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EC PRESIDENTS MEET WITH BUSH

EC Commission President Jacques Delors and Luxembourg Prime Minister Jacques Santer met with US President George Bush in Washington on April 11 for the first of the official biannual presidential visits established by the Transatlantic Declaration, which the US and EC adopted in November 1990. Jacques Santer is the acting EC Council of Ministers President as Luxembourg current holds the six-month rotating EC Council presidency.

Although the presidents covered a wide range of topics, including the Uruguay Round and developments in Eastern Europe, the discussions naturally focused on the Middle East in the wake of the Gulf crisis, particularly on the plight of the Kurds and the EC-sponsored British proposal to create a UN protected zone in Iraq. Prime Minister Santer emphasized that the plan was "a humanitarian, not a legal approach" and added that the EC and President Bush "are quite in the same line" on the issue. Mr. Santer also underscored that the EC should be involved in the future Middle East peace process "by virtue of its geographic proximity, historical ties and economic links with the affected countries."

President Delors hailed the improved climate in the Uruguay Round multilateral talks on trade liberalization and highlighted EC support for prolonging the Bush Administration's fast-track negotiating authority in the Round. On agriculture, the linchpin (and whipping boy) of the negotiations, Delors stated that "the political will of the EC to adapt its agricultural policy is good news for the Uruguay Round," which Bush welcomed. Still, Delors pointed out that progress was needed in other areas besides agriculture, namely services, intellectual property, market access and textiles.

EC COURT REINFORCES COMMISSION'S ANTITRUST CLOUT

In a landmark decision, the EC Court of Justice recently confirmed the Commission's powers to dismantle state-owned monopolies without the formal approval of the member states.

The court backed a 1988 directive opening up the telecommunications terminal equipment market, which had been largely controlled by the state-owned telephone monopolies (PTTs) through their exclusive rights to sell, supply and service such equipment. Some member states alleged that the Commission had exceeded its powers when it used Article 90 of the Treaty of Rome to adopt the controversial directive. (Article 90 states that even state-owned enterprises must abide by competition rules.)

"This (decision) vindicates the Commission's use of Article 90 to prevent governments restricting competition by conferring monopoly or other special rights, when this is not justified on genuine public service grounds," said EC Competition Commissioner Sir Leon Brittan. "Doubts which have been expressed about the Commission's powers in this regard have now been removed."

Sir Leon also emphasized that the judgement

paves the way for future action, where appropriate, to end trade and competition distortions in the internal market. Wasting no time, the Commission has already fired an opening salvo, ordering 10 member states to break up monopolies on the import and export of natural gas and electricity. This is an essential first step in the liberalization of the EC energy market, which would enable companies to buy and sell energy to and from EC countries other than their own.

STRICTER CURBS ON DIESEL EMISSIONS

Diesel trucks and buses will soon be belching less noxious exhaust in the Community as EC environment ministers have reached a Common Position on tougher diesel emission standards. The agreement, a somewhat stricter version of the original Commission proposal (see EURECOM, June 1990), aims to reduce the carbon monoxide, nitrogen oxide and solid particle components of diesel emissions in two stages (first by 40%, and then by 60%).

In the first stage, reductions would enter into force for new vehicle models on July 1, 1992, and for all new trucks (including existing model



ranges) on October 1, 1993. Second-stage reductions would take effect on October 1, 1995 for new models, and a year later for all registered vehicles.

To speed the transition, the member states would be allowed to introduce tax incentives for bus and truck manufacturers, subject to certain competition rules. These incentives would have to lapse when the 1995 standards take effect.

The pending EC regulations would exceed existing US standards and would bring the EC into line with Austria and Switzerland which, partly due to their higher emission standards, are embroiled in disputes with the EC over commercial vehicle transit rights.

LIMITS ON DUTY FREE PURCHASES RAISED

EC consumers will get a foretaste (if not sip) of the single market after July 1, when the basic travel allowance for EC citizens buying tax-paid goods across EC borders will increase from 390 ecu to 600 ecu (ecu1=\$1.23). Although the agreement reached by EC finance ministers fell short of the Commission's original proposal of a 1,200 ecu allowance, the decision marks an important step toward the complete abolition of duty-free restrictions on individuals.

The agreement was reached only after derogations were granted to high tax (and therefore vulnerable) countries Ireland and Denmark. Both will be able to keep their stricter duty-free regimes until the end of 1991.

Increases in duty free allowances on certain tax-sensitive goods (e.g. tobacco products, alcohol, perfume) were blocked by Belgium, however, on the grounds that there first must be more harmonization of value added tax rates (VAT) in the Community. All EC tax decisions require unanimity.

At the same sitting, the finance ministers agreed in principle that after 1992, VAT on new motor vehicles, boats and aircraft and mail-order goods should be paid in the country of destination rather than in the country of origin (which is the Commission's

preference). The question of reduced or zero VAT rates for socially or culturally important goods and services remains unresolved.

INTRA-EC TRADE: PAPERLESS BY 1993

Moving goods across the EC will require no customs documentation after January 1, 1993, following an Internal Market Council agreement to scrap the Single Administrative Document (SAD).

Although 60 million SADs are filled out each year, its introduction in 1988 greatly simplified EC customs procedures, eliminating the some 130 documents needed to transport goods across EC frontiers. Still, in realizing the goal of a borderless internal market, the document will no longer be required for intra-EC trade after 1992 (except for a short period on some trade with the newest EC members Spain and Portugal).

Although third-country exporters will still have to file the SAD on shipments to the EC, once shipments enter the Community, no additional customs documentation will be required on route to other EC countries.

As a transition to the complete removal of internal EC border checks, the ministers approved the concept of completing all customs formalities at domestic (i.e. home country) locations.

Further, they endorsed a 2.4 million ecu program, dubbed "Matthaeus" (or St. Matthew, the patron saint of customs agents), which will support temporary personnel exchanges, educational seminars and language courses for EC customs officials. This is to help ensure that procedures at the Community's external frontiers are applied uniformly.

FIRST STEPS TO IMPROVED CROSS-BORDER PAYMENTS

Based on the strong backing given a recent Commission discussion paper on electronic money transfers in the EC (see EURECOM, October 1990), the Commission is establishing two

committees comprising bankers, technical experts, and small and large companies to recommend improvements for Europe's cross-border payment systems.

According to EC Financial Services Commissioner Sir Leon Brittan, payment systems are as vital to business efficiency as roads, railways or telecommunication systems. "The rapid and reliable movement of goods or services across frontiers must be matched by an equally efficient provision of payment in return if the internal market is to become a reality, particularly for small businesses," said Sir Leon.

The study will focus on linking national automated clearing houses to speed electronic transfers, on eliminating regulatory barriers to cross-frontier transactions and on improving the transparency of charges and services. If necessary, the Commission will propose binding legislation to improve transfer systems.

COMMISSION MOVES TO LIMIT LARGE BANK RISKS

To ensure that banks do not face financial disaster if a major client defaults on debts, the Commission has proposed a directive to limit a bank's exposure to single client to 25% of the bank's "own funds" — its paid-up capital and reserves — as already defined in a 1989 directive. In addition, banks would have to report each exposure over 10% of own funds to the authorities on a regular basis, and the total of such large risks could not exceed eight times own funds.

Small banks would receive an exemption from the 25% ceiling until January 1, 1998, allowing them time to adjust to the stricter rules. This derogation could be prolonged an additional three years for loans extended before the 1998 deadline.

The directive, which still requires member state approval, completes the prudential rules needed to accompany the Second Banking Directive when it comes into effect January 1, 1993. This will allow banks to establish branches throughout the EC on the basis of a sin-



gle license. The Commission hopes to achieve the directive's adoption within the next year so it can take effect at the same time as other banking legislation.

At present, there are no binding EC rules on large risks and, in light of the Commission proposal, most member states will have to tighten their legislation. According to the Commission, the stricter standards will reinforce the stability of the EC's banking sector.

FULL PROBE LAUNCHED INTO TETRA PAK/ALFA-LAVAL MERGER

Following an initial one-month investigation, the Commission has opened a full inquiry into the \$2.7 billion bid of the Swiss-based packaging group Tetra Pak for the Swedish food processing equipment company Alfa-Laval. Only the third case to move past the initial month-long proceeding under the EC's new merger rules, the deal could now be suspended for up to four months; thereafter the Commission must give a ruling.

The Commission's decision to extend the investigation centers on the "vertical complementarity" of the two companies' product lines. After the merger, the new company would be able to offer a complete product range for the operation of a food processing plant (such as a dairy) which could create or strengthen a dominant position in either the EC food processing machine sector or the packaging industry. At present, competitors can provide either food processing or packaging machines, but not both.

This marks the fourth investigation in which the companies involved are headquartered outside the EC, and it is the first "non-EC" case to go this far under the regulation (AT&T-NCR, Saitama-Kyowa and Matsushita-MCA Inc were all cleared by the Commission).

The Commission's merger task force has received widespread compliments from industry and legal circles for its performance thus far: delays for merger approvals have been dramatically reduced because the prescribed timetables for rulings have been assiduously observed.

QUOTES

"Please don't be misled by the debate on monetary union and the central bank. There is no longer a debate on the events as such. It is a debate on conditions and timetables. There is a consensus about it." EC Commissioner **Martin Bangemann**.

"We would not like the Iron Curtain to be replaced by a silver curtain between a rich west and a poor east." Polish President **Lech Walesa**.

"An accord of association (with the EC) is of utmost importance for us... We hope the accord will eventually lead to (EC) membership by the end of the millennium." Czechoslovak President **Vaclav Havel**.

"The vision was and is to build the first pan-European institution, in order to make totally irreversible the end of the split of the European continent in

two." President of the European Bank for Reconstruction and Development **Jacques Attali** commenting on the new institution's role.

"When it comes to matters of defense and security we must proceed with caution — but with imagination, too... We should not be afraid of saying that defence policy should over time be linked into the European Community. We must recognize that the process will be a gradual one — but we need to be clear, too, about where we are going. And it is time we started the journey." EC Commissioner **Sir Leon Brittan**.

"The Gulf crisis showed that we couldn't act as a Community as such... It should accelerate the political union of the Community." Luxembourg Prime Minister and acting EC Council President **Jacques Santer**.

COMMISSION ADJUSTS ECO-AUDIT PLAN

In the face of stiff industry resistance, the Commission has modified a proposal calling for industrial enterprises to prepare annual environmental audits of their manufacturing operations. In essence, the "green" audits will likely be voluntary rather than mandatory as first proposed (see EURECOM, February, 1991).

Under the revision, individual member states would establish a register of firms that conduct an eco-audit and an environmental auditing body to administer the process.

Companies would choose whether or not to have an audit, although member states could require some environmentally sensitive industries to participate.

...IN BRIEF

...Despite the Gulf crisis, cross-border M&A activity in Europe reached a new high in 1990, exceeding the record

levels of 1989. Translink, the cross-border M&A advisory firm which publishes The European Deal Review, reported that the number of European cross-border acquisitions in 1990 totaled 1,467 with an aggregate value of over 48 billion ecu (1989: 1,266 mergers worth 45 billion ecu). French firms took first place both in value (10.6 billion ecu) and number of acquisitions (263) while Swedish companies finished second in terms of deal value at 9.4 billion ecu, just ahead of their US counterparts (9.2 billion ecu). The Swedish juggernaut underscores EFTA member Sweden's determination to access the EC market: 99% of Sweden's M&A expenditure went to EC-based targets. Although US activity fell off from the first place 13.8 billion ecu showing in 1989, the Gulf crisis hit US M&A activity at home far harder than in Europe, indicating that many US firms are concentrating on their European strategies.

...In recognition of biotechnology's importance to Europe's future, the Commission has created a new high-level interservice group—the Biotechnology Coordination Committee

(BCC) — to develop a well-balanced EC policy in this area. Chaired by the Commission's Secretary General, Mr. David F. Williamson, the BCC covers all sectors and Commission activities in the biotechnology field. Its chief tasks are: to examine new initiatives made by Commission services and to prepare the Commission's final decisions; to create, if necessary, a "round table" meeting on certain issues with the Commission, industry and other interested parties; and to evaluate existing EC biotechnology policy.

...The Commission recently proposed that the primary responsibility for European social issues should fall to organizations of employers and employees. According to the Commission, collective agreements between the social partners at the European level would be preferable to laws agreed by the Twelve. If accepted by the member states, this proposal would be a major departure from the current practice of relying on legislation to implement the Social Charter of Workers' Rights, which was accepted by 11 of the 12 EC countries in 1989.

...In step with the general trend in Europe, the Commission is set to propose a directive allowing EC firms to advertise by direct comparison with rivals throughout the Community. If passed, this would force over half the

member states to eliminate bans on comparative advertising between rival products. An EC spokesman said that the legislation would keep consumers better informed, and that there would be safeguards to prevent misleading information.

...The University College London is offering three series of conferences on EC law this summer (June 11 - July 26):

the foundation series in EC Competition Law, concentrating on practice and economic theory; four Advanced Conferences, dealing with latest EC Competition Law developments; and a one-week seminar on EC Law and Practice. For more information on dates and fees please contact Ms. Elizabeth Royston (Tel: 071-636-7668, Fax: 071-637-7921).

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