires not only the right legislation in all the Member States, but also the full framework of technical and other structures necessary to ensure the effective implementation of such legislation. Those structures - be they testing laboratories, metrology institutes, or customs posts at the external border of the Community - all need to win the confidence of the Community as a whole if the principle of mutual recognition is to be applied.

Legislation ensuring the free movement of services

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

Legislation ensuring the free movement of persons

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

