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MAASTRICHT SUMMIT SUCCEEDS ON EC ECONOMIC AND POLITICAL UNION

In the early morning hours of December 11, the European Community heads of government emerged from a marathon two-day summit in Maastricht, the Netherlands having agreed to major revisions of the EC Treaty that will undoubtedly forge closer economic and political ties within the Community, including a single currency by the end of the decade and a framework for a common foreign and security policy.

On the **economic and monetary** (EMU) side, the EC leaders reached an accord that will pave the road to fixed exchange rates and a single currency for at least some of the member states by no later than January 1, 1999. Under the agreement, if a majority of member states meets the strict economic criteria necessary for EMU (including an inflation rate not more than 1.5 percentage points higher than the three lowest rates among the member states; a budget deficit not in excess of 3% of GDP; a long term interest rate not more than two percentage points higher than the EC's three lowest; and no devaluations of a currency against any other within the Exchange Rate Mechanism of the European Monetary System for at least two years) by the end of 1996, then stage three of EMU, which includes the formation of a Central Bank (on the Bundesbank model) and a single currency (the ecu), can proceed.

Failing this, EC leaders will decide in mid-1998 which EC countries are ready for EMU and, without requiring a majority of member states, the "qualified" countries will go ahead with a currency union on January 1, 1999. The European Central Bank must be up and running six-months prior to the fixing of exchange rates, evolving out of the European Monetary Institute, which will come into being on January 1, 1994 — the official beginning of stage two of EMU.

Commenting on the agreement, EC Economic Affairs Commissioner Henning Christophersen called it "a very elegant solution, marrying clear dates with Germany's insistence on economic conditions."

The treaty gives two member states, the UK and Denmark, the right to "opt out" (or "opt in" as UK Prime Minister Major put it) of the third and final stage of EMU. The UK will require a separate decision from the government and Parliament to join, while Denmark will hold a referendum.

The Maastricht agreement on **political union** experienced a much more difficult birth, requiring intense negotiation and significant compromises from all sides. A major breakthrough came when 11 member states agreed to a separate protocol on implementing the EC's Social Charter of workers' rights, which excludes the UK. This enabled the UK, which refused to have the social affairs text included in the treaty revisions, to sign the comprehensive Maastricht accord. In addition, the reference to a "federal goal" in the treaty was dropped in favor of "an ever closer union among the people of Europe, where decisions are taken as close as possible to the citizens."

The creation of a common foreign and security policy, in which there will be some limited majority voting, was approved, but it will remain an intergovernmental structure. Further, the treaty opens the possibility of a common European defense through the Western European Union, which will remain compatible with NATO.

More powers will go to the European Parliament, primarily in the form of legislative co-decision in certain areas, including a wide coverage of proposals made under Article 100 A of the EC Treaty, one of the EC's principal legislative bases.

Among other highlights, the EC leaders agreed to intergovernmental cooperation on immigration and asylum; to create a European police intelligence agency, Europol, to combat organized crime and drug trafficking; to allow the Commission to start accession negotiations with applicant countries as early as 1992; to establish an EC citizenship; and to increase regional funds for the poorer EC countries (the "cohesion fund").

EC COURT OF JUSTICE HOLDS UP EEA

Eleventh-hour reservations registered by the EC Court of Justice on the European Economic Area (EEA) accord between EFTA (European Free Trade Association) and the EC (see EURECOM, November 1991) have held up the agreement.

The Court's misgivings center on the creation of a joint EC-EFTA tribunal to resolve certain EEA-related disputes which, according to the Court, could compromise its freedom of action in EC cases. Five of the 13 EC judges would sit on the EEA court.

The main question is whether the Court's judges would still be able to rule freely on an EC case if a similar case has already been decided by the joint tribunal. In fact, Article 104 of the EEA accord obliges the Court to take into account the interpretations of the EEA court when applying and interpreting the provisions of the EEA. Further, Article 96 of the accord allows the EEA court to decide "competence" disputes between the EC Commission and a future EFTA surveillance body on competition policy, theoretically giving the EEA court the right to interpret EC law, thus diminishing the powers of the EC Court.

The Court expects to deliver its opinion on whether it can accept the accord "as is" before Christmas.

EC REACHES "EUROPE" ACCORDS WITH CENTRAL EUROPEAN COUNTRIES

While the EEA is stuck on legal questions, the EC recently initialed association or "Europe Agreements" with Poland, Czechoslovakia and Hungary, just one year after the Commission initiated negotiations.

Designed to quicken the reform process in the three countries and to pave the way to eventual EC membership, the new agreements will significantly broaden the scope of existing bilateral trade and cooperation agreements with the EC (which all took effect by June 1990).

The structure of all three pacts are identical, but they vary in content according to the needs of the individual countries. For example, the agreements reflect the fact that Poland and Hungary are more dependent on agricultural exports than Czechoslovakia.

In terms of goods, the 10-year agreements are preferential and aim to create eventual free trade. They contain trade concessions to the three countries and special protocols on textiles, customs cooperation and rules of origin. Agriculture and fisheries trade will be based on mutual concessions.

Right of establishment for businesses and professionals will be based on national treatment; the EC will extend this immediately to the three countries, while they will have a transition period before EC entities gain reciprocal rights.

Over time, the three countries will adapt their laws to Community legislation, particularly to competition rules, to promote integration with the EC economies. Said EC chief negotiator Pablo Benavides: "We are exporting our legislation." In addition, the free movement of capital is written into each accord (i.e. EC investors will be able to repatriate profits and vice versa).

These countries will continue to receive financial assistance through the PHARE program (the program of Western economic aid for the reconstruction of Central and Eastern Europe, which is coordinated by the Commission) until the end of 1992.

Further, they will receive EC assistance in areas of common interest: compilation of reliable statistics, EC product and safety standards, education and training, regional development, prevention of money laundering and drug trafficking, environmental protection and clean up, transportation and telecommunications.

The accords must be ratified by the parliaments of the three central European countries, the 12 EC member states and the European Parliament. A ministerial-level Association Council will meet at least once a year to supervise the implementation of the accords, and a (European) Parliamentary Committee will also be established to play a consultative role.

TRIPARTITE AGREEMENT ON DRUG TESTING

A landmark agreement to harmonize guidelines on drug testing has been reached by the EC, the US and Japan — a move which will save lives and millions of dollars for the pharmaceutical industry. US, Western European and Japanese firms conduct 90% of the world's pharmaceutical research and development.

By reducing the need for separate drug tests in the three different regions, the guidelines, covering the areas of drug stability, animal testing, reproductive toxicity and good clinical practices, should cut the time required to license and sell drugs internationally (thereby giving patients faster access to new drugs and increasing time for patent exploitation) and reduce research and development costs for drug companies.

According to the Commission, the agreement to eliminate duplicate testing for stability, which shows how long a drug can be safely kept, will enable companies to pare tests by 30%, resulting in estimated savings of 100,000 ecu (ecu1=$1.29) for each new product. In terms of animal testing, the "triad" agreed to reduce year-long toxicity studies in rodents and mammals to six months (at a savings of some 500,000 ecu, 200 rats and 48 dogs per product), and to abolish the controversial LD50 test, which involves feeding such high dosages to animals that over half die.

The "triad" also consented to mutual recognition of each other's "good clinical practices" and recognized as "equivalent" existing guidelines on reproductive toxicity. A tripartite approach to reproductive toxicity will be proposed in 1992.

COMMISSION RELEASES ANNUAL ECONOMIC REPORT

Following a slowdown in 1991, the Commission, in its recently released Annual Economic Report for 1991/92, forecasts moderate economic growth for the EC over the next two years. The report predicts that the Community's aggregate GDP (Gross Domestic Product) growth rate will slacken to 1.3% for 1991 (compared with 2.8% growth last year) and will rise by 2.25% in 1992 and 2.5% in 1993. This growth will not be sufficient to prevent EC unemployment from exceeding 9% next year, up from 8.6% in 1991. Despite the sluggish growth, inflationary pressures will remain strong.

Although the economic downturn is worldwide — world economic growth (excluding the EC) will register a paltry 0.2% increase in 1991 — EC Economic Affairs Commissioner Henning Christophersen commented that the Community is withstanding the current recessionary environment better than some third countries because of structural economic reforms in the EC economies during the 1980s and strong German growth. Consequently, however, the EC will have to rely on itself to generate growth above 3%, the rate of growth necessary for a reduction in the EC's high unemployment rate.

Christophersen stressed that the EC's economic situation demands cautious macroeconomic policies, i.e. tight monetary policy supported by firm fiscal policy. He warned against the widening of member states' deficits, which would increase long-term interest rates, hampering the EC's efforts toward more economic convergence and to raise capital for the immense financing needs of Central and Eastern Europe and the Soviet Union.

According to Christophersen, prospects for greater growth lie with an increase in EC investment and consumption, both of which depend on renewed confidence. Successful completion of the single market and the Uruguay Round, coupled with the creation of EC-EFTA European Economic Area and the recent agreement on Economic and Monetary Union, would go a long way toward restoring the necessary confidence.

QUOTES

"Federalism is a guideline. It is not a pornographic word. It offers the possibility for ordinary citizens to participate in the common European enterprise." EC Commission President ***Jacques Delors****.*

"The history of our Europe (teaches) us that even when one or two states lag behind, in the end they will follow...The process of going to a monetary union with one currency is now a fact of life." Dutch Prime Minister and current EC Council President ***Ruud Lubbers****, who chaired the Maastricht summit.*

"I am deeply concerned that the recent political maneuvering may have taken precedence over the completion of the [single] market. If so, this is deeply regrettable, because I believe that the single market is the cornerstone of economic integration and of Europe's competitiveness in world markets." Sir ***Denys Henderson****, Chairman of ICI, Europe's third largest chemical group.*

"The United States has long supported European unity because of our strong conviction that it was good for Europe, good for the Atlantic partnership and good for the world...A more united Europe offers the United States a more effective partner, prepared for larger responsibilities." US President ***George Bush****.*

EC FINANCE MINISTERS STRIKE DEALS ON TAX ISSUES

A recent Eco/Fin Council meeting established how value-added tax (VAT) will be collected in the initial years of the single market, ensuring that intra-EC tax frontiers will be abolished on schedule in 1993. Basically filling in previously agreed political guidelines, the Council's decisions (and compromises) will give companies and national government over a year to become familiar with the new provisions.

For EC consumers, the finance ministers agreed that as of January 1993, they will be allowed to pay VAT in the country where they buy goods (the "origin" principle), not in the country where the goods will be used (the "destination" principle) as is the current practice. Exceptions to this regime include big ticket items, e.g. cars and certain types of boats, and mail order purchases (from "distant selling" firms) above a certain threshold.

Businesses will continue to pay VAT in the country of destination for a transitional period lasting, theoretically, until January 1, 1997, when an "origin" system is slated to start. If the Council fails to reach agreement on the permanent system (based on a Commission report) by end-1996, the transitional arrangement will be automatically extended.

Although customs documents are being abolished in the single market, companies will still have to report VAT statistics. Firms that sell goods across borders will be required to supply a monthly report to national authorities on cross-border transactions, which will be far less onerous than existing requirements for intra-EC trade. Smaller businesses will either be exempt or able to use simplified forms for reporting. This information will be centralized in a system known as INTRASTAT, which will eventually be available for market research purposes.

The linchpin for these Eco/Fin decisions was a compromise on the abolition of duty-free shopping for intra-Community travelers. Despite the arrival of the single market, where internal borders for customs purposes are being scrapped, the finance ministers agreed that duty-free shops can continue doing business until July, 1999, giving airports and other businesses dependent on duty-free shopping time to adjust.

...IN BRIEF

...The latest Eurobarometer poll, released on the eve of the Maastricht summit, indicates that on a Community-wide basis, there are solid majorities for a single currency replacing the national currencies in five or six years (54% for vs. 25% against); for the EC being responsible for foreign policy (55% vs. 23%); for the EC having a European Central Bank (55% vs. 22%); for EC responsibility in matters of security and defense (65% vs. 17%); and for the European Parliament gaining more power of "co-decision" with the Council on EC legislation (65% vs. 15%). A majority of people in 10 of the 12 member states backs all five proposals, some by large margins. In the UK, more people are against a single currency (42%) and a "Eurofed" (41%) than are for them (40% and 39%, respectively). The Danish also dislike the single currency idea (35% for; 54% against) and EC responsibility for foreign policy (40% for; 48% against).

...Average year-on-year inflation in the EC dropped to 4.4% in October, the lowest average increase in 34 months. Except for Germany and the Netherlands, inflation rates in the member states are lower than a year ago. The most dramatic decrease has occurred in the UK, where the inflation rate was 3.7% in October compared with 10.9% last year. This happens to coincide with pound sterling's entry into the Exchange Rate Mechanism of the European Monetary System in October 1990.

...The Fordham Center on European Community Law and Antitrust is offering three evening seminars in the upcoming spring semester on a non-credit basis: EC Competition Law (3 hours); Intellectual Property Licensing in the European Community; and US International Antitrust and Trade Law. All classes will be held at Fordham Law School, 140 W. 62nd Street, New York City, adjacent to Lincoln Center. For tuition and registration information, please call Helen Herman at (212) 636-6885.

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EURECOM is published by Barbara Noël, Director of Press & Public Affairs, the Commission of the European Communities, 3 Dag Hammarskjold Plaza, 305 East 47th Street, New York, NY 10017. It is edited by Christopher Matthews. The contents of EURECOM do not necessarily reflect the views of the European Communities' institutions or of the member states. Any article may be reproduced without express permission. However, acknowledgement of the source and a copy of any material published would be appreciated.

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Commission of the European Communities
3 Dag Hammarskjold Plaza, 305 East 47th St., New York, NY 10017
Telephone (212) 371-3804