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SINGLE MARKET ENTERS HOME STRETCH

With the December 31, 1992 deadline just 18 months away, the Commission has released its sixth annual progress report on the single market. While only 89 of the 282 proposals in the 1985 White Paper still require adoption by the Council, the report warns that the Council's productivity on single market legislation has decreased considerably over the past six months (only 11 directives have been adopted since November 1990), and that there are still some serious delays in key areas. Legislative delays in the European Parliament on some 35 items have contributed to the slowdown.

As in previous reports, the Commission points out that the member states are still behind in transposing adopted EC measures into national law, but the average rate of transposition has improved to 72% from 67% in December 1990. This improvement stems primarily from the successful efforts of France and Greece to raise their transposition rates in the first half of 1991. Italy continues to lag the other member states with a paltry 50% implementation rate.

The report lauds the progress made in defining the value-added tax (VAT) and excise duty regimes arising from the abolition of internal border controls, and notes some improvement in the animal and plant health sectors (although 28 directives in these areas are still outstanding). Apart from these achievements, however, many dossiers are still blocked and need a new impetus.

Notwithstanding the recent adoption of the Computer Software Directive (see EURECOM, June 1991), intellectual property has seen little movement, mainly for political reasons. For example, the Community trademark remains nonexistent because the member states cannot decide on a location for the trademark office or on the number of working languages. Further, the EC Patent Convention still requires the ratification of some member states.

Despite the progress made in the air transport sector, the sea, inland waterway and road transport fields still require decisions to ensure the freedom to supply services throughout the EC. The Investment Services Directive, a cornerstone for a single market in financial services, remains blocked at the Council level, and the 13th Company Law on takeovers has been delayed by the European Parliament. In addition, greater efforts are necessary in the areas of the free movement of persons, the European Company Statute and several direct taxation directives (e.g. the abolition of withholding tax on interest and royalty payments) to meet the deadline.

The Commission has asked the Netherlands, the current holder of the EC Council Presidency, to give absolute priority to the 1992 program during its tenure. Like the Commission, the Netherlands wants the Council to adopt all essential single market measures by the end of this year to give member states time to implement them into national law by the end of 1992.

BREAKTHROUGH ON VAT AND EXCISE RATES

EC finance ministers recently reached an important "political accord" on minimum rates of VAT and excise duties, breaking through some of the toughest obstacles holding up the 1992 program. This brings a single market, free of routine border checks along internal frontiers after 1992, much closer to reality. All EC tax decisions require unanimity in the Council.

The overall agreement — which, due to UK opposition, is not legally binding — sets out a minimum standard VAT rate of at least 15% from January 1, 1993, with one or two optional reduced rates of at least 5% on a restricted list of products. (11 of the Twelve support future binding legislation on the VAT rate.) While this will require Germany to raise its standard rate from 14% (which it was doing anyway), and Spain and Luxembourg from 12%, high-tax countries will come under pressure to move toward the 15% minimum because there will be no obstacles for EC citizens to shop in low-tax countries. The UK, Ireland and Portugal will be allowed to continue charging a zero rate of VAT on certain necessities, at least for a transition period, but the special, high VAT rates some member states charge on luxury goods will be eliminated.

After difficult negotiations, the ministers hammered out minimum excise duties on fuel, tobacco and alcohol, and, unlike the standard VAT rate, the UK accepted the principle of binding rates. Further, the Germans achieved agreement from the other 11 on changing the current "country of destination" system of VAT and excise payments to a "country of origin" system by 1997 (with certain exceptions — see EURECOM, April 1991).

THE LUXEMBOURG SUMMIT: TAKING STOCK OF THE IGCs

External events, especially the crisis in Yugoslavia, commanded the attention of EC heads of government at the European Council meeting in Luxembourg at the end of June, marking the end of Luxembourg's eventful EC presidency. Despite the diplomatic pyrotechnics, however, the EC leaders were able to take stock of the two ongoing intergovernmental conferences (IGCs) on economic and monetary union (EMU) and political union (PU) as well as to reaffirm their commitment to complete the necessary legislation for the single market by the end of the year.

The Council exhibited large areas of agreement on the fundamental elements of EMU, underscoring the importance of satisfactory and lasting progress in the convergence of the member states' economies, particularly in relation to price stability and public finances. To this end, it welcomed the decision of several EC countries to present specific, periodic programs directed toward such convergence. It also expressed confidence that an EMU agreement will be achieved by the European Council in December in Maastricht.

On the political side, the EC leaders accepted that the latest revision of Luxembourg's draft treaty (which takes greater account of the Commission's PU proposals) will represent the basis for further work. The draft treaty covers a great deal of ambitious territory: the extension of EC competence in the areas of environment, energy, social affairs, education, transport, consumer and civil protection and development cooperation; the inclusion of the subsidiarity principle in the Treaty; the powers of the European Parliament, with possible co-decision in some EC legislation; the extension of qualified majority voting in the Council; a common foreign and security policy; and greater cooperation in judicial and home affairs, including immigration. As with EMU, the Council stated its intention to reach an agreement on a text by the end of the current Dutch EC presidency.

PROGRESS ON INSURANCE ACCOUNTING RULES

The Internal Market Council has reached a Common Position on the harmonization of insurance accounting standards, which would enable policyholders and shareholders to compare insurers' financial positions throughout the EC. Hitherto it has been impossible to compare financial positions of insurance firms in different member states because of incompatible asset valuation methods.

The legislation, known as the Insurance Accounts Directive, calls for insurers to establish a common standard for clear and comparable accounting practices across the Community.

A key obstacle to the agreement was whether insurers would have to report the current value (i.e. market value) of their assets rather than their historical value. Based on a Commission suggestion, a majority of member states agreed that companies should provide both sets of figures, but firms would determine which method would be used in the main text and which would be presented in the notes.

In member states where insurance firms have been required only to declare historical values, the Council decided on a five-year transition for buildings and a three-year period for other investments to introduce the new system. (The Commission hopes the member states will beat this deadline.)

EC Financial Services Commissioner Sir Leon Brittan welcomed the Council's agreement: "This decision is a crucial step forward on the way toward a single market in insurance. An essential building block has now been put in place. You cannot expect countries to open their markets fully to each others' insurers without it being possible to make a proper comparison of the finances of the various companies. This directive will provide that."

EC-US TALKS ON STANDARDS AND CONFORMITY ASSESSMENT

Meeting for the third time in two years, EC Internal Market Commissioner Martin Bangemann and US Secretary of Commerce Mosbacher recently held discussions in Washington on standardization and conformity assessment issues with senior representatives of European and US standardization and certification organizations.

In a communique, Bangemann and Mosbacher confirmed that international standardization and openness of conformity assessment were indispensable in eliminating or avoiding the creation of technical barriers to international trade. They also agreed that regular exchanges of information between standardization bodies (and officials) were key in preventing such barriers, and welcomed the steps already taken by US and European standardization entities to establish a closer dialogue.

To consolidate progress already made in the standardization area, the two sides agreed to the following: early exchanges of information in areas where standardization plays an important role (i.e. regulations calling for new standards); the promotion of international standards and documentation by public authorities, particularly in product legislation; and an early conclusion of the multilateral talks in the GATT concerning the revision of the Agreement on Technical Barriers to Trade.

In relation to conformity assessment, the statement included the following points: that the development of confidence building systems (i.e. accreditation) would be based on international standards and documents; that Secretary Mosbacher's proposal to make the US system more coherent while satisfying international guidelines would be given full consideration; and that preparatory discussions for negotiations on possible mutual recognition agreements between the EC and the US should be initiated.

MANDATORY EMPLOYMENT CONTRACTS ON TAP

A Common Position has been reached on a directive which would force EC firms to give employees a contract detailing terms and conditions of employment. It is the first item of the Commission's action plan to implement the Social Charter (after many other attempts) to reach any kind of agreement in the Council of Ministers.

Contracts would have to cover information on workers' hours, pay, vacation, notice and place and type of work. Employees who work less than 8 hours a week or for less than a month would be exempted.

"We believe this information strengthens the employee's position and improves transparency on the labor market," noted EC Social Affairs Commissioner Vasso Papandreou.

The Commission has stepped up the pace on the Social Charter legislation, having recently adopted a series of directives and non-binding recommendations ranging from common EC rules for maternity leave to a Code of Practice on the protection of the dignity of women and men at work. Because most social legislation requires unanimity in the Council, directives such as the maternity leave rules and minimum social conditions and pay for foreign subcontractors (to prevent "social dumping") face an uphill climb.

QUOTES

"'Federalism' in the Community means different things to different people. But if it implies a central government for the federation, this is not what people in this country (the UK) want. If it means decentralization, then it sounds like subsidiarity, which many people in this country would find more acceptable." British Prime 'Minister ***John Major.***

"Our objective is both a Europe whole and free, and a Euro-Atlantic community that extends east from Vancouver to Vladivostok." US Secretary of State ***James Baker.***

"...The perception has gained ground that a European security and defense identity would not be worth having if it weakened the [NATO] alliance, especially the vital transatlantic link." NATO Secretary-General ***Manfred Warner.***

"The Dutch presidency must really do its utmost to bring European Monetary Union and Political Union to their conclusions before the end of the year. If we are not able to do so, it will be seen as a very negative thing." Netherlands Prime Minister ***Ruud Lubbers.***

"We have, of course, some problems with the United States, but when you look at the volume of trade between the US and the European Community, the trade covered by frictions is rather small." EC External Affairs Commissioner ***Frans Andriessen.***

"It is time that all concerned in agriculture realized that the status quo cannot continue...We must be able to show the rest of the world we made an effort (at reform)...No matter where we are, we no longer live on an island." EC Agriculture Commissioner ***Ray MacSharry*** *after launching his plan (already sanctioned by the Commission) to reform the Common Agricultural Policy.*

EC RAIL DEREGULATION LEAVES THE STATION

EC transport ministers have taken the first step toward opening state-owned railways to private operators, which could eventually lead to an integrated EC rail network.

Under a "political agreement", the ministers agreed that by January 1, 1993, joint ventures between rail companies in two or more member states offering cross-border rail services (passenger or freight) would have right of access to all rail networks needed to provide the service. This means, for example, that a joint venture between Spanish and Italian rail companies would have free access to the Spanish and Italian networks and the right to cross France. In addition, any EC company providing "combined" (intermodal) freight services would enjoy the right of transit and access to railway facilities throughout the EC.

These new possibilities stem from a consensus among the ministers that railways should be legally independent from national governments and should be obliged to separate infrastructure and operating costs, opening the door for user fee charges to new entrants. Further, to put national rail monopolies on a more commercial footing, they agreed that blanket rail subsidies should be replaced by specific government grants for "socially essential" rail services. Another aspect of the agreement calls on the Commission to formulate harmonization proposals for rail infrastructure (e.g. bridge and platform widths).

The accord must still gain formal approval, but given the increasing air and road congestion in the EC and the related environmental costs, railway liberalization is an attractive transport alternative. According to the Commission, trains are more energy efficient and less polluting than trucks or cars, and railway tracks take up two-thirds less land than new roads. Said EC Transport Commissioner Karel Van Miert: "No member state is going to stand for a 40% increase in road traffic by the year 2000. Public opinion will not accept it."

...IN BRIEF

...EC unemployment rose for the fourth straight month to 8.7% in May (8.6% in April), the highest level in two years. The largest May increase in joblessness occurred in the UK, where the rate climbed 0.3 percentage points to 8.4%. Denmark, France, Ireland, Italy, and Luxembourg also experienced increases in their unemployment rates.

...EC and US competition law and policy will be the subject of the 18th annual Fordham Corporate Law Institute Conference, which will be held at Fordham Law School in New York City on October 24-25, 1991. In addition to leading practitioners of EC law, top EC competition officials, including Michel Petite of the Commission's Merger Task Force, John Temple Lang from the Commission's Competition Directorate (DG IV) and Jonathan Faull of EC Commissioner Sir Leon Brittan's cabinet, will be making presentations.

Starting September 3, Fordham is offering two evening seminars: "EC Corporate and Trade Law" and "European Community Law".

For more information both on the conference and the seminars please contact Ms. Helen Herman, Executive Director, at (212) 636-6885.

...Spain and Portugal have become the seventh and eighth countries, respectively, to sign the Schengen Agreement (see EURECOM, July 1990) on lifting controls on the movement of individuals between the signatory EC member states. To date, only France has ratified the treaty, which will take effect 4 weeks after all signatories have ratified the agreement (expected in the first half of 1992). France, Germany, the Netherlands, Luxembourg, Belgium and Italy make up the other Schengen countries, and Greece has entered talks to join the group.

...*Regions of the EC*, a study undertaken by Ernst & Young and co-sponsored by the business magazine Corporate Location Europe, offers a comprehensive survey on the location of business operations in Europe. It ranks the 64 regions of the EC on factors such as economic climate, labor, transportation, corporate taxation, telecommunications, energy costs, property costs, financial incentives and proximity to markets. For more information or to purchase a copy of the study, please call Ernst & Young at (212) 773-6555.

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