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EC NEARS SINGLE MARKET IN SECURITIES

EC finance ministers have taken major strides toward completing a single market in financial services by attaining compromises on two contentious directives — the **Investment Services Directive** (ISD), and its companion legislation the **Capital Adequacy Directive** (CAD).

After three years of deadlock, EC finance ministers have reached a "political agreement" on the **ISD** (although some technical points must still be resolved). The ISD aims to create an EC-wide market in stock brokerage and other investment services, enabling investment firms and brokers licensed in one EC country to operate throughout the Community on the basis of a "single passport", including third country brokerage firms. It does not specifically cover commodities trading, however, which will be covered in a forthcoming Commission proposal.

On the ISD, the Council had to overcome two key obstacles: share trading transparency in off-market transactions and banks' access to stock exchanges. To ensure "transparency", dealers will have to release information on traded shares in a staggered manner, calculating the weighted average price and volume of shares traded on an exchange over a six hour period and publishing the results with a two hour delay. Further, stock traders will have to calculate the highest and lowest prices of a trade over a rolling two hour period, which will be published every 20 minutes with a one hour lag.

This dual transparency mechanism proposed by the Portuguese presidency was sufficiently detailed and precise to allay member states' fears that the text would be too vague (as in earlier drafts).

On the second sticking point, direct access for banks to stock markets, the Council agreed to give six member states a grace period before banks are allowed to become members of exchanges. Under the compromise, Belgium, France and Italy can still bar banks from operating directly on exchanges until the end of 1996, after which they must "unequivocally" allow direct access. Greece, Spain and Portugal may maintain their curbs until the end of the century, with the possibility of an extension.

Complementing the breakthrough on Investment Services, the ministers agreed to minimum start-up capital provisions for investment firms under the **CAD**, clearing up a loose end left from last month's breakthrough accord (see EURECOM, June 1992).

For "advisors" (i.e. those not authorized to hold clients' capital or to trade on their own account), minimum capital was set at 50,000 ecu (1ecu=$1.37). Brokers and portfolio managers dealing on investors' orders face a 120,000 ecu minimum, while all others would have to start with 730,000 ecu. (The latter category is higher because traders with their own account are tempted to use their clients' funds to offset their own losses.)

IRELAND, LUXEMBOURG RATIFY MAASTRICHT TREATY

Voting by more than 2-1 in favor of the Maastricht Treaty on European Union on June 18, the Irish electorate put the ratification process — at least for the time being — back on track. If Ireland had rejected the treaty as Denmark did earlier (see EURECOM, June 1992), the treaty would have been beyond salvaging.

"It's a great day for Ireland and a great day for Europe," said Irish Prime Minister Albert Reynolds after the referendum, in which 69% voted in favor of the treaty compared with 31% opposed — a far wider margin than had been expected.

Following the resounding Irish endorsement, Luxembourg's parliament ratified the Maastricht Treaty by a vote of 51 to 6. Commented Luxembourg's Foreign Minister Jacques Poos: "As one of the six founding members of the EC in 1951, [Luxembourg] does not consider Maastricht a revolution but rather one more step in a direction we chose 40 years ago."

At the European Council summit in Lisbon, EC member states reaffirmed their agreement to press ahead with the ratification process so that the Treaty can come into force on January 1, 1993. Still, the timetable depends on a solution to Denmark's rejection of the treaty, as it must be ratified by all 12 member states to enter into force. As yet, the only other referendum to be held on the Treaty will be in France on September 20; all other member states are submitting the Treaty to their respective parliaments for ratification.

"OPEN SKIES" OVER EC IN VIEW

EC transport ministers have set the itinerary for open competition in Community skies, reaching a "political agreement" on the Third Liberalization Package for air transport.

Under the accord, which still requires formal Council approval, airlines will be able to set prices on intra-EC flights without government interference as of year's end, and EC-registered air carriers will be able to serve domestic routes in another member state without restrictions after a four-year transition period.

Beginning January 1, 1993 EC airlines will be permitted to conduct consecutive cabotage in other member states (e.g. Lufthansa could fly from Frankfurt to Barcelona, and then take passengers on to Madrid), but only 50% of aircraft capacity will be available for the foreign stopover until April 1, 1997, when unrestricted cabotage takes effect.

The legislation also introduces an EC air transport certificate, which will allow an EC airline to operate in the "liberalized" Community air transport market. To obtain a certificate, an airline must demonstrate technical as well as financial viability. Further, to secure an operator's license, an airline must have a minimum of 80,000 ecu in start-up capital, a majority of its shareholders must be EC nationals and its headquarters and main business operations must be domiciled in the EC. EC transport ministers agreed to a less stringent set of criteria for companies operating only light aircraft.

Most important to the business traveler is the regulation on pricing: airlines, without government participation, will set air fares as of January 1. Hoping to avoid some of the pitfalls of the US air transport deregulation experience, however, the ministers have included some safeguards: both the Commission and member states may intervene on price matters to prevent price gouging or fare wars. The regulation aims for air fares to reflect the true long-term costs of the airlines.

Notwithstanding the imminent passage of the Third Liberalization Package, the problem of air congestion and the shortage landing slots in the Community still cloud the prospects for substantially lower air fares in the EC. The Commission is pressuring the member states to force their national airlines to make room for new entrants into the market or face relinquishment of highly prized take-off and landing slots.

MAJOR PROGRESS ON PUBLIC SERVICE CONTRACTS

Following the June 18 Internal Market Council meeting, the White Paper's legislative assault on "buy national" public procurement practices in the EC is nearly complete.

First, the Council formally adopted the Public Services Directive, which will require public authorities, as of January 1, 1993, to advertise contracts of at least 200,000 ecu for services that have the most potential for cross-border trade (e.g. road maintenance, waste removal, insurance, accounting, advertising and information technology) in the EC's Official Journal. Member states' authorities would have to accept the "best" offer without regard to nationality (see EURECOM, January 1992).

Second, a "political agreement" was reached to open up service contracts awarded by utilities in the "excluded" sectors — water, energy, transport and telecommunications. A companion to the Public Services Directive, the "excluded sector" legislation would similarly require public entities to advertise for services most likely to be the subject of transfrontier operations in the EC's Official Journal, including, for the first time in EC public procurement law, financial brokerage services. It would apply to contracts of at least 600,000 ecu in the telecommunications sector and 400,000 ecu in other areas, covering both private firms and public agencies that have exclusive operating rights (i.e. "concessions") with public authorities. "Non-priority" services such as legal, manpower and vocational/educational services, where there are good reasons to buy local, would be subject to minimum transparency requirements.

Unlike the Public Services Directive, however, it includes a reciprocity clause, albeit watered-down from earlier drafts. This would permit the Commission to propose measures to address discriminatory procurement practices in third countries, but these would have to have Council approval. The directive does not have an EC preference clause which the earlier EC laws on public works contracts include.

Although procurement habits in the EC will not necessarily change overnight — old habits die hard — the economic impact of these directives is huge: public procurement accounts for as much as 15% of EC GDP annually, and 25% of all public contracts cover services.

EC AGREEMENT ON RENTAL RIGHTS

The Internal Market Council has reached a Common Position on a directive giving authors, performers and producers the right to prohibit or to authorize (with "equitable compensation") the rental or lending of their works. It would apply to copyrighted works such as computer software, video cassettes, books and compact discs.

In addition, the directive also involves the harmonization of member states' laws related to copyright by defining rights of fixation, reproduction, distribution, and broadcasting to the public for holders of related rights.

On a major sticking point, the Internal Ministers agreed that the director of a film will be considered its author, with the option of considering the producer its co-author, as of July 1, 1997. Although the legislation's main elements will be in place as of July 1, 1994, the UK, which designates producers as the authors of films for copyright purposes, secured a three-year transition period in which the Commission will study the issue further.

The directive has sparked its share of controversy. According to the Motion Picture Association of America, it could subject "all existing contracts with writers, directors and performers...to review and revision by (EC countries)." Nevertheless, the legislation now moves on to the European Parliament for a final review before the Council formally adopts it.

EC COMPLETES SINGLE MARKET IN NON-LIFE INSURANCE

Representing the completion of a single market in non-life insurance, the Council has formally adopted the Third Non-Life Insurance Directive (see EURECOM, March 1992).

The directive creates a true European "passport", which will enable insurance companies, as of July 1, 1994, to operate throughout the EC on the basis of home country authorization and supervision, and to offer their full range of non-life products and services. This will undoubtedly increase consumer choice and opportunities (and competition) for firms.

Spain, Greece and Portugal received transition periods to adjust to the new legislation (Spain until the end of 1996; Portugal and Greece until the end of 1998).

Commented EC Financial Services Commissioner Sir Leon Brittan: "Only a few years ago very few people...believed that a single insurance market was a serious possibility. The diverse national traditions and systems of regulation created formidable obstacles to its achievement. That we have been able to overcome those obstacles shows very vividly that the problems over Maastricht have not...slowed down the [EC's] movement towards a single market."

QUOTES

*"It would break Europe, there's not the slightest doubt about that. There would be no momentum left, it would be finished, no one would believe in it any more." French President **Francois Mitterrand**, commenting on the consequences of a French rejection of the Maastricht Treaty in the September 20 referendum.*

*"In Germany there is a prevailing concern about the loss of the stable Deutsche Mark. After two periods of hyper-inflation in Germany this century, this worry must be taken seriously. But in the light of the stability provisions of the Maastricht Treaty and the welcome developments in price stability in most European countries in the last ten years, it appears exaggerated." **Hilmar Kopper**, management board chairman of Deutsche Bank.*

*"In abolishing the barriers to the single EC market, we have sometimes had to legislate in the smallest detail. In doing this, however, you trample on principles which are superior, such as respect for Europe's diversity. I prefer a single market 90% complete to one working at 110% which is rejected by the people." EC Commission President **Jacques Delors**, who was appointed for two more years by the member states at the Lisbon summit.*

*"The momentum towards a single market is unstoppable. It is vital to ensure that the single market works and is not diverted by political wrangling." British Trade and Industry Secretary **Michael Heseltine**.*

GENERAL PRODUCT SAFETY DIRECTIVE ADOPTED

European consumers will soon have legal protection from any unsafe products being introduced onto the market after the formal adoption of the General Product Safety Directive (GPS).

While important progress has already been made at the EC level on the harmonization of product safety conditions, some sectors have not been covered by specific legislation. Where specific EC rules exist for a product's safety requirements, the GPS will not apply. Where no specific legislation exists, the GPS will fill in the gaps.

The directive, which takes effect June 29, 1994, will require manufacturers and suppliers to place only safe products on the market (under normal or reasonably foreseeable conditions of use); to provide consumers with all necessary information on possible risks involved in a product's use; and to ensure that consumers can be informed whenever and wherever there are dangers associated with a product's use.

LISBON SUMMIT COVERS EC ENLARGEMENT ISSUE

At the recent European Council summit in Lisbon, EC leaders agreed that official negotiations on membership for the EFTA (European Free Trade Association) applicants — Austria, Finland, Sweden and Switzerland — will commence after the Maastricht treaty has been ratified and after an agreement on the so-called Delors II budget package has been reached. Preparatory work on these negotiations will proceed forthwith, and the eventual negotiations with the individual EFTA countries, to the extent possible, will be conducted in parallel, in light of each candidate's own merit.

They also agreed that the EFTA countries could become members on the basis of present EC institutional arrangements, but for the Community to take on an even larger number of countries, institutional reform would be necessary.

Responding to a request made at the Maastricht summit in December, the Commission submitted a report to the EC Council in Lisbon entitled "Europe and the challenge of Enlargement", spelling out the issues and prospects for

EC enlargement. For a copy of the Commission's report, please contact the EC's New York or Washington delegation.

...IN BRIEF

...Responding to the Ruding committee's report on corporate taxation in the EC, which recommended a 30% minimum corporate tax rate across the Community, the Commission, represented by EC Tax Commissioner Christiane Scrivener, said that a minimum tax is worth examining, although 30% was too high. "It is important not to be carried away by a drive for harmonization which is not justified on economic grounds and which would not be consistent with the principle of subsidiarity," she said. Rather than harmonize everything, the Commission's goal is to continue to eliminate double taxation of companies operating in different member states.

...Joining a growing list of countries (four to be exact), the government of Cyprus has decided to link the Cyprus pound to the ecu, and to align its future exchange rate policy with that of the EC member states. According to the Commission, this move "extends further the zone of monetary stability which is being established in Europe", and confirms the ecu's growing importance.

...In a new book, *The New American Community: A Response to the European and Asian Economic Challenge*, Professor Jerry M. Rosenberg of Rutgers Graduate School of Management has developed a strategy for an American community — North, Central and South — as a response to the rise of the European Community and Japan's growing dominance of Asian markets. He proposes a massive Americas free-trade zone, which he believes would both revitalize the US's economic position and raise standards of living throughout the hemisphere. For more information, contact Praeger Publishers, 80 Post Road West, P.O. Box 5007, Westport, CT 06881.

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