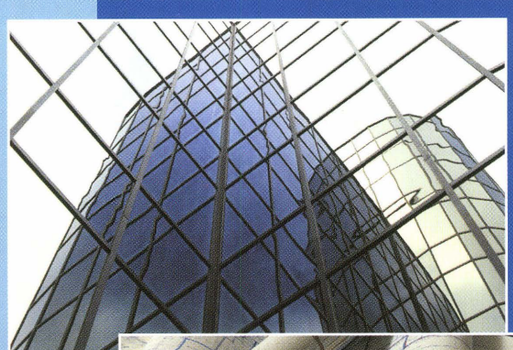
Single Market news

N° 33

APRIL 2004

The Newsletter of the Internal Market DG



SPECIAL FEATURE

Commission européenne
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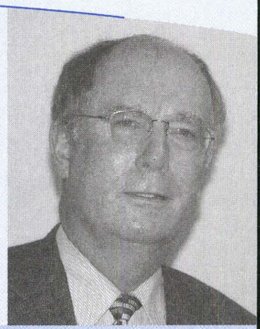
Single Market News

EDITORIAL



BY ALEXANDER SCHAUB

A "genuine Internal Market for services by 2010" is the objective of a major set of proposals from the Commission (see Special Feature p.15) to bring the advantages of a real Single Market to a sector which accounts for at least 50% of the business activity of the European Union. The majority of the firms affected by this are Europe's dynamic small and mid-size companies. The implementation of these proposals could, we believe, be the biggest boost to the Internal Market since its launch in 1993. Removing red tape hindering cross-border trade is a constant demand from the business community and these far-reaching measures will get rid of many of the archaic, overly burdensome and sometimes illegal restrictions they face. It can boost the bottom line of many businesses whilst improving Europe's competitiveness overall.

The United States had its Enron scandal and Europe its Parmalat. These and other corporate scandals have sent a shudder through the world of international finance and raised a myriad of questions about corporate governance, regulation and supervision. Has Europe been slow to act? Not at all. This issue of Single Market News shows the raft of measures that the Commission has in the legislative 'pipeline' (see After Parmalat p.10). The scandals have given new impetus to existing Commission proposals in the areas of company law, corporate governance and audit. These measures have not been a 'knee-jerk' reaction to events but reflect long-standing concern within the Commission about these issues and the global financial market we now live in. Recent events have brought them to the top of the agenda. On 16 March the Commission published new proposals on statutory audit (see p.8) whilst IAS accounting standards for listed companies become obligatory from next year (see p.12). Other significant measures on corporate governance and disclosure are on the legislative table and will help bring the necessary transparency and accountability.

It is always good for us to report success stories in our legislative programmes and we are of course delighted that the Financial Services Action Plan, launched in May 1999, is on track, on time and entering the home straight. Some 37 of the 42 measures have been finalised - an outstanding success rate for an EU legislative programme of this scale and complexity - with two more (the Investment Services and Transparency Directives) also close to formal adoption. A final push is needed to resolve the remaining key issues and to conclude the remaining major FSAP measures (see p.6).

At present the cost of patents is too high in Europe compared to the costs in the US and Japan. This is mainly due to translation and litigation costs. The application system is also cumbersome and lacks transparency. Whilst discussions continue in the Council of Ministers on the Community Patent, the recent European Business Summit in Brussels (11 March) sent a clear message to politicians that if European leaders want a competitive Europe, they must resolve the Community Patent deadlock without delay. To resolve the litigation aspects the Commission has proposed the creation of a Community Patent Court, under the aegis of the European Court of Justice. Such a body would allow the resolution of disputes within the future Community Patent system (see p.32). Its judgements over Community Patent rights would be effective throughout the EU, avoiding the expense, inconvenience and confusion that can occur when judgements in several different national courts are required.

Director General
Internal Market DG

Making the Inte

Internal Market imp

Résumé

Faire fonctionner le Marché intérieur

Il reste encore 134 Directives (soit environ 9 % des Directives «Marché intérieur») qui n'ont pas été transposées en droit national par l'ensemble des États membres dans les délais convenus par les gouvernements au moment de leur adoption.
Il s'agit notamment des Directives concernant la reconnaissance des qualifications professionnelles, l'harmonisation de certains aspects du droit d'auteur et des droits voisins dans la société de l'information et la protection juridique des inventions biotechnologiques; approuvées par les Etats membres, elles revêtent une importance essentielle pour les particuliers, les PME et les grandes entreprises.
La Commission suit de près la mise en œuvre, c'est-à-dire la transposition en droit national, des Directives approuvées par les gouvernements nationaux; les derniers chiffres indiquent que de nombreuses dispositions communautaires relatives au marché intérieur ne sont toujours pas appliquées correctement et dans les délais par les États membres.

Making Europe once again the economic powerhouse of the world and letting Europe's citizens and businesses reap the benefits of high levels of prosperity and employment – this is the vision which EU Heads of Government shared in Lisbon in 2000.
To reach this shared goal, it is vital that the Internal Market works better. It has already provided significant benefits, boosting economic growth by at least 1.8% since 1993, resulting in the creation of 2.5 million jobs and nearly € 900 billion in extra prosperity to both business and consumers. But it can provide much, much more... if the rules are properly applied and enforced by Member States.

Member States have a key role to play

They have a key role to play in making sure that the Internal Market works properly, as it is their businesses and citizens who stand to benefit. This means not only adopting legislation that is intended to make the Internal Market work better, but also ensuring that Directives agreed by Member States are implemented and applied properly and on time.

The Commission made better implementation and enforcement by Member States a key priority of its Internal Market Strategy 2003-2006, and is working to help them to improve their performance. However, in its recent Report on the implementation of this Strategy, the Commission found that many Member States are still not doing enough to ensure that Internal Market rules are implemented and applied.

Problems with implementation into national law

When Member States adopt a Directive at European level, they agree on deadlines for implementing its rules into national law (often 18 months from adoption). But all too often, they do not respect these deadlines. Indeed, according to the Report, as many as 134 Directives (9% of all Internal Market rules) have still not been implemented into national law in all Member States. The disparity between some of the countries is significant:

Implementation of Directives into national law: the scoreboard

	ES	DK	UK	IE	FI	AT	PT	SE	BE	IT	EL	NL	LU	DE	FR
Implementation deficit (%)*	0.5	0.7	1.2	1.3	1.3	1.8	2.0	2.0	2.8	2.8	3.0	3.2	3.3	3.4	4.0
Number of Directives overdue	8	10	18	19	20	28	30	30	43	43	46	48	50	51	61

Member State implementation deficits as at 22 March, 2004

Good results are not achieved by coincidence. They can often be explained by Member States having streamlined internal responsibilities and having implemented good practices, such as close monitoring of progress at the highest political level...

How does this affect business and citizens?

Delays in implementation deprive businesses and citizens of their rights, and they are faced with a patchwork of rules where one set of rules should exist. They are also deprived of the economic benefits of a properly functioning Internal Market. Their rights are affected in a wide variety of important economic sectors, such as e-commerce, mobility of workers, biotechnology and protection of the environment.

Key Directives whose implementation into national law is late (and countries which are late):

- 98/44: Legal protection of biotechnological inventions (BE, DE, FR, IT, LU, NL, AT, SE)
- 1999/44: Sale of consumer goods and associated guarantees (BE, FR, LU)
- 2000/31: Electronic commerce (FR, NL)
- 2000/76: Incineration of waste (EL, IT, NL, PT)
- 2001/18: Release into the environment of GMOs (BE, DE, EL, FR, NL, AT, FI)
- 2001/19: Recognition of professional qualifications (amendment) (BE, DE, EL, FR, AT, SE)
- 2001/29: Copyright and related rights in the information society (BE, ES, FR, LU, NL, PT, FI, SE)

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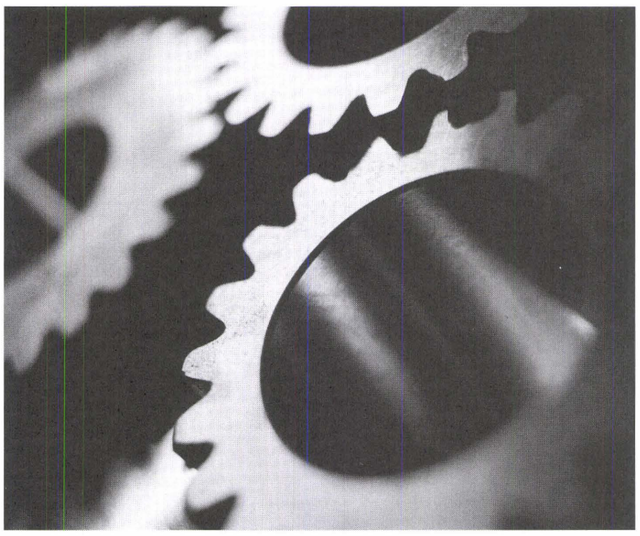

Problems with misapplication of the rules

Even where agreed EU rules are put into national law, businesses and citizens are sometimes deprived of their rights by the misapplication of the rules. Here again, some Member States are worse than others.

Number of infringement procedures

Open infringement cases as at 31st October 2003:

IT	FR	ES	DE	BE	EL	UK	AT	NL	IE	PT	LU	SE	FI	DK
146	135	102	90	81	75	58	57	54	54	44	38	26	25	21

The Commission is working closely with Member States to help them to improve the situation. One approach is the 'Package Meetings' where groups of cases are dealt with in meetings with Member States.

Infringement - "package meetings"

To help speed up the infringement process, the Commission organises 'package meetings' which bring together experts from Member States and the Commission to discuss a 'package' of cases which are being examined by the Commission for violation of EU law. The purpose of these meetings, which have been taking place since 1987, but which have been stepped up in recent years, is to solve cases without the need for further legal action. Nearly half of all cases discussed in package meetings are solved or can be considered to be on the way to being solved, usually because the Member State concerned has undertaken to change its legislation.

Solving problems informally

Another approach is 'SOLVIT', where Member States work together to address complaints from victims of 'misapplication' of Internal Market rules.

SOLVIT - problem solver

SOLVIT has been in operation since July 2002. It deals with cases of misapplication of Internal Market rules by national and local administrations; for example the refusal to recognise a valid diploma or to allow market access to a product which complies with requirements of European Directives. Victims of such misapplication can refer the case via a website or by telephone to the SOLVIT centre in their own Member State, which takes up the case with its counterpart in the country where the problem has occurred. SOLVIT's main advantage is speed: it sets target deadlines of 10 weeks to resolve complaints and finds solutions to more than 70 % of cases.

Enlarged EU – enlarged market opportunities

Making the most of the enlarged market, of over 450 million people, that will be created in May this year after enlargement is both a challenge and an opportunity. It will be a challenge for all Member States to ensure that they implement and apply the rules correctly and that as a result the Internal Market functions properly. Provided they do so, the enlarged Internal Market will provide more opportunities to businesses and citizens, and serve as the engine for the economic and social success of Europe that our political leaders and citizens desire.

* The implementation deficit is the percentage of total Internal Market Directives not implemented.

Further information at:
http://europa.eu.int/comm/internal_market/en/update/score/index.htm

Resümee

Der Umsetzung von Binnenmarktrecht

134 Richtlinien (etwa 9% aller Binnenmarktrichtlinien) sind noch nicht überall in die innerstaatliche Rechtsordnung überführt worden, obwohl die Fristen, die sich die Mitgliedstaaten bei der Verabschiedung der Richtlinien gesetzt hatten, bereits verstrichen sind.
Zu diesen Richtlinien zählen Richtlinien über die Anerkennung beruflicher Befähigungsnachweise, über das Urheberrecht und verwandte Schutzrechte in der Informationsgesellschaft und über den rechtlichen Schutz biotechnologischer Erfindungen, die alle einstimmig verabschiedet wurden und sowohl für Einzelpersonen als auch für Unternehmen aller Größenklassen äußerst wichtig und dringlich sind.
Die Kommission überwacht die Umsetzung der von den Regierungen der Mitgliedstaaten vereinbarten Richtlinien, d. h. ihre Überführung in innerstaatliches Recht, sehr genau, und die jüngsten Zahlen zeigen, dass die Umsetzung des EU-Binnenmarktrechts durch die Mitgliedstaaten noch immer nicht in allen Fällen korrekt und fristgerecht erfolgt.

info

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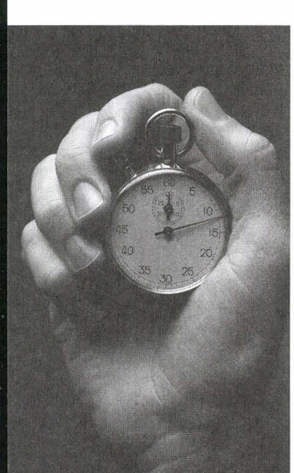
Résumé

Le plan d'action pour les services financiers - «en bonne voie et dans les temps»

Le plan d'action pour les services financiers (PASF) est en bonne voie, dans les temps et entre dans la dernière ligne droite.
37 des 42 mesures ont été réalisées, ce qui représente un taux de réussite sans précédent pour un programme législatif communautaire d'une telle ampleur et d'une telle complexité. Un dernier effort est nécessaire pour régler les principaux points encore en suspens et clôturer les derniers grands dossiers du PASF d'ici avril 2004, c'est-à-dire avant les élections parlementaires européennes.
Le principal objectif stratégique du PASF est de permettre aux marchés financiers paneuropéens de réaliser toutes leurs potentialités et d'accroître ainsi les chances de voir la croissance et l'emploi connaître une amélioration durable, portée par l'investissement.



The Financial Services Action Plan is on track, on time and entering the home straight. Some 37 of the 42 measures have been finalised - an outstanding success rate for an EU legislative programme of this scale and complexity. A final push is needed to resolve the remaining key issues and to conclude the remaining major FSAP measures ahead of the European Parliamentary elections.

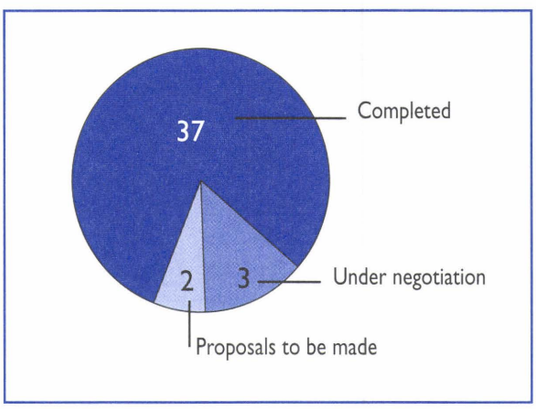
The Commission launched the FSAP in May 1999. At the Lisbon summit in March 2000, Heads of State and Government set a target date of 2005 for the FSAP to be completed. The main strategic objective of the FSAP is to enhance the functioning of underperforming pan-European financial markets and, by so doing, improve the prospects for sustainable, investment-driven growth and employment.

As such, the FSAP is one of the most important adjuncts to the introduction of the single currency, and one which has radically reduced cross-border trading costs within the eurozone.

Driving force for change

The FSAP is a driving force behind the profound changes taking place in the European financial landscape. There is growing market and regulatory belief in the logic of a dynamic, open European capital market. European capital markets are beginning to restructure and rationalise in anticipation. These changes are demonstrated *inter alia* by the convergence of interest rates and spreads; increased cross-border trading; and by the growing presence of financial institutions in Member States outside their own markets. More fundamentally, European finance has become less dependent on bank lending. A greater range of financing techniques has meant more options for businesses to fund investment and for consumers to obtain better returns from their savings.

The FSAP is a working example of how – with a clearly defined objective, a carefully considered strategy, limited resources, and the goodwill of Member States, Parliament and market participants – effective benefits can be delivered. Ultimately, the FSAP is about creating investment, growth, employment and wealth: to create a single, deep and liquid pool of capital – and to reduce the cost of capital for more than 450 million people and more than 18 million investors in Europe.



State of Play on FSAP measures

Since the Progress Report of 25 November 2003, a compromise agreement has been reached between the European Parliament and Council on the Takeover Bids Directive, based on the new proposal presented by the Commission in October 2002. It is the Commission's view that the final compromise agreement waters down the proposal in a damaging way. The harmonisation of rules governing the bid procedure, and the steps to protect minority shareholders are just a small step forward. The lack of balance between the power of management and shareholders in the compromise reached is a setback for Europe's long-term competitiveness.

The FSAP measures working their way through the pipeline are:

Transparency Directive. The Directive aims at increasing the transparency of listed companies to improve investors' trust. The Commission presented in March 2003 its proposal to increase the frequency and content of interim reporting by listed companies, without imposing excessive administrative burdens. Work in the Parliament is now complete and the Council is also set to adopt the Directive in the next few weeks.

Investment Services Directive - scheduled for adoption by summer. A second reading of the proposals was completed by

and on time'

ome straight'

WORK PROGRAMME 2004 Proposals scheduled for adoption by EP/Council

- Revision of the Investment Services Directive
- Transparency Directive
- 10th Company Law Directive

the European Parliament in late March following the Council's agreement on a common position in December.

The Directive now seems likely to be formally adopted very soon.

Cross-border mergers - the 10th Company Law Directive. First proposed in 1985, a new proposal to simplify procedures for cross-border mergers was presented in November 2003 in the context of the Communication on Company Law and Corporate Governance (see below). The proposal will soon be under discussion in Council and the European Parliament.

Continuing work

Elsewhere, the Commission continues to focus its efforts on bringing forward the remaining key FSAP measures. An ambitious timetable underpins the implementation of a **revised capital framework for banks and investment firms** by 2006/2007, following discussions in the G10-Basel Committee. This should increase the risk-sensitivity of banks' and investments firms' supervisory capital requirements. It should increase the stability and safety of the European financial services sector and improve the efficiency of asset allocation. The Basel Committee intends to reach agreement on the new Capital Accord by no later than the middle of 2004. The Commission remains on target to present its proposal for a new Directive within a short period after agreement in Basel so that the global implementation date for the new framework (end of 2006) can be met in the EU.

Also in the prudential field, the Commission is adding the finishing touches to its proposal for a prudential framework for the re-insurance sector. A proposal for an insurance Solvency II framework is scheduled for early 2005.

The Commission published its **Communication on Company Law and Corporate Governance** on 21 May 2003. This includes an Action Plan comprising a balanced and prioritised mix of legislative and non-legislative initiatives. It fully respects the subsidiarity and proportionality principles of the Treaty, and is flexible in application but firm on the principles. The Action Plan was endorsed by the Competitiveness Council on 22 September 2003.

Future priorities

With the FSAP drawing to a close, the Commission believes that an assessment of the state of integration of European financial markets is needed. This process will **not** serve as the basis for a further comprehensive programme of legislative initiatives in the short term. It will, however, be a first step in identifying the priorities for action in the period after the present FSAP.

The Commission has assembled a group of top-calibre market practitioners to assist in assessing the strengths and weaknesses of the EU legislative framework in the banking, insurance, securities and asset management sectors. The reports from the four subgroups will be published in April 2004 and open for public consultation until September. In this context, the Commission will not rush headlong into announcing new legislative initiatives beyond those already announced. The Commission will therefore not come forward with a complete new legislative programme – an FSAP II – in the short term.

Correct implementation and effective enforcement of the present programme will be demanding enough for all concerned and essential to deliver real benefits from the FSAP.

WORK PROGRAMME 2004 Expected Commission Proposals

- Modernisation of 8th Company Law Directive - statutory audit. (adopted 16 March, 2004 see p.8)
- Review capital requirements for financial institutions
- Follow-up to the Action Plan on Company Law and Corporate Governance
- 14th Company Law Directive on cross-border transfer of registered office
- International Accounting Standards 32/39
- Communication on Clearing and Settlement
- Third Money Laundering Directive
- Reinsurance Supervision
- EU Legal Framework for Payments in the Internal Market
- Insurance Solvency II (preparatory work)

Further information at:
http://europa.eu.int/comm/internal_market/en/finances/actionplan/index.htm

Resümee

Die Umsetzung des Aktionsplans für Finanzdienstleistungen verläuft nach Plan und befindet sich derzeit auf der Zielgeraden.

37 der 42 Maßnahmen sind abgeschlossen - das ist eine beispiellose Erfolgsquote für ein EU-Gesetzgebungsprogramm dieser Größenordnung und Komplexität.
Es wird noch einer letzten Kraftanstrengung bedürfen, um die verbleibenden Kernfragen zu lösen und einige wichtige Maßnahmen, deren Verabschiedung noch aussteht, bis April 2004, d. h. vor Ende der laufenden Legislaturperiode des Europäischen Parlaments, zum Abschluss zu bringen.
Das wichtigste strategische Ziel des FSAP sind leistungsfähigere integrierte Finanzmärkte in der EU und damit bessere Voraussetzungen für Investitionen und ein nachhaltiges, beschäftigungswirksames Wachstum.

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Commission proposes Directive to combat fraud and malpractice

Résumé

La Commission européenne a proposé une nouvelle Directive sur le contrôle des comptes dans l'UE. Cette Directive vise à assurer que les investisseurs et les autres parties intéressées puissent se fier totalement à l'exactitude des comptes audités et à renforcer la protection dans l'UE contre le type de scandales qui ont ébranlé récemment des sociétés comme Parmalat et Ahold. La Directive proposée clarifierait les missions des contrôleurs légaux et fixe certains principes éthiques afin de garantir leur objectivité et leur indépendance, par exemple lorsque les cabinets d'audit fournissent également d'autres services à leur clientèle. Elle introduirait une obligation d'assurance qualité ainsi qu'un contrôle public rigoureux de la profession, et améliorerait la coopération entre les organes de surveillance dans l'UE.

A new Directive on statutory audit in the EU has been proposed by the European Commission. Its objective is to ensure that investors and other interested parties can rely fully on the accuracy of audited accounts. It also aims to enhance the EU's protection against the type of scandals that recently occurred in companies such as Parmalat and Ahold. The proposed Directive would clarify the duties of statutory auditors and set out certain ethical principles to ensure their objectivity and independence. It would introduce a requirement for external quality assurance, ensure robust public oversight over the audit profession and improve co-operation between regulatory authorities in the EU.

Swift regulatory response

To permit a swift European regulatory response to new developments the draft Directive presented on 16 March proposes the creation of an audit regulatory committee of Member State representatives, so that detailed measures implementing the Directive could be rapidly taken or modified.

The proposal also foresees the use of international standards on auditing for all statutory audits conducted in the EU and provides a basis for balanced and effective international regulatory co-operation with third country regulators such as the US Public Company Accounting Oversight Board (PCAOB).

- Full group auditor responsibility for consolidated accounts of a group of companies;
- Obligatory independent audit committees for listed companies;
- Stricter auditor rotation requirements;
- Strengthened sanctions.

Helping auditors to resist pressure

Some of the provisions in the proposed Directive would help auditors to resist inappropriate pressure from managers of the company they are auditing. Audited companies would have to set up an audit committee, with independent members, which would oversee the audit process, communicating directly with the auditor without going through management. That committee would also select the auditor and propose the appointment to shareholders. In addition, if a company dismissed an auditor it would need to explain the reasons to the relevant authority in the Member State concerned.

A clear chain of responsibilities

The proposed Directive would also set out a clear chain of responsibilities in situations where groups of companies are audited by several different firms in a large number of locations worldwide (as was the case with Parmalat). The proposed Directive would specifically require that the group auditor of the consolidated accounts of a group of companies take full responsibility for the audit of those consolidated accounts. In doing this, the group auditor would be obliged to review and document the work of other auditors.

"Some of the provisions in the proposed Directive would help auditors to resist inappropriate pressure from managers of the company they are auditing."

Audit firms which audit listed companies, banks or insurance companies, would have to publish annual transparency reports allowing an insight into the audit firm, its international network and other non-audit services provided by it.

The proposed Directive would also establish procedures for the exchange of information between oversight bodies of Member States in investigations.

New opportunities for audit firms

As well as cracking down hard on malpractice and negligence, the proposal would provide new opportunities for the vast majority of honest, conscientious and competent auditors. It would, for example, allow auditors from any Member State to own and manage audit firms in all the others. This would facilitate further integration of European audit firms and help open up the market.

Internal Market Commissioner Frits Bolkestein said: "Auditors are our major line of defence against crooks who want to cook the books... No-one is naive enough to think any Directive will stop accounting fraud at a stroke ...but what we are proposing would inject more rigorousness and a stronger dose of ethics into the audit process."

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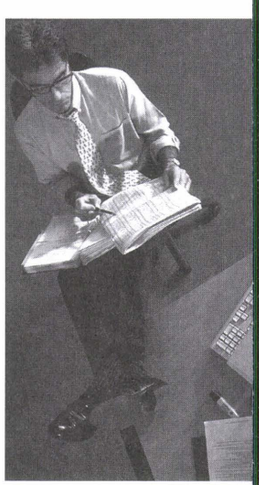
Resümee

Die Europäische Kommissio
hat eine neue Richtlinie zur
Abschlussprüfung in der EU
vorgeschlagen. Sie soll
gewährleisten, dass sich Inv
storen und andere interessi
te Kreise voll und ganz auf
die Korrektheit der geprüfte
Unternehmensabschlüsse v
lassen können, und die EU
gegen Unternehmensskanda
wappnen, die jüngst Parma
und Ahold in die Schlagzei
brachten. Der Richtlinienvo
schlag präzisiert die Pflicht
der Abschlussprüfer und le
gewisse Berufsgrundsätze z
Sicherung ihrer Unparteilic
keit und Unabhängigkeit fe
beispielsweise wenn
Prüfungsgesellschaften ihre
Kunden auch prüfungsfrem
Leistungen anbieten. Die
Richtlinie soll die Pflicht zu
externer Qualitätskontrolle
einführen, eine solide öffen
liche Beaufsichtigung des
Prüfungsgewerbes sicherste
len und die Zusammenarbe
zwischen den zuständigen
Stellen in der EU verbesser



Une nouvelle Directive propose de faciliter les fusions transfrontalières

Summary

sier cross-border ergers proposed in new rective

posals to make cross-rder mergers easier, by ercoming obstacles caused different national laws, ve been drawn up by the ropean Commission. e proposed Directive which s been sent to the Euro-an Parliament and Council Ministers for approval, uld set up a cross-border rger procedure whereby rgers would be governed each Member State by the nciples and rules applica-to "domestic" mergers. e proposals aim to fill an portant gap in company and are the first meas-s to be presented under Commission's Action n on company law and rporate governance.

La Commission européenne a établi des propositions visant à faciliter les fusions transfrontalières en surmontant les obstacles liés aux différentes législations nationales.

La Directive proposée, qui a été transmise au Parlement européen et au Conseil des ministres pour approbation, établirait une procédure de fusions transfrontalières au terme de laquelle les fusions seraient régies dans chaque État membre par les principes et règles applicables aux fusions "domestiques". Ces propositions visent à combler une lacune importante dans le droit des sociétés et constituent les premières initiatives présentées au titre du Plan d'action de la Commission pour le droit des sociétés et le gouvernement d'entreprise.

Si l'objectif ultime est de simplifier les fusions transfrontalières pour toutes les sociétés anonymes, l'initiative s'avèrerait particulièrement utile pour les petites et moyennes entreprises souhaitant opérer dans plus d'un État membre, mais ne désirant pas s'enregistrer sous le statut de société européenne.

Actuellement, les fusions transfrontalières sont difficiles ou impossibles, et la présente proposition vise à rectifier cette situation. Simultanément, il est important de s'assurer de la mise en place de garanties destinées à prévenir l'abus des fusions transfrontalières comme moyen pour les sociétés de contourner au niveau national leurs obligations en matière de participation des travailleurs.

Dans l'état actuel de la législation de l'UE, les fusions transfrontalières ne sont possibles que pour les sociétés établies dans un nombre limité d'États membres. Dans les autres pays de l'UE, les différences entre les législations nationales applicables sont telles que les sociétés souhaitant fusionner doivent recourir à des dispositifs juridiques complexes et coûteux. Ces dispositifs compliquent souvent l'opération et ne sont pas toujours mis en oeuvre de façon transparente et répondant à la sécurité juridique. De plus, ils ont généralement pour résultat que les compagnies acquises sont démantelées, ce qui peut constituer une opération très coûteuse.

La présente proposition, qui couvre l'ensemble des sociétés anonymes, sociétés par actions ou autres, vise à rendre les fusions transfrontalières possibles et aisées en rapprochant la procédure de fusions transfrontalières des procédures utilisées pour les "fusions domestiques" entre sociétés régies par la législation du même État membre.

En d'autres termes, chaque société prenant part à une fusion transfrontalière agirait de la sorte, suivant la proposition, conformément à la législation de son propre État membre

Une protection est assurée par les législations nationales, et serait ainsi maintenue par la Directive proposée, pour les créanciers, porteurs d'obligations, porteurs de titres autres que des parts, actionnaires minoritaires et salariés.

Dans le cas spécifique des droits des salariés, le principe général du droit national de la société créée par la fusion est d'application. S'il n'y avait pas de participation des salariés, ceci continuerait d'être le cas et si la société fusionnée était créée dans un État membre disposant de règles en matière de participation des salariés, elle serait régie par ces règles.

Toutefois, si au moins une des sociétés prenant part à la fusion transfrontalière était régie par des règles en matière de participation des salariés dans son État membre d'origine, et si la société fusionnée devait être créée suivant les règles d'un État membre dans lesquelles de telles règles ne sont en aucun cas d'application, une procédure de négociation, telle que prévue par le statut de la société européenne, serait d'application.

Dans une situation où deux sociétés ont fusionné et où toutes deux opéraient selon un régime de codécision obligatoire, ces sociétés pourraient opter pour l'enregistrement dans un État membre disposant d'un régime obligatoire mais qui n'est pas équivalent au régime de cogestion le plus rigoureux, sans devoir entamer des négociations telles que prévues dans le statut de la société européenne.

Le commissaire au Marché intérieur Frits Bolkestein a déclaré: "Faciliter les fusions transfrontalières constitue un outil important pour faciliter la coopération et la restructuration nécessaires pour rendre l'Europe plus concurrentielle."

Resümee

Neue Richtlinie soll grenzübergreifende Fusionen erleichtern

Die Kommission hat einen Vorschlag erarbeitet, der grenzüberschreitende Fusionen, die durch die unterschiedlichen innerstaatlichen Rechtsvorschriften behindert werden, erleichtern soll.

Nach dem im Richtlinienvorschlag geregelten Verfahren sollen für grenzüberschreitende Fusionen die in dem betreffenden Mitgliedstaat für solche Vorgänge im Inland geltenden Grundsätze und Vorschriften maßgebend sein.

Der Vorschlag, der dem Europäischen Parlament und dem Ministerrat zur Annahme vorgelegt worden ist, ist die erste Maßnahme, die die Kommission auf der Grundlage des Aktionsplans zum Gesellschaftsrecht und zur Corporate Governance in der Europäischen Union vorlegt, und soll eine bedeutende Lücke im Gesellschaftsrecht schließen.

Plus d'informations sur http://europa.eu.int/comm/internal_market/en/company/company/news/index.htm

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After Parmalat: th

Résumé

L'après Parmalat - les répercussions pour les politiques de l'Union

L'affaire Parmalat a ébranlé le monde de la finance internationale et a soulevé une multitude d'interrogations sur la gouvernance, la réglementation et la supervision des entreprises.
La réponse de la Commission européenne à la fraude commise par Parmalat n'a certainement pas été une réaction épidermique. Beaucoup de mesures – Directives et Règlements – qui sont aujourd'hui examinés de toute urgence étaient en préparation depuis longtemps.
Nombre de questions, et non des moindres (contrôle légal des comptes, abus de marché, droit des sociétés et gouvernance d'entreprise), sont sur le point de faire l'objet d'une série de Directives communautaires.

The Parmalat affair, like Enron, Tyco and WorldCom has sent a shudder through the world of international finance and raised a myriad of questions about corporate governance, regulation and supervision.
The response of the European Commission to the Parmalat fraud has certainly not been a "knee-jerk" reaction. Many of the measures – Directives and Regulations – now receiving the most urgent scrutiny have been in the pipeline for a long time.

Parmalat's international dimension

Some of the issues surrounding Parmalat are specific to the family-owned status of the company, to Italy's banking system and its regulation of listed companies and the securities market. Others, given the large numbers of international banks, investment houses and rating agencies involved in its affairs, are clearly of a pan-European and international nature – over 40% of Parmalat's bond placements were conducted by US investment banks.

Many of the regulatory issues discussed by commentators in the wake of Parmalat have been recognised by the Commission a long time back. Many, and the most important, are in the process of being tackled through a series of proposals for EU Directives ranging from statutory audit (see p.8), to market abuse, company law and corporate governance.

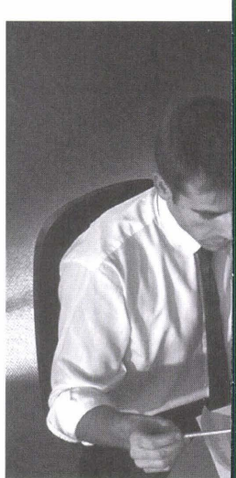
As the Commission and many national ministers pointed out post-Enron, the warning signs have been there for a long time. Parmalat was perhaps just a scandal waiting to happen.

Regulation as a last resort

Commissioner Bolkestein stated clearly to the European Parliament in February that if industry leaders are not prepared to take matters in hand and 'sort out the crooks', then regulators will have to do much more than perhaps they or we would like. "If that is the result, then industry leaders cannot complain about regulation from Brussels. They will have brought it upon themselves," he stated.
"It is the task of politicians and regulators to ensure that the right framework legislation and policies are in place. As you know, the Commission was already working on this," said Commissioner Bolkestein.

Wide-ranging policies

There are already a range of policies in hand which will go some way to improving matters in the future.
The Financial Services Action Plan contains important measures such as the Market Abuse Directive and Prospectus Directives - which are in the implementation stage.
There are also measures close to adoption such as the new Investment Services Directive which would give investment firms an effective "single passport" allowing them to operate across the EU. It would make sure investors enjoy a high level of protection when employing investment firms, wherever they are located in Europe



IAS and financial reporting

In the accounting field the Commission has promoted a principles-based approach to financial reporting, designed to reflect economic reality and give a true and fair view of the financial position and the performance of a company.
At the heart of the strategy is the application, from 1 January 2005, of IAS – the new International Accounting Standards (see p.12) – which will enhance disclosure, along with the Transparency Directive.
All these measures will enhance the powers of the relevant authorities to act and to cooperate much more across borders.

policy implications

Moreover, the EU's commitment to IAS is helping to achieve global convergence on financial reporting, in particular between IAS and the United States' GAAP approach.
Cooperation with foreign regulators is essential – in particular the United States' Securities and Exchange Commission (SEC) and Public Company Accounting Oversight Board (PCAOB). Capital markets, today, are global. Regulatory cooperation must be global too to match them.

"Many of the measures – Directives and Regulations – now receiving the most urgent scrutiny have been in the pipeline for a long time."

Audit change

The impact of scandals such as Enron and Parmalat on auditors and accountants has, without doubt, been significant. One accounting firm has disappeared. Controls on auditors have been tightened. Only four major firms remain and they audit over 95% of the FTSE 300.
In the light of recent events the Commission has fine-tuned its corporate governance and statutory audit strategies. The first proposal on statutory audit was made on March 16 (see p. 8).
The proposals update existing EU arrangements and set out to strengthen controls over the audit profession in the EU. They will push for independent oversight, strengthened inspection, stronger ethical and educational principles, and high quality audit standards.
Work is also being accelerated in three other areas of Corporate Governance/Company Law to have proposals ready, where possible, later this year. They are :

- The role of non-executive directors;
- Directors' responsibility for company accounts;
- Full disclosure in the company accounts of offshore Special Purpose Vehicles.

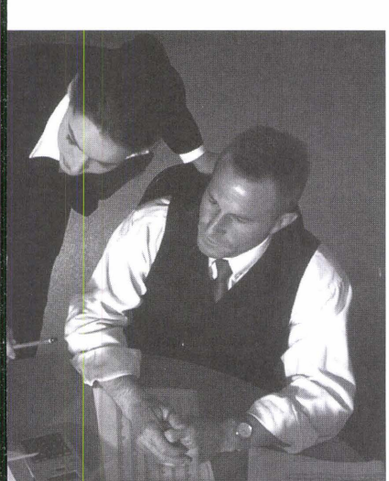
The issue of conflicts of interest of financial analysts is being looked at (see p. 28) as well as the behaviour of credit rating agencies.
On the issue of the regulatory control of offshore centres, the third Money Laundering Directive, which will be tabled in June, will play a significant role.

The Commission has a great deal of work already in progress. The absent partner in all this, as Commission Bolkestein has stressed, has been strong industry leadership – and an appropriate dose of ethics - though there are signs that this is now changing.

Resümee

Parmalat - die Folgen für die Politik

Der Parmalat-Skandal hat die internationale Finanzwelt erschüttert und eine Vielzahl von Fragen über Corporate Governance, Gesellschaftsrecht und Unternehmensaufsicht aufgeworfen.
Bei der Antwort der Europäischen Kommission auf den Parmalat-Betrug handelt es sich sicher nicht um eine Kurzschlussreaktion. Viele der Maßnahmen - Richtlinien und Verordnungen -, die jetzt als dringlich behandelt werden, sind bereits vor langer Zeit in Angriff genommen worden.
Viele der hier aufgeworfenen Probleme, darunter auch die wichtigsten (u. a. Abschlussprüfungen,Marktmissbrauch, Gesellschaftsrecht und Corporate Governance), werden gegenwärtig in Angriff genommen, und zwar mit einer Reihe von EU-Richtlinien.



Company law and corporate governance

In May 2003, the Commission presented an Action Plan on "Modernising Company Law and Enhancing Corporate Governance in the EU".
Its aims are the strengthening of shareholders' rights, reinforcing protection for employees and creditors, and increasing the efficiency and competitiveness of business.
It is based on a comprehensive and prioritised set of proposals for action, covering several years and devotes special attention to a series of corporate governance initiatives aiming at boosting confidence on capital markets.

Further details at:
http://europa.eu.int/comm/internal_market/company/index_en.htm

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Deadline approaches for conversion to IAS

International Accounting Standards

Résumé

Établissement de l'information financière conformément aux nouvelles normes comptables internationales (IAS): le délai approche

Le délai fixé pour l'établissement des comptes des entreprises conformément aux règles comptables internationales (IAS) approche rapidement.
À compter du 1er mai 2004, plus de 7 000 sociétés de l'UE cotées sur des marchés réglementés (généralement des bourses) seront tenues d'appliquer les règles comptables internationales approuvées pour l'établissement de leurs comptes consolidés publiés à partir de 2005.
Si ce règlement ne concerne dans un premier temps que les sociétés cotées, les États membres sont encouragés à étendre les exigences qu'il contient aux sociétés non cotées, ainsi qu'aux comptes annuels.

The deadline for the switch-over of company accounting to International Accounting Standards (IASs) is rapidly approaching.
From 1 January 2005, more than 7,000 EU companies listed on regulated markets – typically stock exchanges – will be required to use endorsed International Accounting Standards (IASs) for their consolidated accounts.

The IAS Regulation was adopted by the Commission in July 2002, and unlike EU Directives, has the force of law without requiring transposition into national legislation.
While applying initially only to listed EU companies, Member States are being encouraged to extend the requirements of this Regulation to unlisted companies and annual accounts. The implementation of the 'options' provided under the IAS Regulation is still under way in most Member States and the EEA countries. The Commission is closely tracking the intentions of these countries.
Following its adoption by the Commission in July 2002, IAS are rapidly becoming the de facto world standard in accounting and many organisations have already switched to IAS as best practice.
Conversion to IAS is not without cost and requires companies to invest in new systems, and to explain the differences in financial reports due primarily to changes in accounting practices. This is a process with wide ranging implications involving company directors and management, auditors and IT specialists. Though the first IAS accounting will be required in 2005, the previous year's accounts will also have to be converted to permit comparison.

Benefits

The Regulation aims to help eliminate barriers to cross-border trading in securities by ensuring that company accounts throughout the EU are more reliable and transparent and that they can be more easily compared. Although the Commission put forward the IAS proposal long before the Enron, WorldCom and Parmalat affairs, this is one of a series of measures which will help to protect the EU from such problems.

Global impact

The impact of Europe's move to IAS extends beyond its borders. A source of frustration for many companies in Europe wanting access to US capital markets remains the requirement to reconcile their accounts to US generally accepted accounting principles (GAAP). By signing up to international accounting standards, Europe has provided momentum for, and should benefit from, the convergence process initiated.
The IAS Regulation provides several options for Member States e.g. to permit or require the application of endorsed IAS by unlisted companies and in the preparation of annual accounts as well as consolidated ones. These are options which the Commission hopes will be taken up by many Member States and so expand the use of IAS in Europe, in particular in respect of important sectors such as banking and insurance.

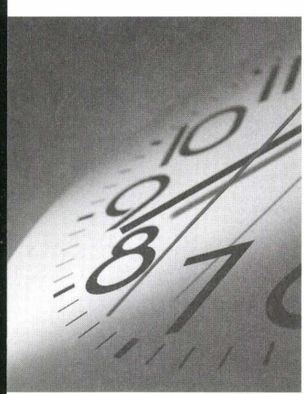
Political oversight

To ensure appropriate political oversight, the IAS Regulation has established a new EU mechanism to assess IAS adopted by the International Accounting Standards Board (IASB), and to give them legal endorsement for use within the EU. The Accounting Regulatory Committee (ARC) chaired by the Commission and composed of representatives of the Member States, decides whether to endorse IAS on the basis of Commission proposals.
In its task, the Commission is assisted by EFRAG, the European Financial Reporting Advisory Group, a body composed of accounting experts from the private sector in several Member States. EFRAG provides technical expertise concerning the use of IAS within the European legal environment and participates actively in the international accounting standard setting process.
Still awaiting adoption are IAS 32 and 39 (Financial Instruments). The Commission will consider these IAS for endorsement as soon as the final version of IAS 39 is issued by the IASB.

Resümee

Frist für die Umstellung der Rechnungslegung auf die neuen internationalen Rechnungslegungsstandards (IAS) läuft in Kürze ab

Die Frist für die Umstellung auf die internationalen Rechnungslegungsstandards (International Accounting Standards - IAS) läuft in Kürze ab.
Ab 1. Mai 2004 gilt die Regelung, wonach über 7000 an geregelten Markt – beispielsweise an der Wertpapierbörse – notierte Unternehmen in der EU ihre konsolidierten Abschlüsse ab 2005 gemäß den von der Kommission freigegebenen IAS erstellen müssen.
Die Regelung gilt zwar zunächst nur für börsennotierte Unternehmen, aber die Mitgliedstaaten werden dazu ermutigt, die Anforderungen der Verordnung auf nicht börsennotierte Unternehmen und auf Jahresabschlüsse auszudehnen.



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Further information at:
http://europa.eu.int/comm/internal_market/accounting/ias_en.htm#status-adoption

Towards a Single European Payments Area

Consultation on a new legal framework

Résumé

ers un espace de paie-ent unique dans l'Union ropéenne

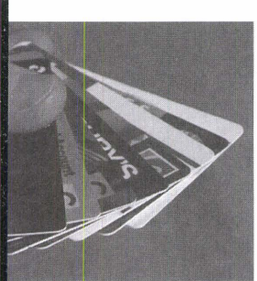
règlement concernant les iements transfrontaliers en ros permet désormais aux nsommateurs de réaliser s économies substantielles squ'ils effectuent des nsferts bancaires de faible leur dans d'autres pays. squ'à l'année dernière, un nsfert de € 100 entre deux ats membres de l'UE coûtait uvent jusqu'à € 24. puis l'introduction, en llet dernier, du règlement ncernant les paiements nsfrontaliers en euros, les is ont été alignés sur ceux s transferts nationaux. Commission s'apprete aintenant à instituer un dre juridique harmonisé uvrant les différents oyens de paiement (vire-nts, cartes, prélévements) des mesures pour prévenir fraude.

Until last year the cost of transferring € 100 from one EU country to another was often as high as € 24. Since the introduction of the EU Regulation last July on 'cross-border payments in euro', it has been reduced to levels similar to domestic transfers. The Commission is now moving to introduce a broader legal framework with a view to removing technical and legal barriers and to applying measures to prevent fraud.

The introduction of the Cross-border Payments Regulation 2560/2001 (see SMN n° 32) is now saving consumers substantial costs on low value bank transfers to other EU countries and on credit card and cash machine withdrawals while travelling in other Member States.

The important proviso for benefiting from domestic transfer rates is that the user must supply the two identification codes needed by the banks, the 'IBAN' (International Bank Account Number) and the 'BIC' (Bank Identifier Code). Without this, users may face higher charges.

The Commission is now moving ahead to create the desired Single Payments Area.



Single Payment Area in the EU: a new legal framework

In December the Commission published a consultation on a new 'legal framework' with clear and simple rules protecting payment services users, providers and systems across the Internal Market. The existing legal framework for payments is to a large extent based on national rules, which leads to a fragmentation of the Internal Market.

This initiative is part of the Commission's efforts to make the EU a Single Payment Area. According to the latest figures, 143 million non-cash transactions take place every day in the EU, an average of 138 transactions per year per inhabitant.

The Commission's ultimate aim is to make it as easy, cheap and secure to make a cross-border payment by credit card, payment card, electronic bank transfer, direct debit or any other means as it is to make a payment within one Member State.

This, it believes, is essential to maximise the efficiency of the European economy, and in particular electronic commerce.

The Commission's document reflects discussions already held with Member States, central banks, the payment industry and consumer associations. It includes preliminary suggestions for future EU legislation to constitute a "new legal framework" for payments in the Internal Market.

The Commission has received more than one hundred responses to the consultation. All the contributions received will be published on the Commission's website (http://europa.eu.int/comm/internal_market/payments/framework/index_en.htm).

Anti-fraud measures – single 'card stop' number

While developing this new legal framework, the Commission is also working on measures to reduce fraud in the payments area.

The Commission is considering the introduction of a single Europe-wide emergency phone number for all lost or stolen payment cards and has launched a public consultation via the Internet on this.

Europe currently has numerous phone numbers to notify a stolen card. Some countries even have more than one. The on-line survey aims at receiving the views of EU citizens on existing card blocking services and on the usefulness of introducing a new pan-European service.

To take part in the consultation, see: http://europa.eu.int/yourvoice/consultations

Resümee

Auf dem Weg zu einem einheitlichen europäischen Zahlungsverkehrsraum

Verbraucher kommen jetzt durch die Verabschiedung der Verordnung über grenzüberschreitende Zahlungen in den Genuss einer erheblichen Kostensenkung bei der Überweisung von kleineren Beträgen ins Ausland.

Bis zum vergangenen Jahr fielen für eine Überweisung von € 100 von einem EU-Land in ein anderes häufig Gebühren von bis zu € 24 an. Seit Inkrafttreten der Gemeinschaftsverordnung über grenzüberschreitende Zahlungen in Euro im vergangenen Juli sind sie in etwa auf die Höhe der Gebühren für Inlandszahlungen gesunken. Die Kommission bemüht sich nun um die Schaffung eines umfassenderen Rechtsrahmens, der auch andere grenzüberschreitende Zahlungssysteme, beispielsweise Kreditkarten, erfassen und Betrugsbekämpfungsmaßnahmen beinhalten soll.

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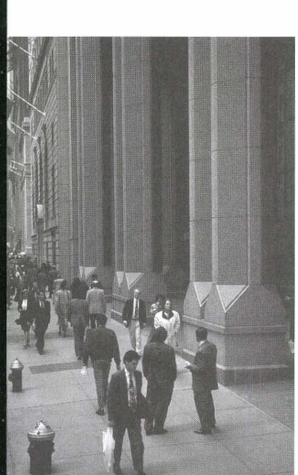
Nouveau régime de fonds propres pour les banques et entreprises d'investissement

Summary

New capital requirements rules for banks and investment firms

After five years' of development, the European Commission has reached the final stages in the preparation of a Directive proposal establishing the new capital requirements framework for banks and investment firms. The proposal will mark an epoch in the Single Market regulation of financial institutions. The existing capital rules are being rapidly overtaken by market developments.
The new framework will introduce significantly enhanced risk sensitivity – allowing a much closer link between the risks faced by an institution and its capital requirements.
At the same time it has been designed to incorporate a range of approaches – from the relatively simple 'standardised approaches' to the more sophisticated approaches based on institutions' own calculations of their risks. This design feature is a key one to ensure that the new framework is suitable for all European institutions – from the very small to the large and complex.



Après cinq années de mise au point, la Commission européenne en est au dernier stade de préparation d'une proposition de Directive établissant le nouveau régime de fonds propres pour les banques et entreprises d'investissement. La proposition fera date dans la réglementation des institutions financières au titre du marché unique. Le régime de fonds propres actuel – prescrivant le montant de leurs ressources propres que les institutions financières doivent détenir pour maintenir leur stabilité financière et protéger le consommateur – a bien servi l'Europe. Cependant ces règles sont rapidement dépassées par l'évolution du marché.

Le nouveau cadre introduira une sensibilité au risque considérablement renforcée – autorisant un lien bien plus étroit entre les risques auxquels doit faire face une institution et ses exigences en matière de fonds propres. Simultanément, ces règles nouvelles ont été conçues de manière à intégrer un éventail d'approches – depuis les approches standardisées relativement simples jusqu'aux approches plus sophistiquées – reposant sur les calculs effectués par les institutions elles mêmes sur leurs risques. Cette originalité est déterminante pour garantir que le nouveau cadre convienne pour toutes les institutions européennes – des les plus petites jusqu'aux plus grandes et aux plus complexes.

Le nouveau cadre de l'UE a été conçu parallèlement au nouveau cadre international mis au point par le comité de Bâle en matière de surveillance bancaire. Il sera cohérent avec le cadre international – tout en en divergeant le cas échéant pour refléter les caractéristiques spécifiques du contexte européen. Un exemple important de cette différence réside dans le traitement des entreprises d'investissement. Le cadre de l'UE s'applique aux banques et entreprises d'investissement, tandis que les règles de Bâle ont été conçues pour le secteur bancaire.

C'est pourquoi le cadre de l'UE inclura des règles spécifiques destinées à garantir que le traitement des entreprises d'investissement soit proportionné et prenne en ligne de compte leurs profils de risques différenciés.

La proposition de Directive a été mise au point sur base de consultations approfondies avec les parties intéressées. Une série de documents de consultation a été diffusée, donnant lieu à une contribution très importante des parties intéressées. La période de consultation la plus récente s'est achevée fin 2003. De façon générale, on note un large soutien aux propositions retenues au stade de projet. Simultanément, une série de questions a été soulevée pour considération ultérieur par la Commission. Un document de retour d'informations traitant de ces questions a récemment été publié sur le site internet de la Commission (1).

La mise au point du nouveau cadre s'est accompagnée d'efforts importants visant à évaluer ses répercussions possibles. En juillet 2003, la Commission a publié les résultats de la troisième étude quantitative d'impact (QIS3)[1]. Ces résultats indiquent que le nouveau cadre proposé est en passe d'atteindre ses objectifs généraux en matière de proportionnalité et de rigueur prudentielle. L'objectif à escompter fait l'objet d'un suivi dans l'optique de l'évolution récente des propositions. En réponse à une demande du Conseil européen, une étude a été commandée en vue d'étudier les conséquences possibles des nouvelles exigences en matière de fonds propres pour tous les secteurs de l'économie européenne, une attention particulière étant accordée aux petites et moyennes entreprises. Un rapport basé sur cette étude est en cours d'achèvement. Les services de la Commission transmettront ce rapport au Conseil européen et le mettront à disposition du public lorsque celui-ci aura été finalisé dans les semaines qui viennent.

On s'attend à ce qu'un accord soit trouvé sur le nouveau cadre de base d'ici le milieu de l'année au plus tard. Il est prévu de présenter une proposition de Directive pour adoption dans un délai très rapproché. Le nouveau cadre devrait être appliqué dans les États membres conformément à la date d'application globale fixée pour la fin 2006.

(1) http://europa.eu.int/comm/internal_market/fr/finances/banks/index.htm

Resümee

Neue Eigenkapitalvorschriften für Banken und Wertpapierfirmen

Nach fünfjährigen Vorbereitungen hat die Europäische Kommission die Ausarbeitung eines Richtlinienvorschlags über die neuen Eigenkapitalvorschriften für Banken und Wertpapierfirmen praktisch abgeschlossen. Mit dem Vorschlag wird ein Meilenstein der Binnenmarktvorschriften für Finanzinstitute erreicht sein. Die bisher geltenden Eigenkapitalanforderungen werden von der Marktentwicklung rasch überholt.
Durch den neuen Rechtsrahmen wird eine deutlich größere Risikosensitivität eingeführt, d. h. die Eigenkapitalanforderungen können wesentlich enger an die Risikosituation eines Finanzinstituts gekoppelt werden.
Gleichzeitig sieht der Rechtsrahmen verschiedene Ansätze vor, von den relativ einfachen „Standardansätzen" bis zu den komplexeren Ansätzen, die auf den eigenen Risikoberechnungen der Finanzinstitute basieren. Dies ist ein entscheidendes Merkmal, mit dem erreicht werden soll, dass der neue Rechtsrahmen auf alle europäischen Finanzinstitute anwendbar ist, von den kleinsten bis zu den großen und komplexen Institute.

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Special Feature

Service industries

Ambitious proposal to realise a Single Market

Removing red tape can boost cross-border business and Europe's competitiveness

Proposals to free EU companies in the service sector from the burden of red tape and restrictions when trying to operate in other EU countries have been drawn up by the European Commission. The service businesses covered by the proposal – ranging from software consultancies to travel agents – account for at least 50% of all economic activity in the EU and success could bring a considerable boost to the companies concerned through cross-border expansion, as well as to the European economy as a whole. The implementation of the proposal could produce the biggest stimulus to the Internal Market since its launch in 1993.

The proposed measures will remove a number of barriers which currently prevent businesses from offering their services across borders or from opening premises in other Member States.

The proposed Directive is part of the process of economic reform launched in 2000 by the Lisbon European Council to boost EU competitiveness by 2010. It sets out a framework for a "genuine Internal Market for services by 2010" and is now on its way to the European Parliament and the EU's Council of Ministers for adoption.

The provisional timetable would see progressive dismantling of impediments to cross-border business with completion scheduled for 2007. Internal Market Commissioner Frits Bolkestein has stated that: "This Directive is potentially the biggest boost to the Internal Market since its launch in 1993. We need to set our service businesses free, so that they can grow and create the sustainable jobs Europe needs. Some of the national restrictions are archaic, overly burdensome and break EU law. Those have simply got to go."

Benefit to SMEs

The bulk of service businesses in the EU are small and medium-sized enterprises (SMEs) for whom red tape and restrictions are particularly onerous and a major disincentive to offering services or launching commercial operations in neighbouring EU countries.

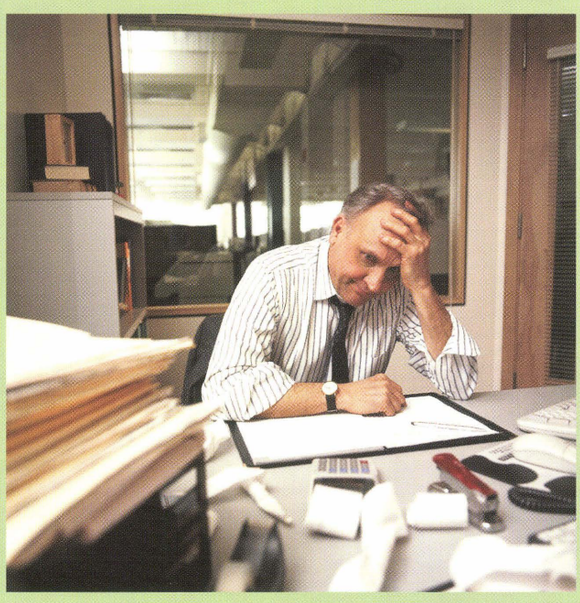
The proposed Directive aims to create a real and effective Single Market in services by requiring Member States to eliminate a number of national restrictions and barriers which currently prevent businesses from offering their services across borders or from opening premises in other Member States.

By increasing competition, it would also be likely to reduce prices. It would also help disseminate best practice and encourage innovation, both through the extra competition and through business services such as consultants and IT providers spreading excellence EU wide.

"Some of the national restrictions are archaic, overly burdensome and break EU law. Those have simply got to go."

- Frits Bolkestein

Special Feature



The bulk of service businesses in the EU are small and medium-sized enterprises (SMEs) for whom red tape and restrictions are particularly onerous.

EU-wide consultation

The proposed Directive has been developed following an extensive consultation exercise undertaken by the Commission in 2001 and 2002 to gauge the views of all interested parties. The consultation conclusions, published in the Commission's Report on the State of the Internal Market in July 2002, demonstrated that administrative complexity and duplication was dissuading many service providers, especially SMEs, from launching cross-border operations.

The proposed measures, once adopted and implemented, would resolve many of the difficulties identified by businesses and other stakeholders.

Making it easier to establish a service business in another Member State

Under the proposed Directive, Member States would commit themselves to removing a large number of unnecessary barriers which prevent or discourage operators from other Member States from setting up on their territory.

For example, Member States could no longer subject access to or the exercise of a service activity on their territory to discriminatory requirements based directly or indirectly on nationality or, with regard to companies, on the place of its registered office.

Complex, lengthy and costly authorisation and licensing procedures would disappear. Those procedures that remain would have to be based exclusively on objective criteria, known in advance.

The proposal does not oblige Member States to abolish existing monopolies, notably those of lotteries, or to privatise certain sectors.

Cutting paperwork

The Directive calls for a large-scale administrative simplification process and modernisation of national restrictions.

The proposal would cut excessive documentation requirements by limiting the number of documents required and establishing electronic procedures. It would ensure that businesses could, through single contact points (one-stop shops), obtain all necessary information and complete all formalities necessary to set up premises in another Member State. They would no longer have to deal with a multitude of different authorities. National authorities would have to respond to enquiries or applications for authorisations within the shortest possible deadlines.

Making it easier to provide services across borders

As well as making it easier for service businesses already based in one Member State to establish themselves in others, the proposal would help service providers who do not wish to establish themselves, but instead just to provide their services across borders, from their existing base.

Legal costs

One services trade association calculated that the direct costs of gaining the requisite advice on legal and regulatory requirements in order to establish a presence in a single EU Member State were between € 80,000 and € 160,000.

Even for companies who merely wish to provide services rather than establish themselves, legal costs can be daunting and can also involve legal advice to determine which Member State's rules apply.

A technical engineering company estimated that it had to spend approximately 3% of its annual turnover on research into the differing legal requirements potentially applicable to its service in two other Member States where it wanted to supply services. An electronic hardware and services company spent € 100,000 on external legal advice to search only the applicable advertising rules in five Member States.

The proposed Directive should lead to substantial reductions in these costs.

The proposed Directive aims to implement in practice the "country of origin principle", whereby once a service provider is operating legally in one Member State, it can market its services in others without having to comply with further rules in those "host" Member States. Service providers would no longer be subject to a plethora of divergent national regulations, administrative requirements and a duplication of supervisory controls which raise costs and often dissuade service providers from engaging in cross-border activities.

However, the country of origin principle is subject to a number of important exceptions.

National authorities working more closely together

The proposed Directive seeks to ensure that national authorities exchange information and work much more closely together, thus replacing the current duplication of national regulations and controls with a much more coherent system. To improve cross-border enforcement and redress, there would be a clearer division of supervisory roles between the Member State of origin and the host Member State and easier access for national authorities to each others' information on services and providers.

This improved administrative cooperation would also facilitate control in the case of the "posting" of workers, in other words, where a company in one Member State sends workers temporarily to another Member State to provide a service. Service providers have to respect the law of the destination country in terms of minimum wages and other working conditions, in compliance with Directive 96/71/EC.

Increasing trust and confidence

The proposed Directive would establish some basic common rules applicable throughout the EU, in order to increase trust and confidence in cross-border services. In particular it would require appropriate professional indemnity insurance for services giving rise to particular risks.
Service users and consumers would also have better information about the services that they can benefit from in other Member States and about the terms and conditions applying to such services.

The proposed Directive takes account of the specific nature of certain services activities, in particular the regulated professions*, which require the maintenance of certain professional ethics. For example, it lifts outdated and disproportionate bans on advertising for such professions, while stipulating that such advertising has to respect certain rules and limits and calling on professional associations to draw up European codes of conduct.
For certain sensitive areas – cash in transit, gambling services and access to the activity of judicial recovery of debts – the proposed Directive would provide for the possible development of specific rules.

Which businesses are covered?

The proposed Directive covers different types of service provision including those:

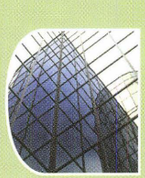
- provided at a distance from the home country of the service provider, for example over the Internet, by phone, or through direct marketing;
- where the provider is present permanently or temporarily in the country where the customer is located;
- where the customer travels to the country where the service is to be provided (such as hotels, theme parks or other tourist attractions, as well as health services).

The business areas covered are wide-ranging and include: distributive trades (notably retailing), employment agencies, certification, laboratories, construction services (including architectural services), estate agencies, craft industries, travel agencies, tour operators, hotels, restaurants and entertainment, the regulated professions, information technology-related services, advertising, car rental, employment agencies, security services, audiovisual services and healthcare services.
It does not cover those services that are already covered by a comprehensive EU policy such as financial services or transport. In addition, telecommunications are covered only as far as they are not dealt with by the telecommunications package.

Screening exercise

The Commission is deliberately avoiding a 'bull in a china shop' approach. As well as proposing the immediate removal of certain types of barrier to trade in services which are clearly unjustified, such as nationality restrictions, the proposed Directive calls for a major screening exercise of a certain number of requirements to be undertaken by the Member States, together with the Commission, to ascertain their compatibility with EU law. The process would oblige Member States, within a short fixed period of time, to evaluate a long list of such requirements, in reports that would be made public and scrutinised by the other Member States, the Commission and stakeholders. This system of exchange of best practices should make possible the progressive and co-

Special Feature



ordinated modernisation of national regulatory systems for service activities. This is vital in order to achieve a genuine Internal Market for services by 2010.

Which businesses can benefit?

The proposed Directive covers all services provided to consumers and businesses (see box) except those provided directly by public authorities for no remuneration, in fulfilment of their social, cultural, educational or legal obligations.

It does not cover those services that are already covered by a comprehensive EU policy (see box).

Also included are services provided by regulated professions* without prejudice, however, to the application of existing EU law on such professions, and especially on the recognition of qualifications. The proposal recognises the specific nature of regulated professions and the particular role of self-regulation and calls on professional associations to establish European codes of conduct on professional ethics. It is complementary to and fully compatible with the proposed Directive on the recognition of professional qualifications.

Rights of service users

Consumers and business users of services have, in the Internal Market, the right to use services offered in Member States other than their own. The proposed Directive would therefore make clear that those rights prevent Member States from imposing restrictions such as requiring authorisation to use services from other Member States.

Reimbursement of medical costs

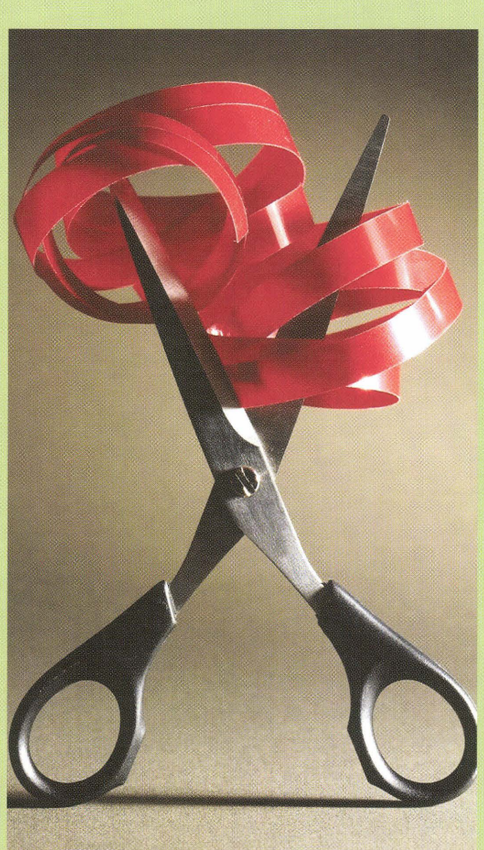
The proposal builds on existing European Court of Justice case law, stipulating that for non-hospital services, patients must be reimbursed by their home Member State for health care elsewhere in the EU, to the extent and at the tariff that the services concerned would normally be reimbursed if administered in the home Member State. Prior authorisation is not required.

For hospital care in another Member State, prior authorisation may be required but cannot be refused if the treatment required would be reimbursable in the patient's home Member State but cannot be obtained there within a time limit which is medically justifiable, taking into account the patient's current state of health and the probable course of the illness.

Impact assessment

In line with its better regulation policy, the Commission has published an assessment of the impact of the proposed Directive.

The full texts of the proposal and impact assessment are available at:
http://www.europa.eu.int/comm/internal_market/en/services/services/index.htm



* regulated professions such as medicine and legal and fiscal advice, to which access is limited to people with specific professional qualifications.

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Proposition ambitieuse visant à la réalisation d'un marché intérieur des services

Réduire les charges administratives peut stimuler les activités transfrontalières et doper la compétitivité européenne

La Commission européenne a présenté une proposition de Directive visant à libérer les entreprises de services de l'UE des charges administratives et des restrictions qu'elles doivent affronter lorsqu'elles cherchent à opérer dans d'autres États membres. Les entreprises de services concernées par la proposition – des sociétés de conseil informatique aux agences de voyage – représentent au moins 50 % de l'activité économique de l'UE et la réussite du projet permettra sans doute de stimuler l'activité de ces entreprises et l'économie européenne dans son ensemble, à travers une expansion transfrontalière. La mise en œuvre de cette proposition pourrait bien être l'impulsion la plus forte donnée au marché intérieur depuis son «achèvement» en 1993.

Les mesures proposées vont éliminer un certain nombre de barrières qui empêchent actuellement les entreprises d'offrir leurs services par-delà les frontières ou les empêchent d'ouvrir des établissements dans d'autres Etats membres.

La Directive proposée s'inscrit dans le cadre du processus de réforme économique lancé en 2000 par le Conseil européen de Lisbonne afin de stimuler la compétitivité de l'UE pour 2010. Elle définit un ensemble de conditions visant à favoriser l'émergence d'un «véritable marché intérieur des services pour 2010» et est maintenant soumise, pour adoption, au Parlement européen et au Conseil de ministres de l'UE.

Le calendrier provisoire prévoit le démantèlement progressif des obstacles aux activités transfrontalières d'ici à 2007.

Frits Bolkestein, le commissaire européen en charge du marché intérieur, a déclaré: «Cette Directive pourrait bien être l'impulsion la plus forte donnée au marché intérieur depuis sa création en 1993. Nous devons libérer nos entreprises de services, de façon à ce qu'elles puissent se développer et créer les emplois durables dont l'Europe a besoin. Certaines des restrictions nationales sont archaïques, pesantes et en contradiction avec la législation de l'UE. Elles doivent purement et simplement disparaître.»

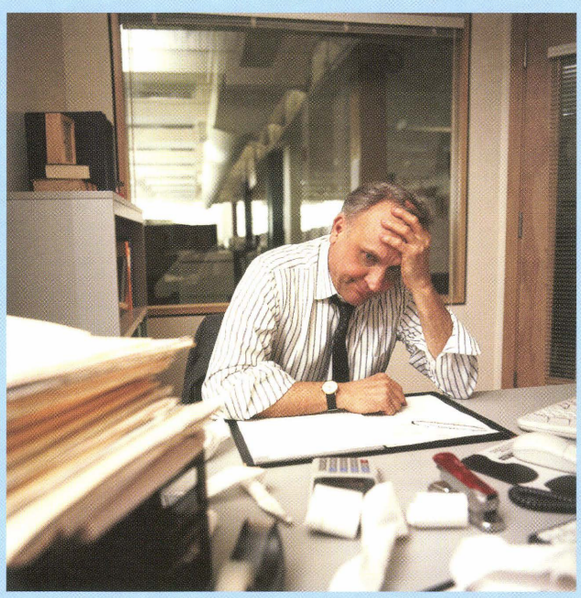
Avantage pour les PME

Dans l'UE, la grande majorité des entreprises de services sont des Petites et Moyennes Entreprises (PME) et celles-ci sont particulièrement pénalisées sur le plan financier par les charges administratives et les restrictions en place, qui les découragent d'offrir des services ou de se lancer dans des opérations commerciales dans des États membres voisins.

La proposition de Directive vise à mettre en place un marché intérieur véritable et performant dans le secteur des services en imposant aux États membres la suppression d'un certain nombre de restrictions et entraves au niveau national qui empêchent actuellement les entreprises d'offrir leurs services à travers les frontières et d'ouvrir des établissements dans d'autres Etats membres.

«Certaines des restrictions nationales sont archaïques, pesantes et en contradiction avec la législation de l'UE. Elles doivent purement et simplement disparaître.»

- Frits Bolkestein



Dans l'UE, la grande majorité des entreprises de services sont des PME et celles-ci sont particulièrement pénalisées sur le plan financier par les tracasseries administratives et les restrictions en place.

En renforçant la concurrence, elle devrait également faire baisser les prix. Elle devrait aussi contribuer à diffuser les bonnes pratiques et à encourager l'innovation, à la fois par le surcroît de concurrence et par le biais de services aux entreprises, tels que ceux des consultants et des fournisseurs de TI, qui diffusent leur expertise dans toute l'UE.

Consultation dans l'ensemble de l'UE

La Directive proposée a été élaborée au terme d'une vaste consultation menée par la Commission en 2001 et 2002 pour connaître l'avis de toutes les parties intéressées. Les conclusions de cette consultation ont été publiées en juillet 2002 par la Commission dans le rapport sur l'état du marché intérieur des services et ont démontré que la complexité et la duplication des démarches administratives dissuadaient de nombreux prestataires de services, en particulier des PME, de se lancer dans des opérations transfrontalières.

Une fois adoptées et appliquées, les mesures proposées devraient permettre de résoudre bon nombre des difficultés relevées par les entreprises et d'autres acteurs du secteur.

Supprimer les obstacles à l'établissement

Selon la Directive proposée, les États membres s'engageraient à éliminer toute une série d'obstacles superflus qui empêchent ou découragent les sociétés de services d'autres États membres de venir s'établir sur leur territoire.

Par exemple, les États membres ne pourraient plus soumettre l'accès à ou l'exercice d'une activité de services sur leur territoire à des exigences discriminatoires basées directement ou indirectement sur la nationalité ou sur le lieu du siège social du prestataire.

Les procédures complexes, longues et coûteuses d'autorisation et d'agrément disparaîtraient également. Les procédures maintenues devraient s'appuyer exclusivement sur des critères objectifs, connus d'avance.

La proposition n'oblige pas les Etats membres à abolir les monopoles existants, notamment les loteries, ni à privatiser certains secteurs.

Réduire la «bureaucratie»

La Directive prévoit un processus de simplification administrative à grande échelle et de modernisation des restrictions nationales.

La proposition éliminerait les exigences excessives en matière de documentation en limitant le nombre de documents requis et en établissant des procédures électroniques.

Elle assurerait que les entreprises puissent obtenir toutes les informations nécessaires et remplir toutes les formalités via des guichets uniques au lieu de devoir traiter avec une multitude d'autorités différentes. Les autorités nationales seraient tenues de répondre au plus vite aux demandes de renseignements ou d'autorisation.

Faciliter l'offre de services par-delà les frontières

Tout en facilitant l'établissement dans d'autres Etats membres d'entreprises déjà établies dans un Etat membre donné, la proposition aiderait les fournisseurs de services

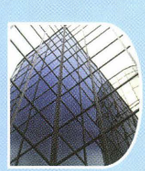
Frais juridiques

Une association professionnelle d'un secteur de services a calculé que les coûts directs pour l'obtention des conseils nécessaires concernant les exigences légales et réglementaires à respecter afin d'établir une présence dans un seul État membre de l'UE allaient de € 80 000 à € 160 000.

Même pour les entreprises qui souhaitent simplement fournir des services plutôt que s'établir véritablement, les frais juridiques peuvent être décourageants; ils peuvent même couvrir des conseils juridiques pour déterminer l'État membre dont les règles s'appliquent.

Une entreprise d'ingénierie a estimé qu'elle devait dépenser approximativement 3 % de son chiffre d'affaires annuel en recherches concernant les différentes exigences juridiques susceptibles de s'appliquer à ses services dans deux autres États membres où elle comptait opérer. Une entreprise de matériel et de services électroniques a déboursé 100 000 euros en conseils juridiques extérieurs, simplement pour déterminer les règles en vigueur en matière de publicité dans cinq États membres.

La Directive proposée devrait amener une réduction substantielle de ces coûts.



qui ne souhaitent pas s'établir eux-mêmes mais qui souhaitent seulement fournir leurs services à travers les frontières, à partir de leur lieu d'établissement.
La Directive vise à mettre en pratique le principe du pays d'origine, selon lequel un prestataire de services qui opère légalement dans un État membre peut vendre ses services dans d'autres États membres sans devoir se conformer à d'autres règles dans ceux-ci. Les prestataires ne seraient plus soumis à une pléthore de règlements nationaux divergents, d'exigences administratives et de contrôles faisant double emploi, qui augmentent les coûts et les dissuadent souvent de s'engager dans des activités transfrontalières.
Toutefois, le principe du pays d'origine fait l'objet de dérogations importantes.

Renforcer la coopération entre les autorités nationales

L'approche choisie vise à assurer que les autorités nationales échangent des informations et coopèrent beaucoup plus étroitement, en remplaçant l'actuelle duplication des règlements et contrôles nationaux par un système beaucoup plus cohérent.
Pour améliorer l'application et la réparation par-delà les frontières, il y aurait une répartition plus claire des rôles de supervision entre l'État membre d'origine et l'État membre d'accueil, ainsi qu'un accès plus aisé pour les autorités nationales aux informations des autres pays sur les services et les prestataires.
Une amélioration de la coopération administrative faciliterait aussi les contrôles en cas de détachement des travailleurs, c'est-à-dire lorsqu'une société dans un Etat membre envoie temporairement des travailleurs dans un autre Etat membre pour qu'ils fournissent un service. Les prestataires de services devraient toutefois continuer à respecter la législation du pays de prestation en matière de salaire minimum et autres conditions de travail, conformément à la Directive 96/71/CE.

Augmenter la confiance

La proposition établirait certaines règles élémentaires communes applicables dans toute l'UE, afin d'accroître la confiance dans les services transfrontaliers. En particulier, elle exigerait une assurance responsabilité civile professionnelle appropriée pour les services présentant des risques particuliers.
Les entreprises utilisatrices de services et les consommateurs bénéficieraient d'une meilleure information sur les services provenant d'autres Etats membres dont ils peuvent bénéficier, et sur les termes et conditions applicables à de tels services.
La Directive proposée tient compte de la nature spécifique de certaines activités de services, en particulier les professions réglementées qui exigent le respect d'une certaine éthique professionnelle. Par exemple, elle lève les interdictions désuètes et disproportionnées de publicité pour ces professions, tout en stipulant que cette publicité doit respecter certaines règles et limites et en appelant les associations professionnelles à rédiger des codes de conduite européens.
Pour certains domaines sensibles (transferts de fonds, services de paris et accès à l'activité de recouvrement judiciaire de créances), la Directive proposée prévoirait l'élaboration éventuelle de règles spécifiques.

Quels sont les secteurs concernés?

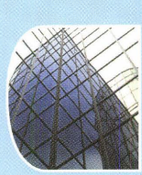
La proposition de Directive couvre d**ifférents types de prestation de services**, comme:

- les services fournis à distance, depuis le pays d'origine du prestataire, par exemple via l'internet, par téléphone ou par démarchage direct;
- les services pour lesquels le prestataire est présent de façon permanente ou temporaire dans le pays où le client est établi;
- les services pour lesquels le client se déplace dans le pays où la prestation doit s'effectuer (par exemple les hôtels, les parcs à thème ou autres attractions touristiques, ainsi que les services de santé).

Les domaines d'activité concernés sont très vastes et comprennent la distribution (notamment vente au détail), les agences de placement, les services de certification, les laboratoires, les services de construction (y compris les services d'architecture), les agences immobilières, les services d'artisans, les agences de voyage, les voyagistes, les hôtels, les restaurants et le secteur des loisirs, les professions réglementées, les services en rapport avec les technologies de l'information, la publicité, la location de véhicules, les services de sécurité, les services audiovisuels et les services de santé.
Elle ne couvre pas les services qui font déjà l'objet d'une législation européenne spécifique comme les services financiers ou les transports. En outre, les services télécommunications sont couverts dans la mesure où ils ne sont pas compris dans le paquet télécom.

Exercice d'évaluation

La Commission a délibérément choisi de ne pas avancer «comme un éléphant dans un magasin de porcelaine».
En même temps qu'elle propose l'élimination immédiate de certains types de barrières au commerce des services qui sont clairement injustifiées, telles que les conditions de nationalité, la Directive proposée prévoit un processus d'évaluation d'un certain nombre d'exigences, qui devra être entrepris par les Etats membres avec la Commission, afin de vérifier la compatabilité de ces exigences avec le droit communautaire. Ce processus obligerait les Etats membres à évaluer, dans un court délai, une longue liste de ces exigences, dans des rapports qui seraient rendus publics et étudiés par les Etats membres, la Commission et les parties intéressées. Le système d'échange des bonnes pratiques rendrait possible la modernisation progressive et



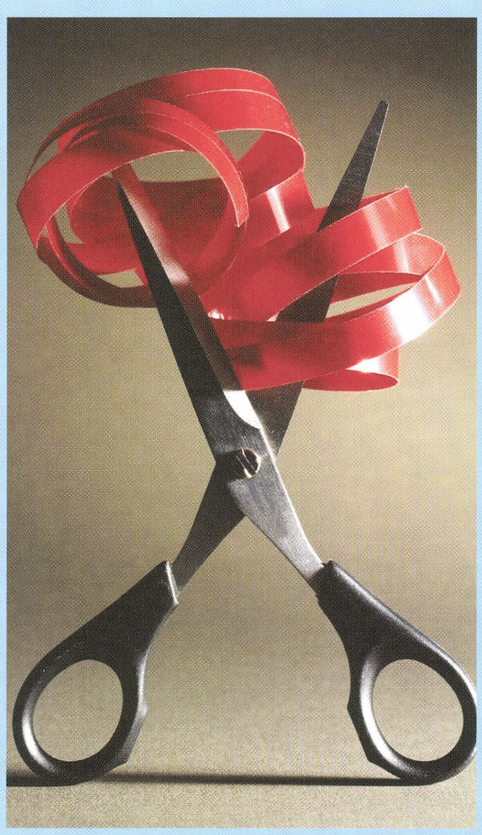
coordonnée des systèmes réglementaires nationaux relatifs aux activités de services. Cela est vital pour aboutir à un véritable marché intérieur des services pour 2010.

Quels sont les secteurs concernés?

La Directive proposée couvre tous les services fournis aux consommateurs et aux entreprises (voir l'encadré) à l'exception de ceux fournis directement et gratuitement par les pouvoirs publics dans l'accomplissement de leurs obligations sociales, culturelles, éducatives ou légales.

Elle ne couvre pas les services qui sont déjà couverts par législation européenne spécifique comme les services financiers ou les transports. En outre, les services de télécommunication ne sont couverts que dans la mesure ils ne sont pas compris dans le paquet télécom (voir l'encadre).
La proposition reconnaît la nature spécifique des professions réglementées et le rôle particulier de l'autorégulation et invite les associations professionnelles à établir des codes de conduite européens concernant l'éthique professionnelle.

Cette Directive et la Directive proposée en matière de reconnaissance des qualifications professionnelles sont complémentaires et pleinement compatibles.



Les droits des utilisateurs de services

Les consommateurs et les utilisateurs de services ont, dans le marché intérieur, le droit d'utiliser les services offerts dans des Etats membres autres que le leur. La Directive proposée préciserait clairement que ces droits empêchent les Etats membres d'imposer des restrictions telles que l'obtention d'une autorisation pour utiliser des services provenant d'autres Etats membres.

Remboursement des frais médicaux?

La proposition est basée sur la jurisprudence existante de la Cour de justice des Communautés européennes selon laquelle, pour les **services non hospitaliers**, les patients doivent être remboursés par leur État membre d'origine pour les soins de santé reçus ailleurs dans l'UE, à concurrence des plafonds et taux de remboursement normalement pratiqués dans l'État membre d'origine pour les services concernés. Une autorisation préalable n'est pas requise.
Pour les **soins hospitaliers** dans un autre État membre, une autorisation préalable peut être requise, mais elle ne peut être refusée si le traitement concerné est remboursable dans l'État membre d'origine du patient mais ne peut y être administré dans des délais médicalement justifiables, en tenant compte de l'état de santé actuel du patient et de la cause probable de la maladie.

Evaluation d'impact

Conformément à sa politique visant à mieux réglementer, la Commission a publié une évaluation de l'impact de la Directive proposée.

Les textes intégraux de la proposition et de l'évaluation d'impact sont disponibles à l'adresse suivante:
http://www.europa.eu.int/comm/internal_market/fr/services/services/index.htm

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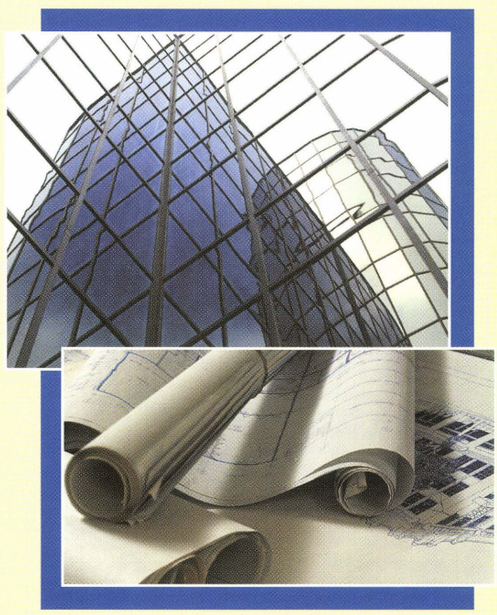
Weit reichende Vorschläge zur Verwirklichung eines echten Binnenmarktes

Abbau von Bürokratie kann grenzüberschreitende Geschäftstätigkeit fördern und Europa wettbewerbsfähiger machen

Die Europäische Kommission hat einen Richtlinienvorschlag erarbeitet, der EU-Dienstleistungsunternehmen, die in anderen Ländern der Union tätig werden möchten, von bürokratischen Auflagen und Hindernissen befreien soll. Die erfassten Dienstleistungsbranchen, – von Softwareberatung bis hin zu Reisebüros –, machen mindestens 50 % der gesamten Wirtschaftstätigkeit in der EU aus. Ein Erfolg dieses Gesetzesvorhabens könnte, da es die grenzüberschreitende Expansion erleichtern würde, den betreffenden Unternehmen und der EU-Wirtschaft insgesamt beträchtlichen Auftrieb geben und dem Binnenmarkt den größten Aufschwung seit seiner Einführung im Jahre 1993 bescheren.



Die vorgeschlagene Richtlinie wird eine Anzahl von Hemmnissen beseitigen, die derzeit Dienstleister daran hindern, ihre Dienstleistungen in anderen Mitgliedstaaten zu erbringen oder in anderen Mitgliedstaaten Zweigstellen zu errichten.

Die vorgeschlagene Richtlinie über Dienstleistungen im Binnenmarkt ist Teil des Wirtschaftsreformprozesses, den der Europäische Rat auf seiner Tagung in Lissabon in Gang gesetzt hat, um den Binnenmarkt bis 2010 zum wettbewerbsfähigsten und dynamischsten wissensbasierten Wirtschaftsraum der Welt zu machen. Der Vorschlag, der gegenwärtig vom Europäischen Parlament und vom EU-Ministerrat geprüft wird, liefert den Rahmen für die Schaffung eines wirklichen Dienstleistungsbinnenmarktes bis 2010.

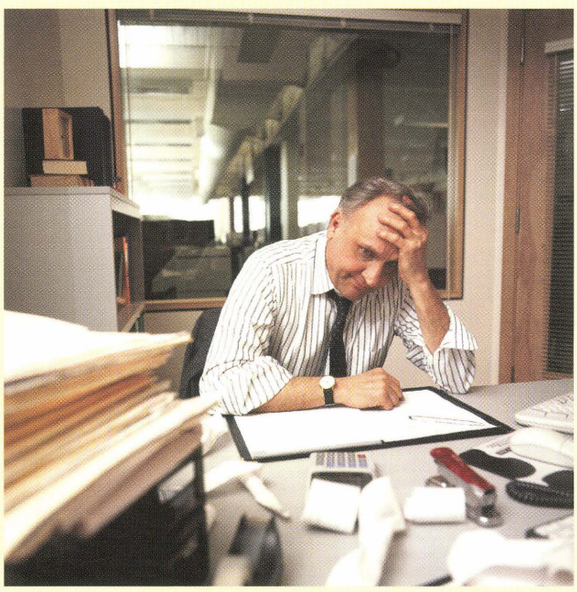
Der vorläufige Zeitplan sieht den schrittweisen Abbau der Schranken für den grenzüberschreitenden Geschäftsverkehr bis 2007 vor. Binnenmarktkommissar Frits Bolkestein setzt hohe Erwartungen in das Vorhaben: „Diese Richtlinie kann den Binnenmarkt weiter voranbringen als alle anderen Maßnahmen, die seit seiner Schaffung im Jahr 1993 ergriffen wurden. Wir müssen unseren Dienstleistungsunternehmen die Freiheit geben, die sie brauchen, um zu wachsen und nachhaltig Arbeitsplätze schaffen zu können, die Europa benötigt. Die nationalen Vorschriften sind zum Teil archaisch, übertrieben aufwändig und verstoßen gegen das EU-Recht. Diese Vorschriften müssen schlichtweg verschwinden."

Vorteile für kleine und mittlere Unternehmen

Die Dienstleistungsunternehmen in der EU sind zum großen Teil mittelständische Firmen, und für diese kleinen und mittleren Unternehmen (KMU) erweisen sich die bürokratischen Schranken und Auflagen als besonders kostspielig und abschreckend, wenn es darum geht, in einem anderen EU-Staat Dienstleistungen anzubieten oder eine Niederlassung zu errichten.

Die vorgeschlagene Richtlinie will einen echten und wirkungsvollen Binnenmarkt für Dienstleistungen schaffen, indem sie die Mitgliedstaaten verpflichtet, eine Reihe von Beschränkungen und Hindernisse zu beseitigen, die gegenwärtig Unternehmen daran hindern, ihre Dienste grenz-

„Die nationalen Vorschriften sind zum Teil archaisch, übertrieben aufwändig und verstoßen gegen das EU-Recht. Diese Vorschriften müssen schlichtweg verschwinden."
(Frits Bolkestein)



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überschreitend anzubieten oder sich in anderen Mitgliedstaaten niederzulassen.

Stärkerer Wettbewerb hätte sinkende Preise zur Folge. Zudem würden optimal funktionierende Geschäftsmodelle (best practices) verbreitet und somit Innovation gefördert, beispielsweise durch Unternehmensberatungen und IT-Provider.

EU-weite Sondierung

Bei der Erarbeitung des Richtlinienentwurfs hat sich die Kommission auf umfassende Sondierungen aus den Jahren 2001 und 2002 gestützt, um die Stimmen aller interessierten Kreise zu hören. Das Ergebnis der Konsultationen, das im Kommissionsbericht über den Stand des Binnenmarkts für Dienstleistungen im Juli 2002 veröffentlicht wurde, brachte zu Tage, dass komplizierte Verwaltungsverfahren und Mehrfachkontrollen insbesondere mittelständische Unternehmen von einer grenzüberschreitenden Tätigkeit abhalten.
Mit der Verabschiedung und Umsetzung der jetzt vorgeschlagenen Maßnahmen könnten viele der von den Unternehmen und anderen Betroffenen beklagten Schwierigkeiten aus dem Weg geräumt werden.

Weniger Hindernisse für die Niederlassung in anderen Mitgliedstaaten

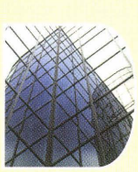
Nach der vorgeschlagenen Richtlinie würden sich die Mitgliedstaaten dazu verpflichten, eine Vielzahl unnötiger Beschränkungen aufzuheben, die Dienstleistungsunternehmen aus anderen Mitgliedstaaten daran hindern, in ihrem Hoheitsgebiet Niederlassungen zu gründen.
So dürften die Mitgliedstaaten den Empfang oder die Erbringung einer Dienstleistung in ihrem Hoheitsgebiet nicht mehr an diskriminierende Bedingungen knüpfen, die direkt oder indirekt auf der Staatsangehörigkeit oder dem Unternehmenssitz beruhen.
Komplizierte, langwierige und kostspielige Genehmigungs- und Zulassungsverfahren würden wegfallen. Weiterhin geltende Verfahren dürften sich ausschließlich auf objektive und berechenbare Kriterien stützen.
Der Richtlinienvorschlag verpflichtet Mitgliedstaaten dagegen nicht, bestehende Monopole, insbesondere staatliche Lotterien, zu beseitigen, oder bestimmte Bereiche zu privatisieren.

Weniger "Papierkrieg"

Die Richtlinie sieht eine umfassende Vereinfachung der Verwaltungsverfahren und eine Modernisierung restriktiver nationaler Vorschriften vor.
Der Richtlinienvorschlag fordert die Abschaffung übertriebener Dokumentationsanforderungen. Die Zahl der notwendigen Unterlagen würde begrenzt, die diesbezüglichen Formalitäten könnten elektronisch abgewickelt werden. Für die Unternehmen würden zentrale Ansprechstellen (One-Stop-Shops) eingerichtet, bei denen sie alle benötigten Informationen bekommen und alle Formalitäten erledigen könnten, um Niederlassungen in einem anderen Mitgliedstaat zu errichten. Die Unternehmen müssten sich nicht mehr mit einer Vielzahl unterschiedlicher Stellen auseinandersetzen. Die nationalen Behörden müssten Anfragen oder Anträge auf Genehmigungen so rasch wie möglich beantworten.

Kosten der Rechtsberatung

Nach Schätzungen eines Verbands der Dienstleistungswirtschaft bewegen sich die direkten Kosten für die Rechtsberatung über gesetzliche und verwaltungstechnische Anforderungen, die eine Präsenz in einem einzigen EU-Mitgliedstaat erforderlich macht, zwischen € 80.000 und € 160.000.
Selbst für ein Unternehmen, das keine Niederlassung gründen, sondern nur in einem anderen Mitgliedstaat Dienstleistungen erbringen möchte, können abschreckend hohe Kosten anfallen. Unter Umständen ist rechtliche Beratung nötig, um herauszufinden, welches nationale Recht überhaupt Anwendung findet.
Eine Ingenieurfirma hat die Kosten für die Prüfung der für ihre Dienstleistungen geltenden Anforderungen in zwei Mitgliedstaaten, in denen sie tätig werden wollte, auf ca. 3 % ihres Jahresumsatzes veranschlagt. Ein Elektronik- und Dienstleistungsunternehmen musste € 100.000 für externe Rechtsberatung aufwenden, nur um in fünf Mitgliedstaaten die anwendbaren Werbevorschriften zu ermitteln.
Die vorgeschlagene Richtlinie würde zur deutlichen Senkungen dieser Kosten führen.



Grenzüberschreitende Dienstleistungen erleichtern

Die Richtlinie würde es Dienstleistungsunternehmen nicht nur erleichtern, sich in anderen Mitgliedstaaten niederzulassen. Auch solche Unternehmen, die sich nicht in einem anderen Mitgliedstaat niederlassen wollen, könnten leichter grenzüberschreitend Dienstleistungen erbringen.
Die vorgeschlagene Richtlinie sieht die Anwendung des Herkunftslandprinzips vor. Maßgeblich für eine grenzüberschreitende Dienstleistung ist somit das Recht des Herkunftslandes, nicht das des Bestimmungslandes. Wird ein Dienstleister in einem Mitgliedstaat rechtmäßig tätig, kann er seine Dienstleistungen auch in anderen Mitgliedstaaten anbieten, ohne in diesen „Aufnahmemitgliedstaaten" weitere Vorschriften erfüllen zu müssen. Dienstleister würden damit nicht mehr einer Fülle verschiedener nationaler Rechts- und Verwaltungsvorschriften und Mehrfachkontrollen unterliegen, die zusätzliche Kosten verursachen und sie oft davon abbringen, grenzüberschreitend tätig zu werden. Allerdings sieht der Richtlinienvorschlag eine Reihe von Ausnahmen vom Herkunftslandprinzip vor.

Eine engere Zusammenarbeit nationaler Behörden

Die vorgeschlagene Richtlinie verpflichtet die Mitgliedstaaten, dafür zu sorgen, dass die nationalen Behörden Informationen austauschen und wesentlich enger als bisher zusammenarbeiten. Das herkömmliche System doppelter nationaler Regulierung und mehrfacher Kontrollen würde auf diese Weise durch ein abgestimmtes und schlüssiges System ersetzt.

Zur Verbesserung der grenzüberschreitenden Rechtsdurchsetzung und Streitbeilegung würde die Verteilung der Aufsichtskompetenzen zwischen dem Herkunfts- und dem Aufnahmemitgliedstaat klarer geregelt. Der Zugriff der nationalen Behörden auf die bei den Stellen der anderen Länder vorhandenen Informationen würde erleichtert.
Durch die verbesserte Verwaltungszusammenarbeit würden auch wirksame Kontrollen für die Entsendung von Arbeitnehmern ermöglicht, also bei Dienstleistungen, für die Unternehmen vorübergehend Arbeitnehmer in einen anderen Mitgliedstaat entsenden. Hinsichtlich der Mindestlöhne und der sonstigen Beschäftigungsbedingungen gelten für die Dienstleister gemäß der Richtlinie zur Entsendung von Arbeitnehmern (96/71/EG) weiterhin die einschlägigen Vorschriften des Aufnahmelandes.

Zuversicht und Vertrauen stärken

Die vorgeschlagene Richtlinie würde innerhalb der EU einige grundlegende einheitliche Regelungen einführen, um das Vertrauen in grenzüberschreitend erbrachte Dienstleistungen zu stärken. So ist insbesondere vorgesehen, dass für Dienstleistungen, die besondere Risiken für die Dienstleistungsempfänger mit sich bringen können, eine angemessene Berufshaftpflichtversicherung abgeschlossen werden muss, beispielsweise für Rechtsberatung. Dienstleistungsempfänger und Verbraucher würden zudem genauere Informationen über die Dienstleistungen aus einem anderen Mitgliedstaat und die jeweils verwendeten Allgemeinen Geschäftbedingungen erhalten.

Die Richtlinie trägt ferner den Besonderheiten reglementierter Berufe Rechnung, für die bestimmte berufsethische Anforderungen bestehen. So sollen beispielsweise für Rechtsanwälte und Ärzte überholte und übertriebene Werbeverbote aufgehoben werden. Gleichzeitig wird festgelegt, dass Werbung bestimmte standesrechtliche Anforderungen erfüllen muss. Die Fachverbände werden aufgefordert, europäische Verhaltenskodizes (codes of conduct) auszuarbeiten.
Für bestimmte sensible Bereiche – Werttransporte, Gewinnspiele und die gerichtliche Beitreibung von Forderungen – sieht die Richtlinie die Ausarbeitung besonderer Regelungen vor.

Selbstüberprüfung durch die Mitgliedstaaten

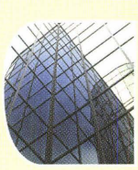
Die Kommission will bewusst nicht wie „der Elefant im Porzellanladen" auftreten. Der Richtlinienvorschlag fordert die Mitgliedstaaten auf, einige genannte offensichtlich ungerechtfertigte Hemmnisse für grenzüberschreitende Dienstleistungen und Beschränkungen in den einzelnen

Für welche Branchen gilt der Vorschlag?

In den Geltungsbereich der vorgeschlagenen Richtlinie fallen verschiedene Formen von Dienstleistungen, u. a.:

- Dienstleistungen, die über eine größere räumliche Distanz vom Herkunftsland des Dienstleisters aus erbracht werden, beispielsweise über das Internet, telefonisch oder im Wege des Direktmarketing;
- Dienstleistungen, für die der Dienstleister sich dauerhaft oder vorübergehend in das Land des Dienstleistungsempfängers begibt;
- Dienstleistungen, bei denen sich der Kunde in das Land der Leistungserbringung begibt (beispielsweise Dienstleistungen von Hotels, Themenparks, Touristenattraktionen oder auch Gesundheitsdienstleistungen).

Die Richtlinie erfasst somit eine Vielzahl von Branchen, u. a. Handel (insbesondere den Einzelhandel), Beschäftigungsagenturen, Zertifizierungsstellen, Labors, das Baugewerbe (einschließlich Dienstleistungen von Architekten), Immobilienmakler, das Handwerk, Reisebüros und -veranstalter, Hotels, Restaurants, die Freizeit- und Unterhaltungsbranche, die reglementierten Berufe, Informationstechnik, Werbung, Autovermietung, Sicherheitsdienste, audiovisuelle Dienste und Gesundheitsdienstleistungen.
Nicht unter die Richtlinie fallen die Dienstleistungen, für die bereits umfassende EU-Vorschriften gelten, wie Finanz- und Transportdienstleistungen. Aus dem gleichen Grund fallen auch Dienstleistungen der elektronischen Kommunikation in solchen Bereichen nicht unter den Geltungsbereich des Richtlinienvorschlags, die bereits in den Richtlinien des „Telekom-Pakets" geregelt sind.



Mitgliedstaaten sofort zu beseitigen. Im Übrigen ruft der Richtlinienvorschlag die Mitgliedstaaten auf, gemeinsam mit der Kommission die nationalen Rechtsordnungen auf Dienstleistungsbeschränkungen zu überprüfen und gemeinschaftskonforme Regelungen zu finden. Dieser Evaluierungsprozess soll die Mitgliedstaaten verpflichten, innerhalb einer kurzen Frist Beschränkungen aufzulisten und öffentlich zu machen, damit die anderen Mitgliedstaaten, die Kommission und Interessengruppen diese eingehend bewerten können. Auf diese Weise sollen Schritt für Schritt und koordiniert die nationalen Dienstleistungsregeln modernisiert werden, um bis 2010 einen wirklichen Binnenmarkt für Dienstleistungen zu erreichen.

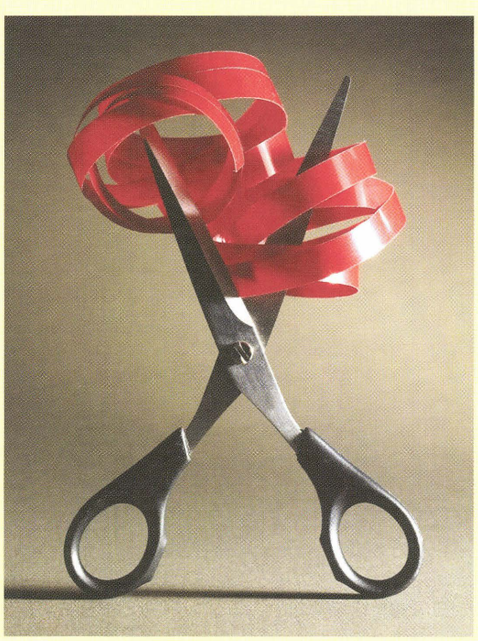
Wer kann von der Richtlinie profitieren?

Die vorgeschlagene Richtlinie soll für sämtliche Dienstleistungen, sowohl für Verbraucher als auch Unternehmen gelten (siehe Kasten), außer für solche, die von staatlichen Behörden direkt und unentgeltlich aufgrund ihrer sozialen, kulturellen, bildungspolitischen oder rechtlichen Verpflichtungen erbracht werden.

Sie gilt nicht für solche Dienstleistungen, für die bereits umfassende EU-Regelwerke bestehen, beispielsweise Finanz- und Transportdienstleistungen (siehe Kasten).

Die Richtlinie soll sich auch auf Dienstleistungen der reglementierten Berufe erstrecken, wobei die bereits geltenden einschlägigen EU-Vorschriften, insbesondere über die Anerkennung beruflicher Qualifikationen, von der Richtlinie unberührt bleiben.

Der Richtlinienvorschlag trägt den Besonderheiten der reglementierten Berufe und der Bedeutung der Selbstregulierung Rechnung. So werden die Berufsverbände aufgefordert, europäische Verhaltenskodizes auszuarbeiten. Das Richtlinienvorhaben ergänzt die vorgeschlagene Richtlinie über die Anerkennung von Berufsqualifikationen und ist ohne Einschränkungen neben dieser anwendbar.



Rechte der Dienstleistungsempfänger

Verbraucher und Dienstleistungsempfänger haben im Binnenmarkt das Recht, Dienstleistungen aus anderen Mitgliedstaaten zu empfangen. Der Richtlinienvorschlag stellt klar, dass die Mitgliedstaaten diese Rechte nicht beschränken dürfen, beispielsweise durch Maßnahmen, die eine Genehmigung zum Empfang grenzüberschreitender Dienstleistungen erforderlich machen.

Erstattung von Gesundheitskosten

Ausgehend von der Rechtsprechung des Gerichtshofs der Europäischen Gemeinschaften schreibt der Richtlinienvorschlag vor, dass die Kosten einer ambulanten Behandlung in einem anderen EU-Land von dem Versicherungssystem des Herkunftslandes des Patienten in dem Umfang und zu den Sätzen erstattet werden müssen, die üblicherweise für diese Leistungen gelten, wenn sie im Herkunftsland erbracht werden. Eine vorherige Genehmigung darf nicht verlangt werden.

Im Fall eines Krankenhausaufenthalts in einem anderen Mitgliedstaat kann eine vorherige Genehmigung verlangt werden. Sie darf aber in den Fällen nicht verweigert werden, in denen die Behandlungskosten im Herkunftsland des Patienten normalerweise erstattet würden und die Versorgung im Herkunftsland nicht innerhalb eines Zeitraums erfolgen kann, der angesichts des Gesundheitszustandes des Patienten und des zu erwartenden Krankheitsverlaufs medizinisch vertretbar ist.

Rechtsfolgenabschätzung

Gemäß ihrer Politik für eine bessere Rechtsetzung veröffentlicht die Kommission eine Abschätzung der Folgen der vorgeschlagenen Richtlinie.

Der Vorschlag der Richtlinie über Dienstleistungen im Binnenmarkt und die Folgenabschätzung sind abrufbar unter: http://www.europa.eu.int/comm/internal_market/de/services/services/index.htm

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Investment Services Directive moves into the final phase

The Proposal for a Directive on Financial Instruments Markets (also known as the Investment Services Directive, or 'ISD2') is now in the final phase of the approval procedure, with possible adoption by the summer.

The Directive would give investment firms an effective "single passport" allowing them to operate across the EU. It would make sure investors enjoy a high level of protection when employing investment firms, wherever they are located in Europe. The Directive also seeks to establish, for the first time, a comprehensive regulatory framework governing the organised execution of investor transactions by exchanges, other trading systems and investment firms.

A second reading of the proposals was begun by the European Parliament in January following the Council's agreement on a common position in December.

At its February meeting, the Parliament's Economic and Monetary Affairs Committee (EMAC) voted on some 90 amendments and adopted 50 of the amendments initially tabled. In Council, consensus seems to have been achieved among the Member States on the most contentious issue, i.e pre-trade transparency.

The Parliament plenary approved the text at the end of March and formal adoption by the Council and Parliament should follow before the Parliament's electoral recess this summer.

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Transparency for securities issuers

The European Commission has also welcomed the Parliament's vote approving the Directive on transparency requirements for securities issuers. Among the Directive's key achievements will be that investors will in future receive interim management statements from those share issuers who do not publish quarterly reports and will get half-yearly financial reports from issuers of new bonds. In addition, all securities issuers will have to provide annual financial reports within four months after the end of their financial year.

For further information | Pour plus d'informations | Für weitere Informationen:
http://europa.eu.int/comm/internal_market/en/finances/mobil/isd/index.htm

Proposal for the Community to sign the Hague Securities Convention

In today's global financial environment, where the great majority of securities are held in electronic form with third parties, international rules on proprietary rights have become needed. The rules governing such indirectly held securities (shares, bonds or other financial instruments) have been established through a worldwide agreement known as the Hague Securities Convention* and the Commission has proposed that the European Community becomes signatory to this international accord.

The Convention, which was agreed in December 2002 by 58 countries, including the US, Japan, Australia and all present EU Member States as well as seven accession countries, is the response to an urgent need in a large and growing global financial market to provide legal certainty and predictability regarding the law applicable to securities, particularly as they are increasingly taken as collateral in cross-border situations.

Specifically, the Convention aims at reducing legal risk, systemic risk and associated costs in relation to cross-border transactions involving securities held with an intermediary, with a view to facilitating the international flow of capital and access to capital markets. The Convention will, once the Community is party to it, affect a number of existing EU Directives, such as the Collateral Directive (2002/47/EC) and the Settlement Finality Directive (98/26/EC) .

* Hague Convention on the Law Applicable to Certain Rights in respect of Securities held with an Intermediary
http://www.hcch.net/e/conventions/text36e.html

For further information | Pour plus d'informations | Für weitere Informationen:
http://www.europa.eu.int/comm/internal_market/securities/hague/index_en.htm

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Financial analysts: avoiding potential conflicts

Broad support for Forum Group's recommendations

Résumé

Le forum des analystes financiers a été mis en place en novembre 2000 en tant que corps indépendant pouvant conseiller en matière de conflits d'intérêts et de bonnes pratiques pour les analystes financiers au sein des banques d'investissement. Ses recommandations pour éviter et gérer des conflits d'intérêts ont reçu une réaction favorable lors d'une consultation publique sur Internet.

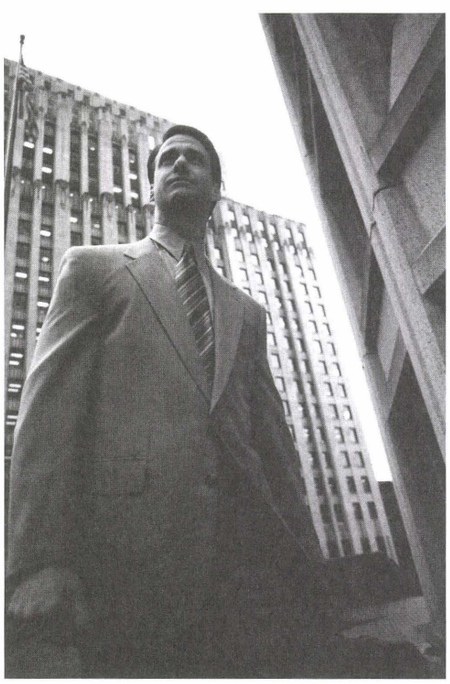
The Financial Analysts Forum Group was set up by the European Commission in November 2000 as an independent, market-focused group who could advise on potential conflicts of interest and on best practice for financial analysts in investment banks.

A report produced by the Forum Group in September 2003 set out 31 recommendations on the avoidance and management of potential conflicts of interest when financial analysts in investment banks produce and disseminate research on companies for which their organisation also provides paid corporate finance services.

The Commission has just completed a public consultation via the Internet to collect views on the report and its recommendations (http://www.europa.eu.int/comm/internal_market/en/finances/mobil/finanalysts/docs/contributions-summary_en.pdf).
Responses were received from nine countries and from a cross-section of the industry including analysts and their professional bodies, financial service providers, institutional investors, companies, national administrations and professional service providers (accountants, lawyers etc.).
The responses were broadly supportive of the proposals put forward by the Forum Group – themselves a judicious balance of private sector practitioners, independent consultants, regulators and professional bodies.
The Group favours 'a forward-looking and principles-based regime, emphasising transparency and self governance, rather than a rules-based regime'.
It places great emphasis on the role of senior management in ensuring that conflicts of interest between the investment banking and research departments of investment banks are avoided or properly managed and disclosed to investors.
The Commission will be taking into account the comments on these recommendations in its reflections on whether further action at the EU level is necessary. This area is already covered by the Market Abuse Directive (which deals inter alia with the fair presentation of investment recommendations and the disclosure of conflicts of interest) and the soon-to-be-adopted Investment Services Directive (see p.27) (which will introduce regulatory provisions governing the avoidance and management of conflicts of interest in investment firms).

Resümee

Die Forumgruppe Finanzanalysten wurde im November 2000 als eine unabhängige Gruppe gegründet, die b eventuellen Interessenskonflikten beraten und den Finanzanalysten in Investmentbanken Ratschläge zu „best practice" geben könn Ihre Empfehlungen zur Vermeidung und Handhabung von Interessenkonflikten wurden, wie die positiven Reaktionen einer Internet-Konsultation zeigen, gut a genommen.



Forum Group's five core principles

Clarity: research should be fair, clear and not misleading

Competence, conduct and personal integrity: research should be produced by competent analysts with skill, care, diligence and integrity; and it should reflect the opinion of its author(s)

Suitability and market integrity: research should be distributed taking into account the different categories of its intended recipients and the need to maintain market integrity

Conflict avoidance, prevention and management: analysts' firms should have in place systems and controls to identify and avoid, prevent or manage personal and corporate conflicts of interest

Disclosure: conflicts of interest, whether corporate or personal, should be prominently disclosed.

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http://europa.eu.int/comm/internal_market/en/finances/mobil/finanalysts/index_en.htm

Risk Capital Action Plan:

Good progress – but work to do

The Commission's Risk Capital Action Plan – a five-year programme launched in 1998 to support Europe's growing venture capital industry – has made significant progress in developing a more favourable regulatory framework for the industry in Europe.
The Commission's final report on the programme shows progress in removing a number of regulatory impediments, and an industry growing and benefiting from EU support.

Résumé

plan d'action sur le capi-
-investissement – un pro-
mme de cinq ans lancé en
98 pour soutenir l'industrie
opéenne du capital-risque
fait un progrès important
développant un cadre
al favorable à l'industrie
Europe.

rapport final de la Com-
ssion révèle un progrès
ns l'élimination d'entraves
gulatoires, et une industrie
expansion qui bénéficie
soutien de l'EU.

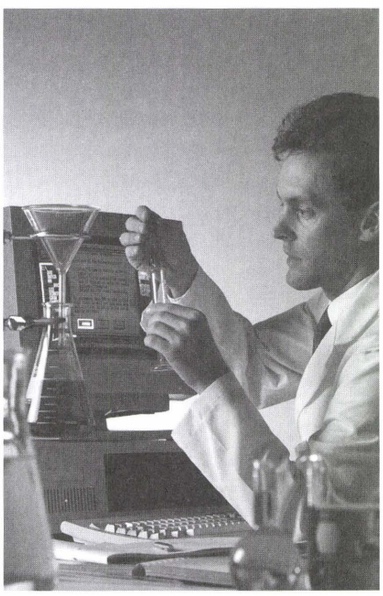
The venture capital/private equity sector represents specialist investors who finance and support the growth of Europe's technology businesses (and other innovative areas), often helping take entrepreneurs from start-up to stock market flotation.

Through the Risk Capital Action Plan (RCAP) the Commission has set out to develop a modern and flexible regulatory framework for both the investors and the entrepreneurs who receive backing and important measures have been adopted or launched as part of the EU's Financial Services Action Plan (FSAP).

In particular:

- the new **Directive on prospectuses** (adopted in July 2003) which will facilitate risk capital exits via initial public offerings of securities, and the listing of new companies on high-growth stock markets;
- the **Directive on supplementary pension funds** which is expected to provide additional funds for the industry;
- the endorsement of **International Accounting Standards** and the proposed **Directive on statutory audit**, which will make financial reporting more transparent and help investors;
- the adoption of the **Commission's Action Plans on company law and corporate governance**.

Following the fallout from the 'dot com' crash of 2000, the industry has managed to rebound and in 2002 invested a total of some € 27 billion in the areas of company buyouts (more than 60% of total investment), in venture capital/ early stage investments (some 35%) and in high tech businesses. Over the past five years (1998-2002) the sector has invested over € 126 billion in Europe's growth companies. European investment, however, still lags significantly behind the levels in the United States.



The venture capital/private equity sector represents specialist investors who finance and support the growth of Europe's technology businesses

A key to long-term success, the industry feels, is a regulatory framework enabling it to raise funds and invest wisely, and a stock market and taxation system enabling it to profitably realise its investments.

Internal Market Commissioner Frits Bolkestein said: "The RCAP has got rid of many obstacles to European risk capital markets. By doing that it has helped new and growing companies create jobs. It has become a benchmark for policy-makers across the EU and has helped strengthen the European risk capital industry."

For further information | Pour plus d'informations | Für weitere Informationen:
http://europa.eu.int/comm/internal_market/en/finances/mobil/risk-capital_en.htm

Resümee

Der Risikokapital-Aktionsplan der Kommission – ein 5-Jahres-Programm, das 1998 verabschiedet wurde, um die europäische Risikokapitalindustrie zu unterstützen – hat erhebliche Fortschritte durch die Schaffung eines günstigeren Regulierungsrahmens für die Industrie in Europa erreicht.

Der Schlussbericht der Kommission berichtet über Fortschritte in der Beseitigung von Verwaltungshindernissen und über eine wachsende Industrie, die von der Unterstützung durch die EU profitiert.

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Framework for electronic commerce now in place

The Internal Market framework for electronic commerce is now in place, concludes the first report on the application of the Electronic Commerce Directive. Adopted in 2000, the Directive has created a legal framework to allow electronic commerce to benefit fully from the Internal Market principle of free movement of services across national borders and provides the necessary legal certainty to business and consumers alike.

For further information
Pour plus d'informations
Für weitere Informationen:
http://europa.eu.int/comm/internal_market/en/ecommerce/index.htm

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The new legal framework (Directive 2000/31/EC) has also led to the modernisation of existing national legislation, for example in contract law, to ensure the full validity of on-line transactions. Given the limited practical experience of the application of the Directive, the Commission has concluded that a revision of the Directive would be premature at this stage. Instead, the Commission will now focus its efforts on ensuring that the legal framework is correctly applied and on collecting feedback and practical experience from business and consumers.
To do this, the Commission has prepared an Action Plan which will include continuous monitoring of the correct application of the Directive both in the current Member States and in the Accession States. Other action planned will include improving administrative cooperation between Member States, raising information and awareness amongst business and citizens, monitoring policy developments and strengthening international cooperation and regulatory dialogue.
The Directive has now been implemented in 13 Member States. In France and the Netherlands work is still under way. Five of the ten future Member States have already written the Directive into national law.

EC ratification of the Convention on regulatory transparency for IS services

The Council of Ministers has decided to adhere to the Council of Europe's Convention 180 on information and legal cooperation in the area of "Information Society services". This Convention, which is inspired by the Notifications Directive 1998/34 for on-line services, introduces for the first time at international level a mechanism of prior information of draft national regulations concerning these services and of legal and administrative cooperation in this area. Not only the 45 Member States of the Council of Europe but also other major partners such as the US,, Canada, Japan and Mexico can adhere to this instrument.

Le principe de 'reconnaissance mutuelle' éclairci pour accroître son efficacité

A moins qu'il ne s'agisse de protéger le consommateur, l'environnement ou un autre intérêt public, un État membre est tenu d'autoriser la commercialisation d'un produit non harmonisé qui est légalement commercialisé ou manufacturé dans un autre pays de l'UE. Telle est la conclusion d'une "communication" préparée par la Commission européenne face à l'évidence manifeste que le fonctionnement du principe de la "reconnaissance mutuelle" pourrait être amélioré dans les États membres.

Pour plus d'informations
For further information
Für weitere Informationen:
http://europa.eu.int/comm/internal_market/en/goods/mutrec.htm

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En publiant cette communication clarifiant le principe de "reconnaissance mutuelle", la Commission souhaite aider les entreprises et administrations nationales à faire meilleur usage de ce principe.
La communication précise bien qu'un État membre doit disposer des preuves techniques ou scientifiques que le produit constitue un risque pour la santé humaine, la sécurité, l'environnement ou d'autres raisons impératives d'intérêt général pour en interdire la vente. La communication précise d'autre part la "charge de la preuve" et stipule quand et comment le libre mouvement des marchandises peut être restreint. Elle a été publiée au Journal officiel C265 du 4 novembre 2003.
La libre circulation des marchandises est un des principes clés du marché unique, et la façon dont les règles nationales sont appliquées doit tenir compte du principe de libre circulation des marchandises inscrit aux articles 28 et 30 du traité CE.

Consultation en ligne

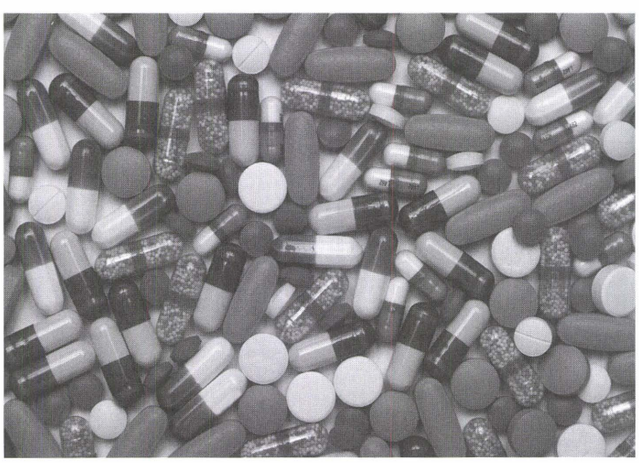
Dans cet ordre d'idées, la Commission européenne a également lancé une consultation internet permettant aux États membres, aux entreprises et organisations de consommateurs de s'exprimer sur les options possibles en matière d'amélioration de la "reconnaissance mutuelle" des produits. Pour permettre à ces parties prenantes de répondre aussi rapidement et facilement que possible, la Commission utilise son outil de consultation décisionnelle interactif basé sur la toile pour recueillir et analyser les réactions. La consultation est ouverte jusqu'au 30 avril 2004 sur le site internet de la Commission "Votre point de vue sur l'Europe": http://europa.eu.int/yourvoice/consultations

Commission clarifies EU rules for parallel imports

Résumé

Commission européenne a
ifié l'application du prin-
e de libre circulation des
rchandises dans l'EU aux
ortations parallèles de
duits pharmaceutiques,
e à une série de contesta-
ns et de procès devant la
ur de justice
importations sont autori-
s si le produit est iden-
ue où «suffisamment sem-
ble» à un médicament déjà
orisé à la vente dans l'État
mbre de destination.

The European Commission has clarified how the principle of free movement of goods within the EU applies to parallel imports of medicinal products, following a number of disputes and cases at the European Court of Justice. Parallel imports are products imported into one Member State from another, outside the manufacturer's or its licensed distributor's formal channels. There is an incentive for parallel imports of medicinal products because prices differ greatly between Member States. Such imports are allowed if the product imported is identical or "sufficiently similar" to one already authorised for sale in the Member State of destination.



The basic aim of the Commission's Communication is to clarify the application of the principle of the free movement of goods (art. 28 to 30 of the EC Treaty) to the market of proprietary medicinal products.

In effect, parallel importing of a medicinal product is a lawful form of trade within the Internal Market under EC Treaty rules on the free movement of goods, subject to the exceptions regarding the protection of human health and life and the protection of industrial and commercial property.

In particular the Commission has confirmed that Member State authorities should grant licences to market parallel-imported medicinal products on the basis of a procedure which is simpler compared to that applied to new medicines being marketed in the EU for the first time - provided the information necessary for the purpose of protecting public health is already available to them.

This is the case when the product in question is already authorised for sale in the Member State from which it is to be exported and is sufficiently similar to a product (known as the "reference product") authorised in the Member State of destination.

'Sufficiently similar'

In fact the two products do not have to be identical in all respects but they should have at least been manufactured according to the same formulation, using the same active ingredient, and also have the same therapeutic effects.

> ***"Our ultimate aim is to ensure that patients and healthcare providers can benefit from parallel imports, without taking any risks with patient safety."***

Furthermore the parallel importer may repackage a proprietary medicinal product and reaffix the trade mark or indeed replace it with the trademark used in the market of destination, provided that repackaging does not adversely affect the original condition of the product or the reputation of the trade mark and its owner.

The divergence in prices is due, in some cases, to Member States' intervention in the pharmaceuticals market to safeguard the viability of their respective public health services. The Court has confirmed that this is permitted in order to protect these legitimate interests.

Internal Market Commissioner Frits Bolkestein said: "Our ultimate aim is to ensure that patients and healthcare providers can benefit from parallel imports, without taking any risks with patient safety."

Resümee

Die Europäische Kommission hat in Folge mehrerer Kontroversen und Verfahren vor dem Gerichtshof klar gestellt, wie der Grundsatz des freien Warenverkehrs in der EU in der Praxis auf Paralleleinfuhren von Arzneimitteln anzuwenden ist.

Diese Importe sind erlaubt, wenn das eingeführte Produkt mit einem im betreffenden Mitgliedstaat bereits zugelassenen Arzneimittel identisch oder im Wesentlichen identisch ist.

For further information | Pour plus d'informations | Für weitere Informationen:
http://europa.eu.int/comm/internal_market/goods/medicines_en.htm

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Single European Patent Court proposed to rule on Community Patent

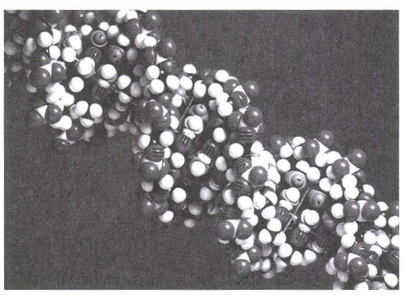
Résumé

Proposition d'institution d'un tribunal du brevet communautaire unique chargé de régler les litiges en matière de brevet communautaire

La Commission a proposé l'institution d'une juridiction compétente en matière de brevet communautaire, placée sous l'égide de la Cour de justice des Communautés européennes et chargée de régler les litiges concernant le futur système de brevet communautaire, notamment en matière d'infraction et de validité.
Les entreprises européennes réclament depuis trop longtemps l'accès à une protection paneuropéenne par les brevets à un coût raisonnable, avec un minimum de formalités administratives et un maximum de sécurité juridique.
Les arrêts rendus par la Cour en matière de droits du brevet communautaire produiraient ainsi leurs effets dans toute l'UE, ce qui permettrait d'éviter les frais, les inconvénients et la confusion qui peuvent apparaître lorsque différentes juridictions nationales sont appelées à statuer.

Whilst the Council continues its deliberations on the Community Patent, proposals have been drawn up by the Commission for a Community Patent Court, under the aegis of the European Court of Justice, to allow the resolution of disputes within the future Community Patent system, in particular those about infringements and the validity of Community Patents.

Europe's companies have been crying out for too long for access to pan-European patent protection at reasonable cost with minimum red-tape and maximum legal certainty.
Member State Ministers failed to reach agreement at the Competitiveness Council on 11 March due to a number of issues related to the translation regime. Despite this setback, the Commission continues to hope that a solution can be achieved allowing the Community Patent Regulation to be adopted. Meanwhile, work on the jurisdiction proposals continues.
Under the proposals, the jurisdiction of the Court of Justice would be exercised by a new Community Patent Court. The new system would mean that judgements over Community Patent rights would be effective throughout the EU, avoiding the expense, inconvenience and confusion that can occur when judgements in several different national courts are required.
The first proposal presented by the Commission would confer on the Court of Justice formal jurisdiction concerning certain disputes over Community Patents, in particular those concerning alleged infringements of patents and challenges to the validity of patents. The second proposal would establish the Community Patent Court, with seven judges appointed by the Council of Ministers, to exercise the Court of Justice's jurisdiction on its behalf.
It also sets up a specialised chamber within the Court of First Instance to hear appeals against the Community Patent Court's judgements. In exceptional cases, a decision of the Court of First Instance could be subject to review by the Court of Justice.



Current system expensive and slow

Under the current system, disputes on national patents or on European Patents granted by the European Patent Office with effect for individual Member States, are decided by the courts of the respective Member States. This means that stopping infringement of a patent or contesting the validity of a patent may require bringing actions in a number of Member States, with all the difficulties and expense this entails. It is also possible that courts in different Member States may interpret patent law differently and reach incompatible verdicts.
To provide a less wasteful and costly system, the Community Patent Court would operate according to a single set of procedural rules, with a uniform case law and with costs affordable for users and in particular for SMEs. Thus, the jurisdiction regime proposed would ensure that disputes over Community Patent rights were judged with EU-wide effect by a single centralised and specialised court. This would provide legal certainty for the protection of inventions throughout the Union.
The creation of the Community Patent system, aims to make it cheaper and easier to protect new inventions in all EU Member States, with a single procedure. It will thus remove a competitive handicap suffered by Europe's innovators and stimulate investment in research and development.
Internal Market Commissioner Frits Bolkestein said: "To maximise the benefits of the Community Patent, we need a single Community Patent Court, under the ultimate jurisdiction of the European Court of Justice, so that disputes are judged with EU-wide effect."

Resümee

Kommission schlägt zentrales Gemeinschafts patentgericht vor

Die Kommission hat Vorschläge zur Einrichtung ei Gemeinschaftspatentgerich beim Gerichtshof der Euro ischen Gemeinschaften vo gelegt, das für Streitsache zuständig sein soll, die das künftige Gemeinschafts- patentsystem betreffen, ins besondere für Verfahren, i denen es um die Verletzun oder die Gültigkeit eines Gemeinschaftspatents geht Die europäischen Unterneh men fordern schon seit lan gem mit Nachdruck einen erschwinglichen europawei Patentschutz mit möglichs wenig Bürokratie und mög lichst viel Rechtssicherheit. Durch dieses System erhiel Urteile vom Gerichtshof im Zusammenhang mit Gemei schaftspatentrechten EU-w te Wirkung; damit ließen s die Kosten, die Unannehm- lichkeiten und die Rechtsu sicherheiten vermeiden, die auftreten können, wenn m rere einzelstaatliche Gerich über die selbe Erfindung a der Grundlage nationaler Rechtstitel urteilen müssen

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"The proposed Community Patent Court would allow the resolution of disputes within the future Community Patent system, in particular those about infringements and the validity of Community Patents."

IP enforcement Directive close to formal adoption

The European Commission has welcomed the European Parliament's favourable vote on 9 March 2004 on the Directive on the enforcement of intellectual property rights. The vote in Parliament follows the political agreement reached in the committee of Member State representatives (Coreper) on 16 February 2004.

The Directive sets out to harmonise national measures and procedures on the enforcement (sanctions and remedies) of copyright and related rights and industrial property rights such as trademarks, designs or patents. The Directive, proposed by the Commission in January 2003 (see SMN May 2003, p. 24), aims to create a level playing field in the EU for all players, including right holders, reinforcing measures against offenders and thus acting as a deterrent to those engaged in counterfeiting and piracy.

The Directive, based on 'best practice' found in at least one Member State's laws, brings national legislation on sanctions and remedies closer into line across the EU and signals to Member States certain measures (such as the publication of judicial decisions and the development of professional codes of conduct) that will contribute to the fight against counterfeiting and piracy.

The text will only become official after formal adoption by the Council, probably in April.

For further information
Pour plus d'informations
Für weitere Informationen:
http://europa.eu.int/comm/internal_market/en/indprop/piracy/index.htm

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'Great citizen concern, but ignorance of rights'

Résumé

L'enquête sur la protection des données montre que les citoyens sont très préoccupés par cette question, mais ignorent leurs droits

Les citoyens et les entreprises qui font usage de données à caractère personnel attachent une grande importance aux questions relatives à la protection de la vie privée, mais n'ont qu'une connaissance limitée de la situation juridique. Tel est le résultat de deux enquêtes «Eurobaromètre» sur la protection des données menées récemment dans l'ensemble de l'UE.
Si des progrès considérables ont été réalisés dans l'application juridique de la directive communautaire de 1995 sur la protection des données, beaucoup reste à faire pour informer l'opinion publique.
Une enquête auprès du grand public a montré que la plupart des Européens ignorent non seulement les droits qui sont les leurs en vertu des législations communautaire et nationale sur la protection de la vie privée, mais aussi l'existence des autorités nationales chargées de la protection des données.

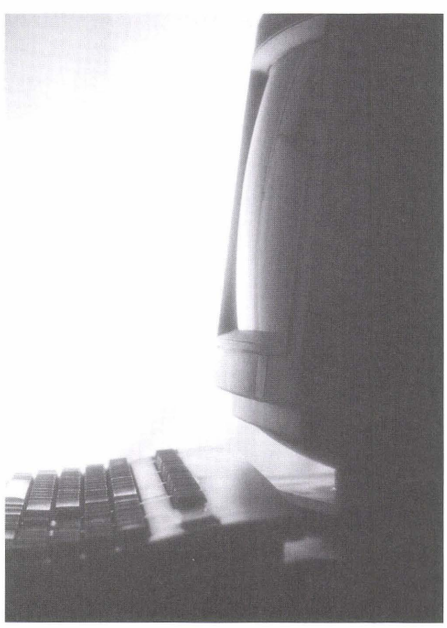
Individual citizens and companies who make use of personal data attach great importance to privacy issues, but only have limited knowledge of the legal position. This has emerged from two recent EU-wide Eurobarometer surveys on data protection.
While considerable progress has been made in the legal implementation of the EU's 1995 Data Protection Directive, public awareness is lagging a long way behind.

A survey of the views of the general public shows that most Europeans are aware neither of their rights under EU and national privacy legislation nor of the existence of national data protection authorities.
A second survey of companies which hold or make use of personal data shows that 91% of these "data controllers" fully recognise the need for privacy laws, though many are not fully aware of what the law is or what their obligations are under it. As a result they are not applying it as they should.
Sixty percent of citizens state they are concerned about privacy issues, though only just over a quarter are aware of the existence of national data protection authorities and less than one third are aware of their basic right under EU and national law to have incorrect data removed or adjusted. Less than half know about their legal rights to information on who is collecting data and why, or about their right to object to the use of personal information for direct marketing.

91% of people interviewed agreed that they should be informed by organisations who gather their personal data, particularly if they are sharing it with other organisations. Whether citizens feel they have a high level of protection under the law varies. Only 31% in Portugal and 33% in Greece and Spain feel well protected, but 76% do in Finland. The EU average is 46%.

Unchanged lack of awareness

The findings echo a review of the implementation of the EU Data Protection Directive (95/46/EC) undertaken by the Commission in 2002. This report expressed concern about the apparently insufficient level of citizens' awareness about data protection, as well as a low level of compliance with the law by the operators.
The Commission continues to closely monitor the implementation of the Directive and is working on various actions to improve citizen awareness of data protection issues. In 2002 it published a 'Citizens Guide' to data protection (see box below).



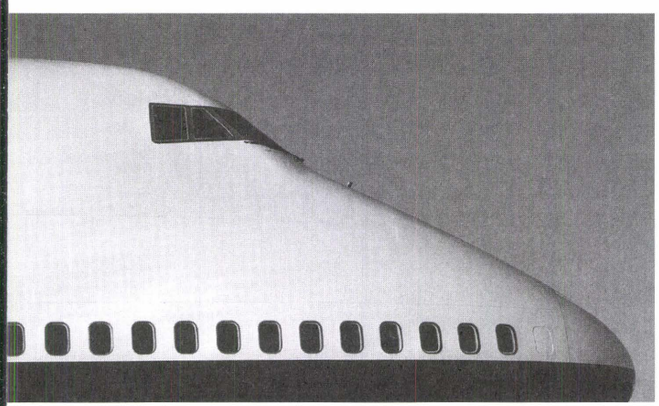
What data protection rights do citizens enjoy

The Commission has drawn up a 15 page guide to citizens' rights regarding data protection. The document explains the European Data Protection Directive, the rules which data controllers must adhere to, rights of 'data subjects', data transfers to non-EU countries, and what you can do if your rights are violated.

Further information on data protection and the guide is available at:
http://europa.eu.int/comm/internal_market/privacy/index_en.htm

Airline 'PNR' data

In the aftermath of the events of 11 September 2001, the US Congress adopted measures requiring airlines flying into their territory to transfer to the US administration personal data relating to passengers and crew members flying to or from this country. The obligation on airlines to transfer this data – Passenger Name Record (PNR) – is in a number of respects difficult to reconcile with the provisions of the EU's Data Protection Directive.



To match the needs of security and privacy, the Commission has negotiated with the US authorities a limit to the amount of data which can be transferred (maximum 34 elements) and a time limit for holding data (three years and six months).

The US has also agreed to restrictions on what data may be shared on a limited case by case basis with other authorities.

The Commission's objective has been to provide a secure legal framework for airlines that are required to transfer their passenger data to the US customs authorities (CBP) and enhance privacy protection. In announcing the outcome of negotiations in December 2003 (COM(2003)826) and improvements in the way the US will safeguard passengers' privacy, the Commission concluded that the CBP provided the required "adequate protection". It then launched the procedures for the adoption of a Decision under Article 25.6 of the Data Protection Directive and the conclusion of a complementary international agreement.

On 29 January, the Working Party of Data Protection supervisory authorities which advises the Commission adopted a non-binding opinion **disagreeing** with the Commission's position that the US provides adequate protection.

On 27 February, the Member States, meeting in the so-called Article 31 Committee, **supported** the Commission's proposed Decision by a majority of 13 to 2. The Decision must now rest for a month before the European Parliament before the Commission can adopt it. The Parliament is expected to vote on the proposed adequacy finding at its end March plenary session and on the international agreement in April.

Resümee

Umfrage zum Datenschutz zeigt große Besorgnis der Bürger, aber auch Unkenntnis der Rechte

Sowohl der einzelne Bürger als auch Unternehmen, die personenbezogene Daten verwenden, messen Datenschutzfragen große Bedeutung bei, sind aber nicht sehr gut über ihre rechtliche Position informiert. Das haben zwei kürzlich durchgeführte EU-weite Eurobarometer-Umfragen zum Thema Datenschutz zu Tage gebracht.

Während bei der Umsetzung der EU-Datenschutzrichtlinie aus dem Jahr 1995 in innerstaatliches Recht der Mitgliedstaaten große Fortschritte erzielt wurden, lässt der allgemeine Kenntnisstand über dieses Thema noch sehr zu wünschen übrig.

Eine Umfrage in der Bevölkerung hat ergeben, dass die meisten Europäer sich weder ihrer Rechte nach den Datenschutzvorschriften der EU bzw. ihres Landes bewusst sind, noch von der Existenz einer nationalen Datenschutzbehörde wissen.

"Adequate protection" of data in third countries:

Argentina and Guernsey approved

In July 2003, the European Commission officially recognised that Argentina provides an adequate level of protection of personal data. This decision allows personal data to flow freely from the EU to Argentina, without additional safeguards being needed to meet the requirements of the EU Data Protection Directive. The Commission's decision was taken in the light of advice from Member States' supervisory authorities.

In Argentina personal data is protected under a system combining different elements, including constitutional recognition of the "habeas data" right (a constitutional data protection right granted in several Latin American countries), legal norms regulating this right, and the broad interpretation and application of these norms by the Argentine courts.

The Argentine legal framework covers all the basic data protection principles and its enforcement mechanisms meet the standard required of countries that the EU recognises as providing adequate protection.

In November 2003, the Commission decided positively on the adequacy of the protection of personal data in Guernsey. The legal provisions in Guernsey are generally well aligned to the Data Protection Act in the United Kingdom.

Similar decisions have been adopted concerning the data protection regimes in Switzerland and Hungary, the "safe harbor" arrangement in the United States and the Canadian Personal Information Protection and Electronic Documents Act.

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Internal Market reforms pay off

New Directives promise further savings

Résumé

La réforme des marchés publics dans le marché intérieur a porté ses fruits et des économies supplémentaires sont possibles grâce à de nouvelles Directives

D'après une étude récente de la Commission européenne, les Directives communautaires en matière de marchés publics ont, au cours des dix dernières années, fortement accru la concurrence et la transparence transfrontalières, réduisant d'environ 30 % le prix payé par les pouvoirs publics pour les biens et services. Dans un secteur dont la valeur s'élève à plus de 1 500 milliards d'euros (soit 16 % du PIB total de l'UE), cela représente des économies considérables pour les contribuables. Un nouvel ensemble de mesures législatives visant à améliorer et moderniser encore le processus de marchés publics a été adopté en janvier; il permettra de nouvelles économies de deniers publics.

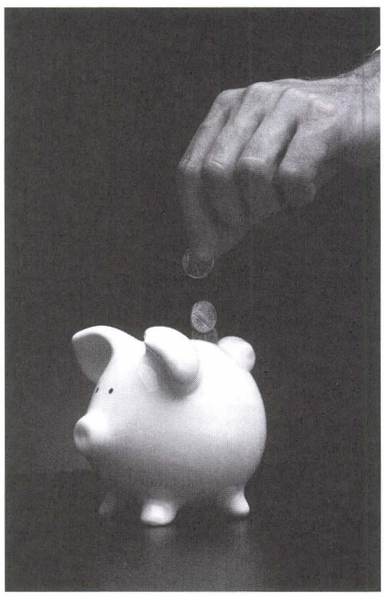
EU public procurement Directives have over the past ten years greatly increased cross-border competition and transparency in procurement markets and reduced by around 30% the prices paid by public authorities for goods and services, according to a recent European Commission study. In a market worth over € 1,500 billion – some 16% of total EU GDP – this represents an enormous saving to the taxpayer. A new legislative package to further enhance and modernise the public procurement process was adopted in January, offering great potential for further savings to the public purse.

The new public procurement legislative package was approved by the European Parliament and the Council of Ministers in January. The measures, which are based on extensive consultations with contracting authorities and businesses, set out to simplify and clarify the existing Directives, and to adapt them to modern administrative needs, for example by facilitating electronic procurement and, for complex contracts, by introducing more scope for dialogue between contracting authorities and tenderers in determining contract conditions.

"The package brings in simplifications and changes that those at the sharp end – contracting authorities and bidders – have asked for. Taxpayers will win twice: electronic procurement and simpler procedures will bring administrative costs down, and more cross-border competition for contracts will cut prices."

- Frits Bolkestein.

To enhance transparency in the award process and to combat corruption and organised crime, the legislative package also includes measures designed to bring greater clarity to the selection of tenderers thus avoiding 'favouritism'. The rapid implementation of the measures should iron out many remaining difficulties identified by contractors and contracting authorities and further boost cross-border competition.



This package[1] consists of two Directives: one regulating the award of works, supplies and services contracts by public sector bodies, the other covering the award of contracts by entities – public or private – operating in the water, energy, transport and postal services sectors.

The Directive will help ensure that contracts are awarded in complete conformity with the standards and principles governing this area and that bodies involved (whether they are purchasers or suppliers) are in a better position to know their rights. In addition, the package makes procedures more flexible in order to meet the needs of purchasers.

Finally, in keeping with the overall objective of simplification, the new Directives clarify the ways in which social and environmental considerations may be taken into account during the various stages of a procurement process.

[1] COM(2000) 115 and COM(2000)117.

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Resümee

Reform des öffentlichen Beschaffungswesens zahl sich aus, und neue Richt linien stellen weitere Einsparungen in Aussic

Die EU-Vergaberichtlinien haben in den letzten zehn Jahren den grenzüberschr tenden Wettbewerb und d Transparenz auf den Besch fungsmärkten deutlich erh und die Preise, die öffentli Auftraggeber für Waren u Dienstleistungen zu zahle haben, um etwa 30% ge- senkt; dies geht aus einer kürzlich vorgelegten Studi der Europäischen Kommis sion hervor. Angesichts ei Marktvolumens von über € 1 500 Mrd., das sind 16 des gesamten BIP der EU, bedeutet dies enorme Eins rungen für den Steuerzahl Im Januar wurde ein neue Legislativpaket angenomm durch das die öffentlichen Ausschreibungsverfahren noch effizienter gestaltet u modernisiert werden solle und das ein großes zusätz- liches Einsparpotenzial für die öffentliche Hand schaf

Parliament approval brings simplified system closer

The proposed Directive to clarify and simplify the rules on the free movement of qualified people between the Member States received the approval of the European Parliament in February.

The new measures aim to cut red tape by replacing fifteen existing Directives in the field of the recognition of professional qualifications and constitute the first comprehensive modernisation of the EU system since it was conceived over forty years ago.

A number of changes are proposed compared with the existing rules. These include greater liberalisation of the provision of services, more automatic recognition of qualifications, increased flexibility in the procedures for updating the Directive and more cooperation between the Commission and Member States in keeping citizens better informed about their rights. They also aim to give them more help in getting their qualifications recognised.

When implemented, the Directive will ensure that job-seekers and employers get the swifter and simpler system they need for people to get their qualifications from one EU Member State recognised in the others. Enhancing the freedom of movement of qualified persons will mean more opportunities for those people themselves, more choice for those who use their services and wider dissemination of good professional practice.

The proposals, which were presented by the Commission in March 2002, now go to the Council of Ministers ("co-decision procedure") for review and approval.

For further information | Pour plus d'informations |
Für weitere Informationen:
http://europa.eu.int/comm/internal_market/qualifications/index_en.htm

Infringement proceedings

Non-implementation of EU law

Insurance law and consumer protection

Seven EU countries have been referred to the European Court of Justice (ECJ) for not implementing Directive 2001/17/EC which guarantees consumer protection when insurance companies are wound up. The deadline was 20th April 2003. The countries affected are: Belgium, France, Luxembourg, the Netherlands, Finland, Sweden and the UK.

Lawyers – right of establishment

The Commission has decided to refer France, Ireland and Spain to the ECJ for failure to implement Directive 98/5/EC which aims to entitle lawyers to practice in another Member State on the same basis as the host country's own lawyers.

Subscription TV and Radio

Belgium, Greece Luxembourg and Spain are being referred to the ECJ for non-implementation of Directive 98/84 on the legal protection of conditional access services – television, radio and on-line services – offered to the public at a distance and subject to payment. The implementation deadline was 28 May 2000.

Copyright – public lending of works

Belgium is being sent a 'reasoned opinion' regarding the non-implementation of Directive 92/100/CEE on rental right and lending right and on certain rights related to copyright. This Directive should have been applied as from 1994 and Belgium has still not adopted the implementing decrees on public lending rights.

Money laundering: complaint against six countries

Six EU countries have failed to implement the Second Anti-Money Laundering Directive (97/2001/EC) and are being sent a 'reasoned opinion' by the European Commission. The countries concerned are: Italy, Portugal, Greece, Sweden, Luxembourg and France. None of these Member States has yet notified the Commission of their measures to write the Directive into national law.

Financial Reporting

Financial reporting by sports clubs questioned

The Commission has asked Italy for information about a recent national law on financial reporting ('Salva calcio' decree) by professional sports clubs (including Serie A football clubs) in Italy. The Commission is concerned that the legislation may breach EU laws on accounting and grant financial advantages over other clubs in Europe.

Free movement of goods

One-way packaging levy (Dosenpfand): a barrier to imports

The European Commission has sent Germany a formal request for information concerning the functioning of its deposit and return systems on certain kinds of 'one-way' (recyclable but non-reusable) beverage packaging such as cans and plastic bottles. The Commission is concerned that the way in which the systems function may constitute a disproportionate barrier to the free movement of packaged beverages from other Member States.

Foodstuffs authorisation: French procedure opposed

Following complaints to the Commission by traders, the ECJ has ruled against the French procedure for prior authorisation for the marketing of foodstuffs for human consumption enriched with nutrients, manufactured and marketed in the Member States.

Parallel imports of pesticides: regulations incompatible

The Commission is to ask the ECJ to rule that German regulations on plant health products are incompatible with the Treaty. When the marketing authorisation (MA) for a plant health reference product is withdrawn, Germany does not grant parallel importers an appropriate transitional period in which to liquidate their stocks.

Stuffed animals: Dutch export restriction unjustified

The Dutch authorities have been informed that the Commission considers that the country's ban on exports of certain types of stuffed animal to other Member States is an obstacle to the free movement of goods.

Hospital medicines: German restrictions under scrutiny

The Commission has decided to ask Germany to modify its legislation on supplying hospitals with medicines. Hospitals are required to obtain supplies from pharmacies which are located in the same or a neighbouring district. The Commission finds that this legislation is disproportionate and exceeds what is necessary to protect human health.

Parallel imports of medicines: Belgian obstacles

Belgian legislation lays down that authorisation for parallel importing of a medicine is automatically rescinded when the marketing authorisation for a similar medicine on the Belgian market (reference product) is withdrawn or, at the holder's request, is not renewed. This automatic withdrawal forces parallel importers to submit a new file, and to bear additional costs. The Commission considers that this requirement is a disproportionate obstacle to the free movement of goods and has sent a 'reasoned opinion' to Belgium.

Private import of alcoholic beverages: Sweden out of line

The Commission has sent a 'reasoned opinion' to Sweden concerning a ban on individuals bringing alcoholic beverages, through an independent intermediary, from other Member States into Sweden. If consumers in Sweden cannot themselves physically transport the product into the country, their only option is to request Systembolaget, the national alcohol retail monopoly, to bring it in on their behalf. The Commission's view is that protecting human health from the effects of excessive alcohol consumption could be achieved by other means than restrict trade between the Member States less.

Austrian 'quality label' could be restrictive

In Austria, a quality label "AUSTRIA-Gütezeichen" is granted for Austrian products. Products from elsewhere can also receive quality labels, but these take a different form. The Commission has sent Austria a 'reasoned opinion' stating that the form of quality labels must not depend on the origin of products. The Commission considers that this arrangement could make it more difficult for products from the other Member States to be sold on the Austrian market.

Public procurement

French public procurement law: competition needed in certain areas.
The European Commission has decided to take France to the ECJ for non-compliance of some provisions of its procurement code with the Directives on public contracts and the EC Treaty. Certain services such as loans contracts and legal services are concerned. In addition, the Commission has sent a reasoned opinion to France against its town planning legislation which allows local development agreements to be concluded without being advertised and without competition.

Unsuccessful tenderers: effective review needed
The European Commission has decided to formally request that Belgium, Ireland and UK introduce public procurement procedures permitting a decision awarding a public procurement contract to be suspended and annulled at a stage where the infringement can still be rectified. The 'reasoned opinions' have been issued owing to the failure of these Member States to comply with the obligations of the remedies Directives applicable in the public procurement area.

Free movement of services

Energy production concessions: restrictive
The Commission has decided to send Italy a reasoned opinion on grounds of the incompatibility of its legislation on granting hydroelectric concessions with the principle of freedom of establishment. Its procedures for granting concessions give preference to outgoing concession-holders and, in the Trentino-Alto Adige Region, to local public bodies.

Infringement procedures

If the Commission obtains or receives from a complainant convincing evidence that an infringement of EU law is taking place, it first sends the Member States concerned a letter of formal notice.
If the Member State does not reply with information allowing the case to be closed, the Commission sends a reasoned opinion, the second step of the infringement proceedings under Article 226 of the EC Treaty. If there is no satisfactory response within two months, the Commission may then decide to refer the case to the European Court of Justice in Luxembourg.

Professional qualification

Tourist guides: non-recognition of qualifications
The European Commission has decided to take action before the ECJ to put an end to the major administrative difficulties that tourist guides with professional qualifications obtained in another Member State are likely to encounter in France as a result of France's failure to apply correctly two European Directives on the recognition of professional qualifications.

More detailed information on the items mentioned and on other Internal Market cases can be found at:
http://www.europa.eu.int/comm/internal_market/en/update/infr/index.htm

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