COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 29.06.1995
COM(95) 303 final

REPORT FROM THE COMMISSION

TREATMENT ACCORDED IN THIRD COUNTRIES TO COMMUNITY CREDIT INSTITUTIONS, INSURANCE COMPANIES AND INVESTMENT FIRMS

CONTENTS

CHAPTER I - Introduction

1. Purpose of the report

The Commission is required by Community law to draw up a report for submission to the Council examining the treatment accorded to Community investment firms in third countries as regards establishment, the carrying on of investment services activities and the acquisition of holdings in third country investment firms[1]. This report must be drawn up no later than six months before the bringing into effect of the Investment Services Directive.

According to the preamble of the Investment Services Directive, and the corresponding texts of the other financial services directives the Commission's report forms part of a procedure "intended to ensure that Community investment firms receive reciprocal treatment in the third countries in question". This procedure is intended to be "flexible" and to make it possible to assess reciprocity on a Community basis. It has the central aim "to improve the liberalisation of the global financial markets in other third countries" and "provides for procedures for negotiations with third countries and as a last resort, for the possibility of taking measures involving the suspension of new applications for authorisation or the restriction of new authorisations".

The first report of this kind was adopted by the Commission on 15 July 1992 (SEC (92) 1343 final and XV/4004/92-EN). That report covered treatment accorded by third countries to Community credit institutions and insurance companies. However, investment services were also covered by that report, in so far as they were included in the list of activities subject to mutual recognition under the second banking directive (see Annex on Banking).

The 1992 report explained in detail the functioning of the provisions on relations with third countries, notably the notions of denial of national treatment and comparable effective market access as contained in Article 9 paras 3 and 4 of the second banking directive[2]. Identical provisions are included in the corresponding directives on insurance. As these same notions also govern relations with third countries in the investment services field, that explanation is not repeated in this report.

2. Coverage of the report

The Commission has decided to use the occasion of the report on treatment given to Community investment firms, also to update the 1992 report covering credit institutions and insurance companies. This update is based on developments which have taken place in the financial services sector of the 24 countries covered by the report[3].

---

[1] Art. 7 para 3 of Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field (OJ no L 141 of 11.6.1993, p. 27).

[2] Second Council Directive of 15 December 1989 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions and amending Directive 77/780/EEC (O.J. L 386 of 30/12/90, p. 7).

[3] Argentina, Australia, Brazil, Canada, Chili, China, Egypt, Hong Kong, India, Indonesia, Japan, Korea, Malaysia, Mexico, Philippines, Russia, Singapore, South Africa, Switzerland, Taiwan, Thailand, Turkey, United States, Venezuela.

While the report is selective in terms of the countries covered, inclusion, or indeed, non-inclusion of any particular country should not be interpreted as having implications for the treatment granted in any such country for Community credit institutions, insurance companies and securities firms. The principal criterion followed by the Commission has been the relative importance of the financial sector of the countries for the European Community's own operators, a situation which will obviously change as markets develop and grow. Account should also be taken of the extent to which an EC presence has been established in a third country market despite the existence of restrictions. The Commission reserves the right to make further reports in the light of new information, as of course it is empowered to do under Community law. In so doing, the Commission will continue to carry out its obligations in a transparent manner, through dialogue with the countries concerned and, where appropriate, by negotiation, and in a manner which fully reflects the Community's commitment to pursuing a liberal policy of openness to competition in the financial sector.

3. Developments since the 1992 report

Within the European Community : with the adoption of the Investment Services Directive on 10 May 1993 the foundation was completed for a single market in financial services in banking, insurance and investment services The investment Services Directive actually enters into force on 1 January 1996. For credit institutions the legislation took effect on 1 January 1993 and for the insurance sector on 1 July 1994. Efforts are now concentrating on consolidating the single market and on reinforcing it. cf. Chapter II.

Multilaterally : the European Community and its Member States participate actively in the continuing negotiations on financial services in the framework of the GATS (General Agreement on Trade in Services) negotiations. The European Community and its Member States have offered to bind its regime of open access and operating conditions based on national treatment on an MFN basis. cf. Chapter III.

Bilaterally, agreements containing provisions inter alia on financial services have entered into force with a number of non-member countries[4]. These agreements though not strictly speaking negotiated under the third country provisions of the European Community directives on financial services, have market opening objectives similar to those set out in the directives. They thus aim to achieve national treatment in the right of establishment and carrying on of activities in the country concerned. Full achievement of these objectives will however be on a progressive basis.

4. Enlargement - EFTA

Since the 1992 report, the European Community has been enlarged with Austria, Finland and Sweden. Although these new Member States received transitional periods in a limited number of areas to implement Community law, none of the provisions covered by these exemptions affect the conditions of access of third country financial institutions to Austria, Finland and Sweden. These countries have traditionally pursued liberal policies in financial services. This is reflected in the statistics which show a presence of foreign

---

4 The so-called Europe Agreements have all entered into force and cover Polan, Hungary, the Czech and Slovak Republics, Bulgaria and Romania.

financial companies above the average of the Union at twelve as well as in the amount of assets held by these foreign financial companies in Austria, Finland and Sweden.

The European Free Trade Area - EFTA - countries which are signatories to the agreement with the European Community establishing the European Economic Area which took effect on 1 January 1994 (Iceland, Liechtenstein and Norway) apply Community legislation relevant to financial services subject in a limited number of cases to a relatively brief transitional period. Iceland and Liechtenstein for instance are allowed to maintain restrictions on direct investments until 1 January 1996.

Annex A : Text of Article 7 of the Investment Services Directive

CHAPTER II - The European Single Market in Financial Services

1. Introduction

The financial services sector is of considerable importance to the EC economy. In 1992, the sector were estimated in 5.1% of EC output[5] (around 300 trn. of ECU). Between 1980 and 1989 employment in the sector rose an annual average increase of 3.2%. By 1992, the employment[6] in the financial sector were estimated in 3% of total employment in the EC. In 1991, outward EC direct investment[7] in financial services accounted for 32% of the total extra EC investment.

In 1993, total assets of credit institutions in the EC[8] were estimated in 10,757[9] bn of ECU equivalent to 195% of EC's GDP. Total deposits of credit institutions in the EC were estimated in 9,794 bn of ECU (178% of EC's GDP). In 1992, EC total insurance premiums were 334[10] bn of ECU or 6.2% of EC's GDP. This represented 963 ECU off premiums per capita. In 1994, turnover in equity shares in the main EC stock markets reached 2,183[11] bn of ECU (37.8% of EC's GDP). In the same period, market capitalisation were 2,314[12] bn of ECU (40.1% of EC's GDP). The number ogf companies with listed shares in the main EC stock markets were 5,781.v

The European common market in financial services is therefore an essential and economically crucial part of the frontier-free single market of 348 mn people. The single market in financial services is designed to remove barriers to the free and open provision of financial services whether in the form of restrictions on the right of establishment or obstacles to the provision of services across the frontiers of the 15 Member States which make up the European Community.

2. Access to the European Community by third country financial institutions

The European Community pursues a liberal policy in its relations with third countries in the financial services sector, as regards access to its markets and as regards the conditions in which financial firms originating in third countries established in the Community may operate. This was described fully in the 1992 report and is only represented in summary form here.

---

5 Estimation based in the gross value added at market prices, SEC-2 database EUROSTAT.
6 Estimation based in SEC-2 database, EUROSTAT. EU = 11. No information for GR.
7 Source : Direct investment in the EC. EUROSTAT.
8 EU = 12 countries.
9 Source : IMF Statistics.
10 Source : SIGMA.
11 Source : European Stock Exchange Statistics.
12 idem 8).

The Community is aware of the importance of open markets for the development and liquidity of its financial markets; it also believes that open competition in its financial markets will lead to better services, from which the whole economy would benefit given the central role financial services play in contributing to the efficient allocation of resources.

Community policy and that of Member States in general is based on two main tenets:

- Open market access, and in particular the right of establishment in conditions of national treatment : financial institutions from third countries have access to the Community both in the form of establishment and provision of cross-border services. Third country access by way of provision of cross-border financial services is not examined in this report. As regards establishment, third country firms may establish in all the Member States of the Community in the form of subsidiary or branch or, with very few exceptions, representative office. The Community's conditional offer of commitments in the context of the extended Uruguay Round negotiations on services would bind the present open policy of granting the right of establishment in whatever form to third country financial institutions.

- Second, the principle of national treatment, which applies at Community level without exception to the operations of partly or wholly owned subsidiaries, and with limited exceptions as regards the primary establishment of such subsidiaries and the establishment and treatment of direct branches. In some cases these exceptions to the full application of national treatment are being phased out, and, in any event, they have not acted as a significant deterrent to the establishment of a large presence of financial firms of third countries on the EC market.

The central concept of the single market in financial services is the single licence, sometimes referred to as the "single passport". The investment services directive established this concept for investment firms, just as the so-called third generation insurance directives did it for the insurance sector and the second banking directive for credit institutions.

The single licence concept permits any bank, insurance or other financial services company, of whatever origin, incorporated in the Community to establish a branch in any or all of the other Member States, or to provide services to consumers in other Member States.

3. Investment services

Pursuant to the Investment Services Directive (ISD) in order to carry on business as an investment firm an authorisation is required by the competent authorities in its "home" member state (Member State of incorporation) and will thereafter be regulated primarily by that member state, regardless of whether the investment firm establishes a branch or provides services without a local establishment in another member state, the "host" member state.

In line with the other financial services directives, the ISD provides for the minimum harmonisation of regulatory provisions throughout the Community thus creating a basis for the mutual recognition of authorisations by the member states.

The types of investment business that will require authorisation are order collecting, execution of orders on an agency basis, dealing, portfolio management and underwriting, where these activities relate to securities or securities related instruments such as financial futures and options. Commodities and commodity futures are not covered. A category of "non-core" services can be provided by the investment firm in all member states as long as they are mentioned specifically in the authorisation.

Article 7 of the ISD covers relations with third countries. Its paragraph 4 stipulates that whenever it appears to the Commission, either on the basis of the reports provided for in paragraph 3 (this report) or on the basis of other information, that a third country does not grant Community investment firms effective market access comparable to that granted by the Community to investment firms from that third country, the Commission may submit proposals to the Council for an appropriate mandate for negotiation with a view to obtaining comparable competitive opportunities for Community investment firms. The Council shall act by a qualified majority.

Article 7 paragraph 5 stipulates that whenever it appears to the Commission, either on the basis of the reports referred to in paragraph 3 or on the basis of other information, that Community investment firms in a third country are not granted national treatment affording the same competitive opportunities as are available to domestic investment firms and that the conditions of effective market access are not fulfilled, the Commission may initiate negotiations in order to remedy the situation.

Also coming into force on 1 January 1996 is the Capital Adequacy Directive (93/6/EEC)[13] which lays down basic capital requirements for investment firms and fixes the ongoing risk-adjusted capital requirements for market risk incurred by investment firms and credit institutions on their trading portfolio.

Work is currently under way to extend the scope of the 1985 UCITS Directive and to establish minimum Union-wide investor compensation in the event of the failure of an investment firm.

Cfr. Annex B.

4. Credit institutions

The Second Banking Directive, the Annual Accounts Directive and the Own Funds Directive which were essential for the coming into effect of the Single Market for credit institutions have since been supplemented by 5 other important directives ; these all apply on a national treatment basis to credit institutions of whatever origin.

---

13 Council Directive of 15 March 1993 on the capital adequacy of investment firms and credit institutions (93/6/EEC) (O.J. N. L 141, 11.6.1993, p. 1).

The Directive on supervision of credit institutions (Directive 92/30/EEC)[14] requires the consolidated supervision of financial holding companies and mixed activity holding offices which have their headquarters in the Community.

Directive 92/121/EEC concerns the monitoring control of credit institutions. Its effect is to limit an excessive concentration of exposure to a single client or group of clients[15].

Directive 94/19/EEC establishes deposit guarantee schemes, requiring Member States to introduce one or more officially recognised deposit guarantee schemes guaranteeing up to ECU 20.000[16].

Directive 93/6/EEC is concerned with capital adequacy of investment companies and credit institutions for market risks[17].

Directive 91/308/EEC prohibits the laundering of criminal proceeds and establishes a set of measures aimed at preventing the use of the financial system for purposes of money laundering[18].

Cfr. Annex B.

5. Insurance

The principles of full home country control and a single license were completed by two directives (3rd non-life and 3rd life Directives[19]) which were adopted in 1992, and entered into force on 1 July 1994.

Prior approval of premiums and systematic notification of policy conditions for <u>all</u> consumer risks are abolished. A company thus is able to market its product without

---

14 Council Directive of 6 April 1992 on the supervision of credit institutions on a consolidated basis (92/30/EEC) (O.J. N. L 110 of 28.4.1992, p. 52).

15 Council Directive of 21 December 1992 on the monitoring and control of large exposures of credit institutions (92/121/EEC) (O.J. N. L 29 of 5.2.1993, p. 1).

16 Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994 on deposit-guarantee schemes (O.J. N. L 135 of 31.5.1994, p. 5).

17 Council Directive of 15 March 1993 on capital adequacy of investment firms and credit institutions (93/6/EEC) (O.J. N. L 141 of 11.6.1993, p. 1).

18 Council Directive of 10 June 1991 on the prevention of use of the financial system for the purpose of money laundering (91/308/EEC) (O.J. N. L 166 of 28.6.1991, p. 77).

19 Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life insurance and amending Directives 73/239/EEC and 88/357/EEC (O.J. N. L 228 of 11.8.1992, p. 1

Council Directive 92/96/EEC of 10 November 1992 on the coordination of laws, regulations and administrative provisions relating to direct life insurance and amending Directives 79/267/EEC and 90/619/EEC (O.J. N. L 360 of 9.12.1992, p. 1).

needing authorisation for each market it enters. Given the sensitive nature of compulsory insurance, systematic notification of these types of risks is, however, maintained.

Even though non-systematic notification is the general rule the possibility is not excluded for the competent authorities to seek information of a number of companies or even the whole market at the same time, if they see prudential reasons for doing so. What will be excluded is a legal obligation or companies to inform the authorities any time they market a new product.

CHAPTER III - Multilateral negotiations

In the 1992 report the Commission concluded "that the most effective market opening policy and that of most benefit to the Community's financial services sector is to continue to use the opportunity provided by the extended Uruguay Round negotiations on financial services in order to remedy problems arising for Community credit institutions and insurance companies".

The possibilities for addressing problems relating to market access and conditions of operation in a given market are still open, as a result of the decision to continue negotiations on financial services for up to six months into the life of the GATS.

The extended GATS negotiations on financial services are scheduled to terminate on 30 June 1995. They have reached a delicate stage. The Community and its Member States are as committed as ever to a successful outcome and reiterated their position in a submission to the Committee on Trade in Financial Services on 22 March 1995.

The following is the text of the Communication by the European Communities and their Member States to the GATS Committee on Trade in Financial Services, submitted on 22 March 1995 :

"Commitments in Financial Services

At the meeting of the Interim Group on Financial Services on 3 February 1995, the Chairman invited participants to indicate in writing their contribution to the ongoing negotiations for improved commitments.

The European Communities and their Member States confirm their readiness to maintain in full their Schedule of Specific Commitments of 15 April 1994 (GATS/SC/31). They remain committed to bind a regime of open access and operating conditions based on national treatment on an MFN basis provided, however, significantly improved concessions on an MFN basis are obtained from other trading partners.

The schedule binds the whole of the financial services sector. It represents more than a standstill, and offers a multilateral guarantee of a very substantial degree of liberalisation. The European Communities and their Member States further wish to drawn the attention to the following important characteristics of their commitments :

- the schedule, which was fully maintained at the conclusion of the Uruguay Round and has been applied in full since 1 January 1995 guarantees direct access in non-discriminatory conditions and in any form of commercial presence whether subsidiary, direct branch or representative office ;

- subsidiaries of foreign banks, insurance companies and securities firm wherever they may be incorporated in the European Community, enjoy in full the benefits of the European Community's single market in financial services and in particular of the "single licence" or single passport". This will permit them to provide cross-border services and open branches throughout the countries of the European Community ;

- the commitments also provides for the freedom of Community resident companies and individuals to carry out outside the Union activities and transactions in all financial services sectors.

In addition, with the enlargement of the European Community to 15 Member States so as to include Austria, Finland and Sweden, the advantage of the internal market regime and single license has even been expanded. Since the conclusion of the Uruguay Round negotiations, market opportunities for our trading partners have hereby substantially increased.

The Communities and their Member States have in their legislation a number of measures making access to their markets dependent on reciprocal possibilities in third country markets. The Communities and their Member States have offered to forgo use of those measures subject to a satisfactory outcome of the negotiations. For this reason they have so far refrained from seeking an MFN exemption which would be necessary if such measures were to be applied to GATS members. A final decision to maintain such an approach, which will in itself constitute significant liberalisation, will depend on the level of improved commitments and balance of benefits which will be obtained at the end of the negotiating period. Among the factors to be taken into account when the decision is taken will be the extent to which it has been possible to achieve :

- non-discriminatory commitments from other parties in regard to market access in particular the right of establishment in all forms of commercial presence, and with regard to service supply through the other modes of delivery

- national treatment with regard to operational conditions

There have been some encouraging signs of progress : indications have been given of bank reform and changes in the regulatory regime in the insurance sector and securities. Some important bilateral initiatives have been concluded. These need to be confirmed on a MFN basis as part of an improved package of commitments.

As provided for in the Ministerial decision to continue negotiations, the European Communities and their Member States retain the right to modify their level of commitments by withdrawing commitments and introducing exemptions from the MFN obligation, if the outcome of the ongoing negotiations is unsatisfactory.

There is only a short time left in which to complete the negotiations. Unless there are substantial moves resulting in improved liberalisation and these are multilateralised before the end of the negotiating period, it will be very difficult for the EC and their Member States to confirm their very open regime on a MFN basis."

CHAPTER IV - Treatment of EC securities firms, credit institutions and insurance companies in third countries - findings and conclusions

Overview

The Commission's examination of the treatment of EC securities firms, credit institutions and insurance companies in the countries covered by this report provides evidence of a wide variety of regimes. Since the 1992 report important developments have taken place in several countries some of which have improved access and operation conditions for EC financial services companies. In some cases domestic liberalisation programmes continue to be implemented on a progressive basis.

The Commission again notes as in 1992 that an assessment of the treatment granted by the third countries to Community financial services companies is difficult to make in general terms. It is necessary to consider each country individually.

However, some generalisations can usefully be made. Firstly, in the markets of the main developed countries[20], and some developing countries with established financial services markets, i.e. markets which provide 80-85% of the world's financial services business; the difficulties encountered by Community practitioners tend not to be the result of the failure to receive "national treatment offering the same competitive opportunities as are available to domestic operators". Few if any of those markets provide examples of economically significant denials of national treatment. There are, however, a number of instances of a lack of effective market access. "Effective market access" has not been given a definitive interpretation and therefore needs to be assessed on an empirical basis : clearly, an embargo on new market entrance, geographic restrictions or sectoral segmentation mean that this condition laid down in the EC directives is not fulfilled.

Secondly, in a number of markets of growing importance in the developing world significant denials of national treatment are more prevalent, both in relation to the right of initial establishment and to the carrying on of activities for established firms.

Thirdly, in recent years the concept of "progressive national treatment" and/or market access has developed. The concept is based on the premise that some countries' financial services sector may find difficulty in confronting the competitive forces generated by the sudden introduction of a policy of full national treatment. Time may be needed to adjust. It has been used in the context where countries such as those with economies undergoing fundamental change or transition and where the financial services sector is at a very early and sometimes delicate stage of development.

Thus, the concept has been incorporated by the European Community and its member states initially in the ECrope Agreements with the countries of Central and Eastern ECrope and, with significant differences in the agreements negotiated with Russia and other republics of the former Soviet Union. The NAFTA Agreement (North Atlantic Free Trade Area) between the United States, Canada and Mexico provides yet another variant of the concept allowing Mexico to adopt a policy progressively improved market

---

[20] OECD, Singapore, Hong Kong.

access over time, and with the possibility of applying a safeguard mechanism in the event of unforeseen adverse economics or financial conditions.

The concept has been the subject of multilateral debate in the context of the negotiations in financial services. The Community and its Member States have indicated that they would be willing use it as a basis for negotiation in appropriate cases.

There is a wide variety in the difficulties encountered by EC firms ; difficulties also vary from sector to sector. Much has been written about the tendency for the financial services sectors - banking, insurance, investment services to merge. While this may be so, there are still significant differences in the policies pursued by some countries. Insurance in India is a state monopoly, while a more liberal policy if pursued in banking and investment services ; Malaysia will not allow more than 30% ownership of an insurance company, while 100% ownership of a banking subsidiary is still permitted;

Differences also apply ith regard to the legal form or ownership limits for foreign market participants : Canada will not allow direct branching for banks, insisting on a policy of mandatory incorporation (though not in insurance) ; Korea, conversely, refuses 100% ownership of a subsidiary, but does permit direct branching. Other countries , in S E Asia pursue policies of new access for foreign market entrants to minority share holdings.

ARGENTINA

Access by foreign investment firms to Argentina's securities market is allowed on a non-discriminatory basis both as branches and subsidiaries. There are no limits on the shares of domestic companies which may be acquired and owned by foreign companies. For pension fund management, a separate company must be established.

Foreign credit institutions are allowed to establish as subsidiaries or branches. Operations of foreign bank branches are limited to the value of their local capital. Subject to prudential supervision, foreign banks are allowed to offer new financial products and to engage in funding activities on a non-discriminatory basis. However, differences in treatment exist in Argentina in respect of state-owned and private sector credit institutions wherein all public sector deposits are placed with state-owned banks which also administer all government funds on an exclusive basis.

In insurance, a total ban on new establishment exists which is applicable to both domestic and foreign firms. Foreign firms may only enter the insurance market via acquisition of shares of existing insurers.

AUSTRALIA

A general foreign investment screening requirement exists in Australia.

As regards investment services a reciprocity test applies with regard to stock exchange membership. The Commission is not however aware of serious obstacles or denial of national treatment.

Generally, the picture of Australian regulation of foreign credit institutions is one of non-discrimination. Branches of foreign banks are not, however, permitted to accept retail deposits. Further discrimination lies in the imposition of interest withholding tax (IWT) on half of the interest on intra-bank borrowings by foreign bank branches.

In certain states monopolies may limit the scope for establishment and activities for foreign insurance firms.

BRAZIL

The financial services sector is closed to new foreign entrants by virtue of the Brazilian constitution. Article 52 of Brazil's 1988 constitution prohibits, unless Congress Legislates, the establishment of new branches and subsidiaries, as well as the increase of foreign ownership in the capital stock of Brazilian financial institutions. Those prohibitions could in theory be waived pursuant to international agreements and based on considerations of reciprocity and national interest through simple legislation but the Brazilian authorities have not so far used the possibility of allowing new foreign establishment in the country. The new Brazilian government has declared its intention to liberalise the financial services market by introducing a constitutional reform into Congress which would lift the ban on new entry. However, this objective appears to have slipped down the priority list.

National treatment is, however, granted for operations of those financial institutions already established in the Brazilian market.

CANADA

Foreign investment firms are allowed access to the Canadian market but incorporation under federal provincial or territorial laws is required by certain provinces. However, all private operations are regulated at provincial level, which means 10 different sets of regulations governing capital requirements, operations and investment.

In the banking sector direct branching by foreign banks is not allowed. A foreign bank wishing to operate in Canada must establish a Schedule II subsidiary (institutions with capital not exceeding CAD 750 mn).

Access for foreign insurers is subject in law to an economic needs test, although it is difficult to judge its real impact.

Reciprocity provisions apply with respect to the granting of licences for the establishment to provide banking, trust and insurance services.

CHILE

Securities may be traded through up to 100% foreign-owned subsidiaries by natural or legal persons engaged in brokering securities, either as stockbrokers or securities agents, but only stockbrokers may trade shares or derivatives on the stock exchange. National treatment for operations of established foreign securities firms is guaranteed by Chilean law.

Chile maintains an economic needs test covering all financial services sectors.

In banking, establishment of subsidiaries and branches is permitted. Authorisation is required for the acquisition of more than 10 per cent of the shares of a local bank; this is applied in a non-discriminatory way both to foreign and domestic banks. In general, the banking law (Article 30) provides for a national treatment guarantee to foreign banks.

In the insurance sector, local incorporation as a limited company is required to provide insurance and reinsurance services. No direct branching is permitted. National treatment is broadly guaranteed for foreign insurance company already present in Chile's market.

CHINA

Foreign investment firms may establish representative offices but are not allowed to establish subsidiaries or branches. Representative offices are limited to offshore activities and, for stock exchange members, to transactions in "B" shares only i.e. shares which may only be traded outside China.

Foreign banks may establish subsidiaries or branches in 13 economic zones. Establishment outside these zones may only take place in the form of a representative office. Investment banks are prohibited from opening branches. Foreign banks are not allowed to carry out business in local currency which is a denial of national treatment of major economic significance.

Foreign insurance companies are only allowed to establish representative offices in China. During an experimental period of two years branches or joint ventures of foreign insurance companies may be established on an experimental basis in the city of Shanghai where local currency business is permitted.

With respect to all sectors, restrictive qualifications are to be met for the establishment of a commercial presence (e.g. minimum total assets, or 30 years previous establishment in insurance) and discriminatory measures apply to foreign institutions, notably as regards capital requirements and guaranteed funds.

EGYPT

Foreign investment firms have to incorporate locally to operate on the securities market. Foreign bank branches can accede to this market by establishing ad hoc affiliates.

Access to the banking market is possible either through direct branching or within the framework of joint-ventures with a majority share holding of Egyptian capital. Establishment of new branches (either domestic or foreign) is conditioned by an economic needs test. However, 100% foreign-owned bank subsidiaries are still prohibited from establishing in Egypt.

Market access has slightly improved in the field of insurance since 1990. Wholly-owned foreign subsidiaries can be set up in certain special "offshore" zones. However, it is not before 2000 that access to the whole insurance sector will be opened to joint-ventures, with a minority foreign share holding only. In any case, economic needs test will then apply.

HONG KONG

Foreign investment firms may establish via subsidiary branches or acquisition. Five year prior residency required.

Foreign banks cannot establish subsidiaries but can acquire a controlling interest in local bank. Establishment of branches is based on reciprocity and requires a prior representative office. No similar limitations exist in the insurance sector. National treatment is granted for the carrying on of activities in all three sectors.

INDIA

With the exception of the embargo on foreign brokerage companies operating directly on the Indian Stock Markets, and the limitation on branching for merchant banks, the Commission has no evidence of denial of national treatment in the investment services sector.

Despite recent major changes in the commercial banking sector EC banks cannot establish subsidiaries and branching is subject to reciprocity. In the "merchant" banking sector establishment of a branch and a majority interest in a subsidiary is permitted. Operation generally takes place on a national treatment basis.

The insurance market is closed to EC insurance companies.

INDONESIA

EC banks face a number of relatively important discriminatory restrictions in Indonesia. As regards establishment, banks, insurers and securities houses are all required to enter into joint-ventures with local institutions. Although the bank and insurance reforms that took place in 1992, now allow up to 80% foreign ownership (even 85% in the banking and securities sectors) of these joint-ventures, there is no guarantee that such levels of foreign participation could be maintained on the long term. Indeed, the "indonesianisation" policy requires that each local financial institution is under Indonesian control. If there is no set calendar for compulsory divestments in the banking sector, ministerial regulations impose that foreign partners detaining a majority stockholding in an insurance joint-venture should cede over a period of 20 years the majority control to their Indonesian partners.

With regard to operating conditions, capital requirements for foreign institutions are higher than for domestic firms. Restrictions are maintained on the geographical expansion of foreign banks. Furthermore, a discriminatory 20% tax being levied on premiums paid to foreign insurance companies has been introduced in January 1995.

JAPAN

Japan pursues a general policy of national treatment towards foreign financial institutions with regard both to their establishment and to their operations. Foreign firms nonetheless experience serious market access problems in Japan, for several reasons. Heavy and conservative administrative regulation, market segmentation and the existence of close corporate relationships, established networks and patterns of doing business are the primary causes of lack of market access and penetration by foreign firms, particularly in the insurance sector. It is expected that this sector will experience considerable reform in the course of 1995.

Japan has confirmed its commitment to a policy of deregulation of its financial sector over the past two years. In insurance a major revision of the Insurance Law has been undertaken. Introduction of a brokerage system is envisaged ; it is intended to expedite and simplify procedures for product approval. Some foreign exchange business previously reserved for banks, is now allowed for securities firms, through subsidiaries. Foreign banks can now have wholly-owned subsidiaries or branches operating in the securities business. Optionally, they may retain the 50 per cent ceiling, thus avoiding the need for strict segmentation of activities (firewalls), a facility not available to domestic operators. This has been termed "better than national treatment". The rules on traditional market segregation have been relaxed. Several EC requests have therefore been met by Japan.

However, corporate underwriting (lead-management of corporate issues unknown for foreign firms), investment management services (distribution problem) and pension fund management (better access for investment advisory firms) remain to be addressed. Additional deregulatory, market-opening, measures are therefore needed in asset and investment management, corporate securities and to complement and complete the deregulatory progress in Japan to date. The US/Japan measures on Insurance and Financial Services will give further impetus to the market opening and deregulation process in a number of financial services, when implemented. It remains to be seen how far non-US companies will in practice benefit from these provisions.

KOREA

In the securities sector, permission to establish branches of foreign securities companies is dependent on discretionary criteria decided upon by the Korean authorities. This policy has resulted in quantitative limitations on the number of foreign securities firms allowed to operate in the Korean market. Foreign securities firms may establish only branches, or joint ventures in which foreign shareholding cannot exceed 50 per cent but must be at least 40 per cent. In most instances, national treatment is granted as regards their operating conditions. Foreign securities firms are subject in general to the same restrictions on dealing as those imposed on domestic firms; thus, they cannot broke in unlisted stocks; they can deal in bonds only for residents, since foreigners are not allowed to purchase domestic bonds. Investment management and investment trust management are hampered by severe restrictions : limits on foreign equity participation (5%) ; brokering of foreign securities prohibited ; limits on Korean residents'access to foreign securities products.

The most important operating restriction for foreign securities firms relates to the limits on foreign investment in Korean securities. Access to stock market activity is effectively limited by an overall limitation of 12% foreign share ownership and 3% individual foreign ownership of Korean companies. Foreign ownership of Korean bonds is not permitted.

Access to the banking sector is possible only through branches and representatives which may not transact business. Foreign branches must be capitalised to a value of three billion won. Foreign banks wishing to establish branches must be among the top 500 in the world (measured by assets) and have been operating as a representative office for at least one year. Subsidiaries are not authorised. There is a 10% limit on foreign participation in existing commercial banks. Foreign participation in domestic merchant banks is allowed.

Most of the difficulties experienced by EC banks in the Korean financial sector stem from the severe nature of the regulatory environment. Some problems result from a differential treatment in certain areas. Problems in the operation of foreign banks in Korea have been reported, affecting in particular funding in local currency, competition for loans to domestic enterprises and for deposits in terms of interest rates, and access to ATM and clearing house networks

Korea applies criteria based on economic needs to grant new insurance licenses both to foreign and domestic insurers. Criteria for authorization are stringent: foreign companies must have 10 years experience in the home market, the total world-wide volume of premiums and total assets must exceed half the average of premium income and total assets of Korean life insurance firms (i.e., they need to have a world-wide premium volume of about $1.5 bn a year).

The insurance market in Korea is very tightly controlled with only a very few newly authorised companies in the last twenty years. Rates and policy rules are strictly controlled, particularly in the non-life sector, thus reducing the level of real competition in the industry.

MALAYSIA

Malaysia operates a number of important restrictions on foreign financial institutions. Since 1982, no new commercial banking licenses have been granted, except for restricted offshore activities based in Labuan. For the time being, no new licenses are given to insurance companies and to securities houses. As regards establishment by acquisition of shares, all foreign financial institutions are still restricted to minority share holdings.

Important restrictions are maintained on the operation and expansion of foreign firms. These include a requirement to convert all foreign bank and insurance branches into subsidiaries. However, whereas existing foreign bank branches of commercial banks, after local incorporation, are permitted to be wholly-owned foreign bank subsidiaries; foreign partners of the newly incorporated insurance undertakings have to cede any stockholding in excess of 30% of the local firm's total equity. A two-tier regulatory system was introduced in December 1994 in banking, that puts local establishment of foreign banks at a severe disadvantage compared to local banks, because of excessive prudential and capital requirements, not proportionate to the activities undertaken (and their underlying risk).

Although EC financial institutions are at present carrying out a relatively important amount of business in Malaysia, the impact of the newly imposed restrictions is likely to affect negatively their operations, and actually did so in the insurance sector.

MEXICO

Access to the Mexican market has eased since the entry into force of the NAFTA on 1 January 1994. Foreign financial companies now have access via a US or Canadian based subsidiary. Establishment of branches is still not allowed. The market opening will take place in stages from 1 January 1994 until 1 January 2000. In the banking sector, the foreign market share will allowed to increase from 8% to 15%, in the insurance sector from 6% to 12% and in the securities sector from 10% to 20%. Several EC based financial services companies have already taken advantage of the new rules.

Foreign financial services companies established in Mexico receive national treatment.

PHILIPPINES

Access to the Filipinos financial services market has improved, after the 1994 bank and insurance reforms. New licenses have been granted, though in a very limited number, for establishing foreign bank branches (for the first time since 1948) or wholly-owned insurance subsidiaries or branches. Restrictions on foreign share holding in the banking sector have been substantially raised from 30% to 60% of voting stock. Ceiling on foreign equity participation in local insurance companies have been suppressed. However, new establishment in all financial sectors remain subject to economic needs tests.

Restrictions are still imposed on foreign financial institutions as regards branching and expanding activities. Furthermore, capital requirements are higher than for domestic financial firms. For foreign bank branches, these would vary according to the number of sub-branches created (up to 6), and for foreign insurance companies according to the size of foreign equity participation in their capital.

RUSSIA

The Russian market is only partly open to establishment and operation of foreign institutions in financial services. In capital markets, no particular restrictions exist for foreign firms, except that securities houses cannot bid more than 10% in a Treasury Bonds auction.

In the area of banking, the status quo applies. The presidential decree dated 10 June 1994 prevents, in practice, any access for newcomers for two years by prohibiting any business with Russian customers. Beyond this moratorium period according to the Cooperation and Partnership Agreement, national treatment will be granted after five years following the signature. Other technical discriminations exist such as the necessity to increase the level of the minimum capital required for a foreign institutions or a general limit to the foreign capital participation in the Russian Banking System (no more than 12%).

In insurance activities, foreign shareholding is limited to 49% of the capital in a domestic company (Decree of 27/11/1992). For brokerage services, access is free. The main objective is to reach national treatment for European operators five years after the signature of the agreement.

SINGAPORE

There are two markets : a very large offshore financial services market (which is characterised by a very considerable foreign presence), and the domestic market; foreign presence is very important on both markets. However, in the domestic market there has been a moratorium since 1974 on the issue of full banking licenses - to either local or foreign applicants, and foreign-owned licensed banks cannot branch in Singapore.

In the area of investment services, for a wide range of activities (unit trust, sovereign securities, financial futures, merchant banking), foreign firms have the same rights to establish and offer financial products as domestic firms. However, membership of the Stock Exchange of Singapore has been restricted for many years to local stockbrokers. Access to the SES can only be obtained via a 49% acquisition of a local broker or the special status of "international member" which allows trading on behalf of non-residents.

In the insurance area, for the time being no new companies (foreign or local) are being registered. The Monetary Authority of Singapore considers that the small domestic market does not justify new registration, and no discriminatory restriction on activity has been notified.

SOUTH AFRICA

South Africa's financial services sector is undergoing considerable changes. Liberalisation of access to the securities market is under preparation.

In the banking sector, access is still limited at present since local incorporation is requested. However, new legislation will allow direct branching from end 1995.

In insurance, establishment as a locally incorporated public company is required and direct branching is prohibited.

National treatment is guaranteed throughout all sub-sectors.

SWITZERLAND

Foreign investment firms, may establish as subsidiary or branch and operate under national treatment conditions.

For establishment, operation and funding of banking activities, the Swiss government imposes no legal constraints on foreign banks. The banking law is based on the principle of reciprocity.

Foreign insurers in the insurance sector must open an agency or a branch. Companies that operate both life and non-life insurance in their home countries are not allowed to operate life assurance in Switzerland, only non life. Life insurance companies are allowed to offer only a limited range of four insurance classes. Business unrelated to insurance is prohibited. The head office of the insurance company applying to open an agency or branch in Switzerland must take the form of either a joint stock company (Aktiengesellschaft, société anonyme) or a co-operative (Genossenschaft, société coopérative). A minimum of three years experience in the home country is usually required. A minimum share capital of the home company is required. Tariffs, general policy conditions and documents used in connection with certain classes of non-life risk are subject to prior approval. For non-life, the technical reserves of the Swiss portfolio have to be covered by tied assets. For life, branches and agencies must establish an organisation fund in Switzerland, the amount of which is determined by the insurance authority and must be represented in liquid assets.

TAIWAN

Foreign companies operating in the ROC's securities market still experience discriminatory treatment which restricts several areas of commercial activity.

Since the 1992 report, conditions of access to the ROC's banking market have improved considerably. However, entry into the ROC's banking markets is still restricted to branches and representative offices. Wholly owned subsidiaries are prohibited. Moreover, a foreign institutional investor may only hold up to 5% of the total issued stock of a listed company. Some' of the operational restrictions which currently exist, such as capital movement, act as a deterrent for foreign banks.

At present, no Community companies are operating in the ROC's insurance market. It is therefore not possible to comment on treatment received.

THAILAND

In the field of securities, no new license is delivered; the purchase of a minority stake in an existing securities firm (49%) or in a finance house (25%) remains the only market access possibility for newcomers. With regard to conditions of operations of existing firms, Thailand will suppress the separate licensing requirement imposed on securities firms which want to expand in other capital market activities than their initial one: additional licenses would be granted automatically upon request.

In spite of recent liberalisation plans in the banking sector, Thailand still imposes major restrictions to the establishment of EC financial institutions. Currently, there is no access for new entrants (either domestic or foreigners) to the Thai commercial banking sector, except, to a very limited extent, if granted authorisation to convert a BIBF or PIBF offshore branch license into a full onshore branch license. Foreign participation in Thai banks remains limited to a 25% share holding. Conditions of operations of EC banks would improve if the current prohibition on the creation by foreign banks of sub-branch networks is effectively lifted as announced in the financial services master plan presented in March 1995.

In the insurance sector, no new license is delivered and foreign participation in local insurance companies is capped at 25%. However, the Ministry of Commerce plans to introduce an amendment to the existing insurance law, that will raise the existing ceiling on foreign equity participation from 25% to 49% and authorise foreign insurance companies to set up branches in Thailand.

TURKEY

Foreign investment firms cannot branch directly or establish a representative office. Establishment of subsidiaries is subject to an economic needs test. Once established foreign securities firms can carry out activities on a national treatment basis.

Foreign banks may establish a subsidiary or a branch. Once established they operate under national treatment conditions.

Foreign insurance companies may establish a subsidiary or a branch. With few exceptions such as compulsory traffic insurance for public sector vehicles foreign insurance companies are granted national treatment for the carrying on of activity.

UNITED STATES

In the financial services sector, the United States has traditionally welcomed foreign investment and pursued a policy based on the application of national treatment to foreign firms. National treatment is normally provided at the Federal level with only a few exceptions, mostly not significant. A national treatment policy is also normally pursued at the state level, although a number of states maintain restrictions including reciprocity requirements on foreign firms, especially in the banking and insurance area. In a number of instances, some grandfathered foreign banks have been exempted from certain restrictions applied to US banks, such as their ability to maintain securities subsidiaries under the International Banking Act of 1978.

The most important restrictions faced by Community financial institutions stem from non-discriminatory regulations which limit the scope of permissible activities to banks or which prevent the combination of banking and securities activities within the same banking organisation, or which limit the ability of banks to expand across state borders. Although these restrictions have been progressively relaxed in a number of ways, they may still prevent Community banks affiliated in the Community with insurance companies, securities firms or industrial companies to set up respectively banking and insurance or securities operations in the US. In cases where an EC insurance company having operations in the US becomes affiliated outside the US with a bank also having operations in the US, the resulting banking organisation would be obliged to divest either its banking or insurance operations. There have in practice been a number of cases where European companies/banks have been required by the US authorities to cease carrying on certain types of business.

The restrictions on the geographical expansion of banks were eased in 1994. To a significant extent, the impact of the "Interstate Banking and Branching Act" will depend upon the actions taken by the federal bank regulatory agencies in interpreting and implementing the Act's provisions. Individual state decisions will impact these provisions. They should be non-discriminatory.

VENEZUELA

Access to the Venezuelan financial services market has been significantly liberalised over the past few years through the adoption of new legislation. However, access for foreign banks and insurance companies is based on reciprocity. New entrance of foreign financial firms into the <u>securities market</u> is possible through the acquisition of domestic banks or other financial institutions, de novo establishment of investment banks and universal banks, as well as investment companies, and through direct branching.

In both, the <u>banking</u> and the <u>insurance</u> sectors establishment of a new commercial presence may take the form of a subsidiary or branch ; acquisition of domestic banks or insurance companies is also permitted.

Already established foreign financial institutions are generally granted national treatment as regards their operations.

Action under Article 7(4) or 7(5) of the Investment Services Directive (and corresponding provisions of the second banking directive and the insurance directives)

The Commission has examined the possibility of action under the directives. Its conclusions are the following.

Article 7(4)

Even in countries where Community investment firms, credit institutions and insurance companies have acquired a significant market share in either absolute terms or relative to the market share acquired by other countries. There are very few cases where Community institutions enjoy effective market access comparable to that granted by the Community to third countries. Very few countries allow comparable flexibility for both securities banking and insurance in the terms of access to its market, and the form which establishment may take (branch, subsidiary, representative office or acquisition of holding) the same degree of freedom to expand geographically and the same range of activities or variety of financial products.

Thus, several countries apply non discriminatory regulations which restrict the operations and freedom to compete of financial institutions ; these may include limitations on geographical expansion, restrictions on the financial activities which may be carried out or segmentation of activities, in particular between banking, securities and insurance ; other examples are cases where the type of financial products which are permitted may be limited or the introduction of new products may be subject to restriction or a lengthy approval process.

The Commission would therefore be in a position to submit a proposal to the Council for a mandate to negotiate with a view to obtaining effective market access comparable to that granted by the Community to securities firms, credit institutions and insurance companies from that third country. The Commission has however concluded that such a proposal for a mandate would at the present time be redundant. As mentioned earlier the Community and Member States are engaged in multilateral negotiations which aim, at least in part, at achieving greater competitive opportunities for Community financial firms. In the Commission's view no useful purpose would be served by seeking at this moment a separate mandate to negotiate to the same end under the financial services directives. The Commission will continue its informal contacts at both political and official level with the authorities of the relevant countries to reinforce its efforts in the GATS context. The Commission does, however, reserve the right to "submit proposals to the Council for the appropriate mandate for negotiation with a view to obtaining comparable competitive opportunities for Community investment firms/credit institutions/insurance companies". Exercise of this right will be on an individual country by country basis and will inter alia take account of the results of the extended GATS negotiations on financial services due to be concluded by 30 June 1995.

Article 7(5)

Similar considerations apply with regard to action under Article 7(5).

Article 7(5) (and the corresponding provisions of the second banking directive and the insurance directives) provides that where Community investment firms do not receive national treatment and the conditions of effective market access are not fulfilled, the Commission may initiate negotiations in order to remedy the situation.

In virtually every case[21], the countries examined by the Commission in drawing up this report are participating in the current round of extended negotiations on financial services agreed as part of the Uruguay Round package in December 1993.

The Community's negotiating objectives include elements such as better market access and national treatment guarantees in the provision of cross border services, not contained in the third country provisions of the financial services directives. However, better guarantees of market access and national treatment with regard to establishment and carrying on activities within another country constitute, perhaps, the major overall negotiating objective. In that respect, the Community will need to be satisfied that the results of the negotiations achieved by 30 June 1995 must represent a significant improvement compared with the situation at the end of December 1993. Unless this condition is met, the maintenance of the Community's current negotiating offer, including the offer to forgo application of the possibility to limit or suspend the right of establishment of third country financial services firms in the Community should not be taken for granted. The option to seek an MFN exemption and to continue to invoke the powers of limitation and suspension remains open.

CONCLUSION

The Commission therefore concludes that the Community and Member States must continue to pursue their market opening policy through the GATS negotiations on financial services. The Commission will continue to monitor progress of the negotiations in close consultation with the Member States. This is entirely consistent with the third country provisions of the directives which place a firm emphasis on achieving market opening through a process of negotiation. An assessment of the final results will be prepared and presented to the Council. That assessment will also include an examination of the implications of the negotiated results for the future application of the third country provisions of the financial services directives.

[21] Taiwan and China have not participated in the Uruguay Round. However, Taiwan and China have applied to become WTO members, which necesserily requires membership of GATS too.

ANNEX A : art. 7 of ISD

1. The competent authorities of the Member States shall inform the Commission :

   (a) of the authorisation of any firm which is the direct or indirect subsidiary of a parent undertaking governed by the law of a third country ;

   (b) whenever such a parent undertaking acquires a holding in a Community investment firm such that the latter would become its subsidiary.

   In both cases the Commission shall inform the Council until such time as a committee on transferable securities is set up by the Council acting on a proposal from the Commission.

   When authorisation is granted to any firm which is the direct or indirect subsidiary of a parent undertaking governed by the law of a third country, the competent authorities shall specify the structure of the group in the notification which they address to the Commission.

2. The Member States shall inform the Commission of any general difficulties which their investment firms encounter in establishing themselves or providing investment services in any third country.

3. Initially no later than six months before this Directive is brought into effect and thereafter periodically the Commission shall draw up a report examining the treatment accorded to Community investment firms in third countries, in the terms referred to in paragraphs 4 and 5, as regards establishment, the carrying on of investment services activities and the acquisition of holdings in third-country investment firms. The Commission shall submit those reports to the Council together with any appropriate proposals.

4. Whenever it appears to the Commission, either on the basis of the reports provided for in paragraph 3 or on the basis of other information, that a third country does not grant Community investment firms effective market access comparable to that granted by the Community to investment firms from that third country, the Commission may submit proposals to the Council for an appropriate mandate for negotiation with a view to obtaining comparable competitive opportunities for Community investment firms. The Council shall act by a qualified majority.

5. Whenever it appears to the Commission, either on the basis of the reports referred to in paragraph 3 or on the basis of other information, that Community investment firms in a third country are not granted national treatment affording the same competitive opportunities as are available to domestic investment firms and that the conditions of effective market access are not fulfilled, the Commission may initiate negotiations in order to remedy the situation.

In the circumstances described in the first subparagraph it may also be decided, at any time and in addition to the initiation of negotiations, in accordance with the procedure to be laid down in the Directive by which the Council will set up the committee referred to in paragraph 1, that the competent authorities of the Member States must limit or suspend their decisions regarding requests pending or future requests for authorisation and the acquisition of holdings by direct or indirect parent undertakings governed by the law of the third country in question. The duration of such measures may not exceed three months.

Before the end of that three-month period and in the light of the results of the negotiations the Council may, acting on a proposal from the Commission, decide by a qualified majority whether the measures shall be continued.

Such limitations or suspensions may not be applied to the setting up of subsidiaries by investment firms duly authorised in the Community or by their subsidiaries, or to the acquisition of holdings in Community investment firms by such firms or subsidiaries.

6. Whenever it appears to the Commission that one of the situations described in paragraphs 4 and 5 obtains, the Member States shall inform it at its request :

   (a) of any application of the authorisation of any firm which is the direct or indirect subsidiary of a parent undertaking governed by the law of the third country in question ;

   (b) whenever they are informed in accordance with Article 10 that such a parent undertaking proposes to acquire a holding in a Community investment firm such that the latter would become its subsidiary.

This obligation to provide information shall lapse whenever agreement is reached with the third country referred to in paragraph 4 or 5 or when the measures referred to in the second and third subparagraphs of paragraph 5 cease to apply.

7. Measures taken under this Article shall comply with the Community's obligations under any international agreements, bilateral or multilateral, governing the taking up or pursuit of the business of investment firms.

ANNEX B

Developments in the Single Market in Financial Services

INVESTMENT SERVICES

The foundations were laid for a European securities market by a series of directives adopted mainly during the 1980s which provide for common requirements on the financial information required for stock exchange listing (Directive 79/279/EEC), and on the information to be published regularly by listed companies (Directive 82/121/EEC). Common rules have also been adopted on the prospectus for admission to listing (Directive 80/390/EEC) with mutual recognition of that listing prospectus (Directive 87/345) so that multiple listings will be greatly facilitated. These measures are designed to help companies treat the Union as a single market to obtain a stock exchange listing after equities and bonds have been issued.

Complementing these proposals the Commission secured the adoption of a directive (89/298/EEC) which sets common standards for the prospectus required on the issue of securities to the public.

Increased transparency of securities markets and improved investor confidence in the fairness of their operations (particularly with respect to take-overs and other price sensitive information) were also the objective of directives on the publication of information when major holdings of a listed company are acquired or disposed of (Directive 88/627/EEC) and on the curbing of insider trading across the Union (Directive 89/592/EEC).

The "UCITS" directive (Directive 85/611/EEC, as amended) came into effect in October 1989. This directive allows units of undertakings for collective investment in transferable securities to be marketed throughout the Union, subject of course to their compliance with the minimum standards set in that instrument.

A single market for investment intermediaries will exist as from 1 January 1996 with the entry into force of the Investment Services Directive (93/22/EEC). This will enable broker/dealers and other investment firms to establish branches and provide services throughout the Union on the basis of their home State authorisation and under home State supervision.

Coming into force at the same time, the Capital Adequacy Directive (93/6/EEC) lays down basic capital requirements for investment firms and also fixes the ongoing risk-adjusted capital requirements for market risk incurred by investment firms and credit institutions on their trading portfolio.

Work is currently under way to extend the scope of the 1985 UCITS Directive and to establish minimum Union-wide investor compensation in the event of the failure of an investment firm.

Section A

Section B

Section C

BANKING

A first banking co-ordination Directive of 1977 (Directive 77/780/EEC) achieved two main goals. First, it cleared away most of the obstacles to freedom of establishment of banks and other credit institutions and secondly, it laid down common standards for the granting of banking licences.

It is however the second Banking Co-ordination Directive (Directive 89/646/EEC) which is the cornerstone of the single market in financial services. This Directive provides for a single banking licence, valid throughout the Community, which will authorise a bank or credit institution established in one Member State to supply its services throughout ECrope either by establishing branches in other Member States or by the provision of cross-frontier banking services to customers in other Member States. This licence will be mutually recognised by other Community banking supervisors in all other Member States.

Not only will the single banking licence require Member States to recognise and permit traditional services, it will also require mutual recognition of some banking services or activities which may not traditionally have been associated with banking *per se* (such as, for example, trading in securities). The Directive provides that the following range of banking activities be permitted and mutually recognised by the authorities of all the Member States:

1. Acceptance of deposits and other repayable funds from the public.

2. Lending (including, *inter alia*, consumer and mortgage credit, factoring with or without recourse, financing of commercial transactions including forfeiting).

3. Financial leasing.

4. Money transmission services.

5. Issuing and administering means of payment (e.g. credit cards, travellers' cheques and bankers' drafts).

6. Guarantees and commitments.

7. Trading for own account of for account of customers in:

   a) money market instruments (cheques, bills, CDs etc.)
   b) foreign exchange
   c) financial futures and options
   d) exchange and interest rate instruments
   e) transferable securities.

8. Participation in share issues and the provision of services related to such issues;

9. Advice to undertakings on capital structure, industrial strategy and related questions and advice and services relating to mergers and the purchase of undertakings.

10. Money broking.

11. Portfolio management and advice.

12. Safekeeping and administration of securities.

13. Credit reference services.

14. Safe custody services.

Three other Directives were prerequisites for the completion of the single market in the banking sector, namely the previously adopted Directive on Annual Accounts and Consolidated Accounts (Directive 86/635/EEC), the Directive the Own Funds of credit institutions (Directive 89/299/EEC) and the Directive on Solvency Ratio (Directive 89/647/EEC).

The Accounts Directive sets out special rules applying the general provisions on the annual accounts of joint-stock companies (fourth and seventh Company Law Directives) to the banking sector. The Directive requires credit and financial institutions to publish harmonised statements of their economic and financial situation with results in the form of a balance sheet, profit and loss account, financial report and corresponding annex at the end of each financial year. In order to ensure the comparability of annual accounts and hence, the information provided to creditors, debtors and shareholders, the Directive provides for harmonisation of the layout of balance sheet and profit and loss account items, nomenclature, terminology and valuation rules.

The Directive on Own Funds adopted in 1989 provided for a minimum degree of harmonisation of Member States' rules on own funds. It sets out the items attributable to own funds, distinguishing between original own funds and additional own funds of lesser status. Thus, subject to a number of conditions set out in the Directive, own funds comprise paid-up capital reserves, funds for general banking risks, value adjustments, the commitments of the members of credit co-operatives, cumulative preferential shares and subordinated loan capital. Additional own funds must not exceed the amount of original own funds. The Directive specifies sample criteria for particular items of own funds, leaving the Member States free to apply stricter criteria if they see fit.

The Directive on own funds is central to the Directive on solvency ratio which establishes common definitions and methods for their calculation based on 8% minimum for the solvency ratios. Both of these Directives have taken account of the work of the Committee on Banking Regulations and Supervisory Practices of the Bank for International Settlements, Basle.

There are five other important Directives. The first is the Directive on the supervision of credit institutions (Directive 92/30/EEC) which requires the consolidated supervision of financial holding companies and mixed activity holding offices which have their head-offices in the Community. The second, Directive 92/121/EEC, is concerned with the monitoring control of credit institutions. Its effect is to limit an excessive concentration of exposures to a single client or group of clients. Thirdly, Directive 94/19/EC, which is concerned with deposit guarantee schemes, requiring Member States to introduce one or more officially recognised deposit guarantee schemes guaranteeing up to ECU 20,000. Fourthly, Directive 93/6/EEC is concerned with the capital adequacy of investment companies and credit institutions for market risks. And finally, Directive 91/308/EEC which prohibits the laundering of criminal proceeds and establishes a set of measures aimed at preventing the use of the financial system for the purposes of money laundering. This Directive ensures active co-operation between credit and financial institutions and the law enforcement authorities by lifting requirements of professional confidence in order to achieve its objective.

INSURANCE

In 1961 an ambitious programme to realise the freedom of establishment and the freedom to provide service was adopted in the field of insurance.

In 1964 a directive was adopted removing the barriers to establishment and provisions of services in reinsurance. Reinsurance was subject to little control in the then six Member States and the directive did little more than confirm the existing situation in the Member States entailing no harmonisation of national rules.

Ist Generation Directives

The next generation of directives (the so-called Ist generation directives) i./e. the first non-life (73/239/EEC) and the first life (79/267/EEC) concerns the freedom of establishment in direct insurance.

In order to implement this freedom, Member States had to agree to a number of basic principles, which were laid down in the directives.

Thus, an insurance company seeking to start business needs a prior authorisation from the national authorities for each particular class of business. This authorisation is only granted subject to a series of precise conditions laid down in the directives.

As regards technical reserves and assets, these directives do not contain any detailed rules of harmonisation. Harmonisation only takes place as regards the goal to be achieved, i.e. Member States are only required to ensure that the undertaking will establish sufficient technical reserves, to be covered by equivalent and matching assets localised in each country where the business is carried out. Here - and the same goes for general and special policy conditions - the Member States were allowed to maintain their national rules. Thus, the establishment directives maintained a regime of host country control.

The effect of the establishment directives was largely to confirm the existing situation of twelve separate, compartmentalised markets allowing countries to maintain their prudential regulatory framework.

2nd Generation Directives

The approach taken in the so-called 2nd generation of directives the 1988 non-life services directive (90/619/EEC) combined elements of both home country and host country control.

Following a judgement by the European Court of Justice in 1986, both directives make a distinction between policyholders who do not need special protection when dealing with an insurance company from another Member State and those policyholders who do. In non-life insurance the first category can be summed up as large industrial, commercial or professional clients who can look after themselves (large risks). In life insurance it concerns policyholders who take the initiative to enter into contact with an insurance undertaking. For these two types of policyholder Member States agreed that they would mutually recognise each others systems without any further harmonisation of, in particular, financial control regulations. For other policyholders, however, in line with the Court's ruling, existing host country rules continued to be applied pending further co-ordination as to technical provisions, assets covering these technical provisions and general and special policy conditions. A limited harmonisation was realised as regards, for instance, the choice of the applicable contract law and a cooling-off period.

Third Generation Directives

A true single market in the EC implies a market where insurance companies and intermediaries are free to operate throughout the Community either by means of establishment or freedom to provide services across national frontiers. Competition should be based on price, the nature of the product and the service offered. The public should be able to choose freely from a wide range of competing products and suppliers. Insurance companies should be subject to the same key supervisory rules ensuring adequate prudential control and thus consumer protection. Control should be exercised by the country of location of the head office, which also would issue the authorisation valid for the whole Community. That is : full home country control and a single licence.

These principles were complemented by two directives (3rd non-life and 3rd life Directives) which were adopted in 1992, and entered into force on 1 July 1994, giving an insurance company authorised in one EC-country access to all 15 markets on the basis of a single licence (instead of 15 separate licenses) for establishment and free provision of services business. Financial control as of 1994 is the sole responsibility of the State of the head office. As regards control of products, Member States will be able to maintain their provisions of contract law, but these will remain subject to general principles of Community law as developed by the Court of Justice in Luxembourg in the above mentioned co-insurance cases. These will act as a filter against national regulations unduly restricting competition on different types of product.

The above directives contain rules as to the responsibilities of home and host state's and the way they have to cooperate. These concern both the process of authorisation of a new undertaking and the prudential monitoring of firms in operation. They reflect the increased responsibilities of the home state, but do allow the host state to initiate procedures or, in urgent cases, intervene directly if a company acts against its justified legal provisions.

The Directives do not seek full harmonisation of Member States' prudential systems and rules, but rather through minimum harmonisation, which is at the same time necessary and sufficient to lay down the prerequisite conditions which allow mutual recognition of what each Member State does to protect its consumers. For certain aspects of control a Member State is allowed to impose stricter rules on undertakings with a head office within its territory, that is within its jurisdiction.

This mutual recognition is essentially brought about by a common body of rules concerning the calculation of technical provisions and assets covering these technical provisions and by allowing Member States to maintain their national contract law, subject to the jurisprudence by the Court of Justice. Another key element of the EC approach is the strengthened co-operation between supervisory authorities.

Prior approval of premiums and systematic notification of policy conditions for all consumer risks are abolished. A company thus is able to market its product without needing authorisation for each market it enters. Given the sensitive nature of compulsory insurance, systematic notification of these types of risks is, however, maintained.

Even though non-systematic notification is the general rule the possibility is not excluded for the competent authorities to ask information of a number of companies or event he whole market at the same time, if they see prudential reasons for doing so. What will be excluded is a legal obligation or companies to inform the authorities any time they market a new product.

ANNEX C

SUMMARY TABLE

Table of Conclusions of 1995 Third Country Report.

Country	Sector	Establishment	Activities	Acquisition
Argentina				
	Securities	Subsidiary, branch.	National treatment.	No limits on share acquisition.
	Banking	Subsidiary, branch.	National treatment.	No limits on share acquisition.
	Insurance	New entrance prohibited.		Acquisition of shares in existing companies permitted.
Australia				
	Securities	Problems of access to ASX (reciprocity), otherwise none.	National treatment.	Foreign investment of 15% or more involving over 5mn is subject to approval.
	Banking	Subsidiary, branch.	Foreign banks denied direct access to cheque clearing system; no access to central bank discounting system. IWT imposed on half the interest on intra-bank borrowings by foreign banks; not permitted to accept retail deposits.	
	Insurance	May be limited by state monopolies.	National treatment.	

Country	Sector	Establishment	Activities	Acquisition
Brazil				
	Securities	Access prohibited since 1988. Pre-1988 firms are grandfathered.	Grandfathered firms are subject to restrictions on expansion.	Increase in foreign ownership prohibited. Institutional investors may hold 49% of shares.
	Banking	Access prohibited since 1988. Firms established pre-1988 are grandfathered.	Grandfathered firms are subject to restrictions on expansion.	Increase in foreign ownership prohibited. Institutional investors may hold up to 49% of shares.
	Insurance	Direct branching is not permitted.	National treatment for established companies.	Foreign participation limited to 50% of capital.
Canada				
	Securities	Subsidiary, branch; reciprocity requirement.	Private operations regulated at provincial level.	
	Banking	Direct branching from abroad is prohibited. Foreign banks must establish Schedule II subsidiary; reciprocity requirement.	Competitive disadvantage as a result of having to operate as a subsidiary.	
	Insurance	Subsidiary, branch, subject to economic needs test; reciprocity requirement.	Certain measures affect activity, ie., capital requirements on parent companies.	

Country	Sector	Establishment	Activities	Acquisition
Chile				
	Securities	Must establish 'corredores de bolsa' in order to join the stock exchange; economic needs test.	National treatment.	
	Banking	Subsidiary, branch, subject to economic needs test.	National treatment.	Authorisation required to acquire 10% or more of existing bank.
	Insurance	No direct branching; economic needs test.	National treatment for established companies.	
People's Republic of China				
	Securities	May only establish representative offices.	Limited to off-shore activities and transactions in 'B' shares.	
	Banking	Subsidiary, branch within certain regions.	Business in local currency prohibited.	
	Insurance	May establish representative offices. Branch, joint ventures permitted in Shanghai on experimental basis.	Investment limits.	

Country	Sector	Establishment	Activities	Acquisition
Egypt				
	Securities	With approval of CMA.	Permitted to carry out specified activities.	
	Banking	Branch, joint venture, subject to economic needs test.	Ban on commencement of new activities since October 1993.	Maximum 49% ownership for joint ventures.
	Insurance	Subsidiaries in off-shore zones.		
Hong Kong				
	Securities	National treatment.	National treatment.	
	Banking	Branch, conditional upon branch and prior representative office.	National treatment.	May acquire a controlling interest.
	Insurance	National treatment.	National treatment.	
India				
	Securities	Branch for merchant banks.	Prohibited from making portfollio investments in corporate firms.	Limited to 51%.
	Banking	Branch, subject to reciprocity.	National treatment.	
	Insurance	Closed.		
Indonesia				
	Securities	Only via joint venture.	High capital requirements.	
	Banking	Only via joint venture.	High capital requirements.	
	Insurance	Only via joint venture.	High capital requirements; may not insure government property; payment of premiums to foreign companies subject to 20% tax deduction on estimated net income.	

Country	Sector	Establishment	Activities	Acquisition
Japan				
	Securities	National treatment.		
	Banking	National treatment.	National treatment.	
	Insurance	National treatment.	National treatment.	
Korea				
	Securities	MoF approval required. Branch, joint venture	National treatment	Foreign equity participation limited to 50%.
	Banking	Branch, must rank amont top 500 in world.	Restrictions on access to government funds, ownership of real estate, funding in local currency; access to ATM and clearing house networks.	Maximum 10% foreign participation.
	Insurance	Economic needs test.	Rates and policy strictly controlled.	
Malaysia				
	Securities	No new brokerage licences		May acquire on a joint venture; maximum 30% shareholding at the beginning of agreement.
	Banking	No new licences at present.	Excessive prudential and capital requirements; controls on lending; no access to ATM network.	Maximum 30% foreign shareholding plus approval.
	Insurance	No new licences at present.	Reinsurance only permitted if there is insufficeient capacity or experise in Malaysia.	Maximum 30% foreign shareholding plus approval.

Country	Sector	Establishment	Activities	Acquisition
Mexico				
	Securities	Only via a Canadian or US based subsidiary.	National treatment.	
	Banking		National treatment.	
	Insurance	Only via a Canadian or US based subsidiary.	National treatment.	
Philippines				
	Securities	Subsidiary, representative office.	National treatment, generally.	
	Banking	Subsidiary, branch.	National treatment.	Maximum 40% foreign equity ownership; 30% of total banking system resources; 60% ownership of voting stock.
	Insurance	Subsidiary, branch.	Not permitted to insure government property or provide contract bonds for public sector companies. Special deposit requirements; different capital requirements.	May completely take over existing company.
Russia				
	Securities	Subsidiary, branch.		
	Banking	No access for two years.		
	Insurance	Joint venture.		

Country	Sector	Establishment	Activities	Acquisition
Singapore				
	Securities	No new registrations.	National treatment.	Foreign equity ownership of SES limited to 49%.
	Banking	No new licences at present.	National treatment.	Foreign shareholding limited to 40% of total equity.
	Insurance	No new companies being registered.	National treatment.	
South Africa				
	Securities	Closed.		
	Banking	Subsidiary, branch, representative office.		
	Insurance	As a locally incorporated public company.		
Switzerland				
	Securities	National treatment.	National treatment.	
	Banking	National treatment.	National treatment.	
	Insurance	Branch, agency.	Only non-life if parent company operates life and non-life.	

Country	Sector	Establishment	Activities	Acquisition
Taiwan				
	Securities	Discriminatory treatment restricts access.	Limitations on foreign institutional investors; ban on individual portfolio investment.	
	Banking	Branch, representative office.	Considerable restrictions on activities foreign banks may perform; restrictions on capital movement; lending limits.	Total individual shareholding limited to 5%; total group holding limited to 15%.
	Insurance	No EC companies operating.		
Thailand				
	Securities	Seperate licences required for each activity undertaken.	Limits on brokerage activity.	Maximum 49% foreign share ownership.
	Banking	No new licences at present.	Stringent loan-to-capital rations; limits on foreign lending.	Maximum 25% foreign share ownership.
	Insurance	No new licences at present.		
Turkey				
	Securities	Subsidiary, subject to economic needs test.	National treatment.	
	Banking	Subsidiary, branch.	National treatment.	
	Insurance	Subsidiary, branch.	National treatment.	

Country	Sector	Establishment	Activities	Acquisition
USA				
	Securities	National treatment.	National treatment.	
	Banking	National treatment; sectorial segmentation.	National treatment.	
	Insurance	National treatment; sectorial segmentation.	In principle, national treatment.	
Venezuela				
	Securities	Subsidiary, branch.	National treatment.	
	Banking	Subsidiary, branch.	National treatment.	
	Insurance	Subsidiary, branch.	National treatment.	

ISSN 0254-1475

COM(95) 303 final

DOCUMENTS

EN 10 11

Catalogue number : CB-CO-95-336-EN-C

ISBN 92-77-91085-2

Office for Official Publications of the European Communities

L-2985 Luxembourg