Single Market News

N° 36

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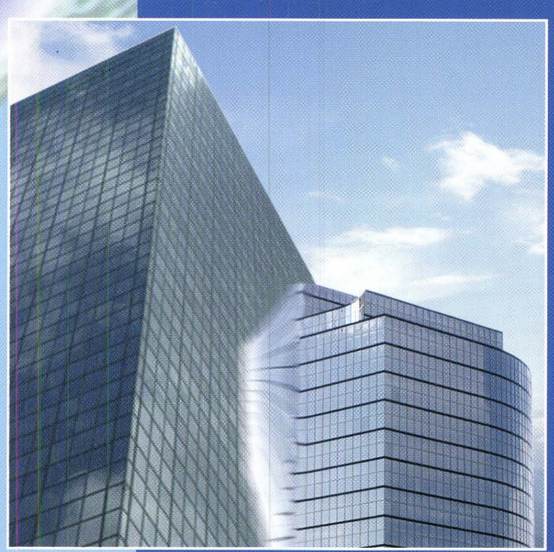
The Newsletter of the Internal Market DG



SPECIAL FEATURE

Commission européenne
European Commission
Europäische Kommission

FEBRUARY
2005
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Single Market news

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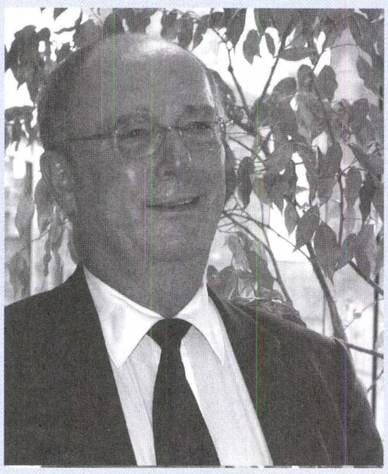
EDITORIAL



by Alexander Schaub

● A new year, a new Commission team and a new focus on the strategy for managing the work ahead to improve EU economic competitiveness across the board. President José Manuel Barroso and Commissioner for Internal Market and Services Charlie McCreevy have thrown the spotlight on the key priorities for action. Growth and jobs are now centre stage in the Commission's work programme. They are seen as the essential foundation for maintaining and promoting our social and environmental objectives. As the Commission President also made clear, the key instrument for releasing the full potential of Europe's economy is the further development of the internal market. We have a big challenge ahead and we are looking forward to it!

● The first proposed legislation from the Commission's 2003 Company Law and Corporate Governance Action Plan has received political agreement from the Council and I hope that the European Parliament will also endorse it. The Directive on Cross-border Mergers occupies a significant niche in EU company law. For young, growing companies wishing to develop their operations in neighbouring countries, the ability to undertake a merger as easily as with a domestic company could be a valuable tool in their expansion armoury. (See Special Feature, page 15).

● Our new Commissioner for Internal Market and Services has made clear how he sees the future direction of internal market policy. A lot has been achieved on the legislative front over the past decade and Mr McCreevy will be putting a lot of emphasis on implementing that body of law. There is a lot of frustration among businesses and citizens that measures which are right, essential and urgent are still stuck in the 'pending tray' at national level. Our annual 'scoreboard' on Member States' record in implementing EU law contains quite a lot of good news – some countries have significantly improved their performance and some of the new Member States have done well (see page 30). As Mr McCreevy has pointed out, when the political will is there Member States are able to make dramatic progress. But there are still too many internal market laws which are not being written into national law on time or which are being broken once they have been. These are not the 'Brussels diktats' of Eurosceptic myth. They are measures agreed by Member States themselves and aiming to reduce red tape for businesses who want to trade with other EU countries and to improve citizens' access to goods, services and the EU-wide job market. So the Commission is determined to see them applied. Where we can, we will work with Member States to get EU law implemented and provide those who suffer from it being misapplied with an opportunity for quick and effective redress, especially through the SOLVIT network. But where necessary we will go to the European Court of Justice. Of course, some new legislation will also be necessary to keep pace with market developments and to break down some stubborn barriers to trade between EU countries. But we will not be rushing out with new proposals – they will emerge only after rigorous impact assessments.

● Public procurement is often seen as a 'technocratic' area that will not grab headlines in the popular press. Yet it accounts for 16% of the EU's GDP. The Commission wants to project public procurement into the Internet age and a new Action Plan (see page 14) aims to ensure that companies from all over the EU can get onto their PC and put in competitive bids for public contracts in any Member State on the same, fair, basis. This is very important for businesses, who deserve a level playing field and user-friendly online procedures. It is even more important for governments and for the EU's competitiveness: reducing the cost of public procurement by 10% – an entirely plausible objective – would alone be enough to correct the budgetary imbalances of some Member States.

Director General
Internal Market DG

CEE : XIV/1

McCreevy: integrated ca

Résumé

Intégration des marchés de capitaux : une priorité

Lors de son premier discours d'orientation générale en tant que commissaire européen chargé du marché intérieur et des services, Charlie McCreevy a indiqué aux participants à la réunion du comité européen des régulateurs des marchés de valeurs mobilières (CERVM) tenue à Paris, en décembre 2004, que la création d'un marché intégré des capitaux constituait un aspect important des tâches prioritaires de la Commission Barroso, dans la perspective de la réalisation des objectifs fixés par la stratégie de Lisbonne.

In his first keynote speech as EU Commissioner for Internal Market and Service, Charlie McCreevy told an audience of the Committee of European Securities Regulators (CESR) meeting in Paris in December 2004 that creating an integrated capital market would be an important feature of the Barroso Commission's priority tasks – meeting the objectives set out in the Lisbon strategy. The new Commissioner paid tribute to the fact that, under his predecessor, Frits Bolkestein, the Financial Services Action Plan (FSAP) measures had largely been agreed on schedule, noting that it was now essential that they were properly implemented and enforced to obtain the economic benefits of an integrated financial market and ensure a level playing field across Europe.

Towards market integration

Whilst noting that it was too early to draw any firm conclusions on the impact of the FSAP itself, he pointed to clear evidence that European markets are beginning to integrate. This is evident through reduced trading costs, the development of cross-border stock exchanges and post-trading infrastructures etc. He argued that the FSAP was, along with the Lamfalussy process and the euro, acting as "one of the catalysts of this change".

The Commissioner stated that he will aim for "a close partnership with all interested parties" on implementation and will work closely with Member States to avoid the need for infringement procedures.

The Commissioner also highlighted the role of CESR in facilitating convergent implementation and called on the financial services industry to be more proactive in highlighting cases of bad implementation – and anti-competitive practices – to the Commission.

MiFID deadline

Acknowledging industry concerns that the timetable for implementing the Markets in Financial Instruments Directive (MiFID - also known as ISD2), a key FSAP measure, could be too tight, the Commissioner explained that he was examining the arguments for extending the implementation deadline. But "there could be absolutely no suggestion of reopening any substantial issue".

Post FSAP Green Paper

Regarding the Post-FSAP agenda, McCreevy announced that the Commission would publish a Green Paper in Spring 2005. One important aspect of this debate would be the future shape of regulation and supervision of financial markets at European level.

CESR's recent "Himalaya report" was "a timely contribution to this debate", but any convergence of national regulators' rule-making and supervisory powers would need to be "evolutionary rather than revolutionary, building bottom up, not top down", he stressed.

Lamfalussy process

The Commissioner noted that good progress had been made in implementing the Lamfalussy process, with more open and transparent preparation of EU legislation, better involvement of external stakeholders and better political cooperation

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between the Commission, Council and the European Parliament, leading to improvements in both the speed and quality of EU legislation and some regulatory and supervisory convergence. Nevertheless, he suggested some further improvements that could be made, including the further strengthening of democratic accountability, and better focusing of the rules agreed under the Lamfalussy process on the roles and tasks of the respective levels.

Regulatory fatigue

Noting concerns within the financial services sector over 'regulatory fatigue' following the intense period of legislative activity under the FSAP, he considered that letting the FSAP measures 'bed down' would therefore be important: "I do not envisage bringing forward any major co-decision proposals aimed at securities markets during 2005," he stated.

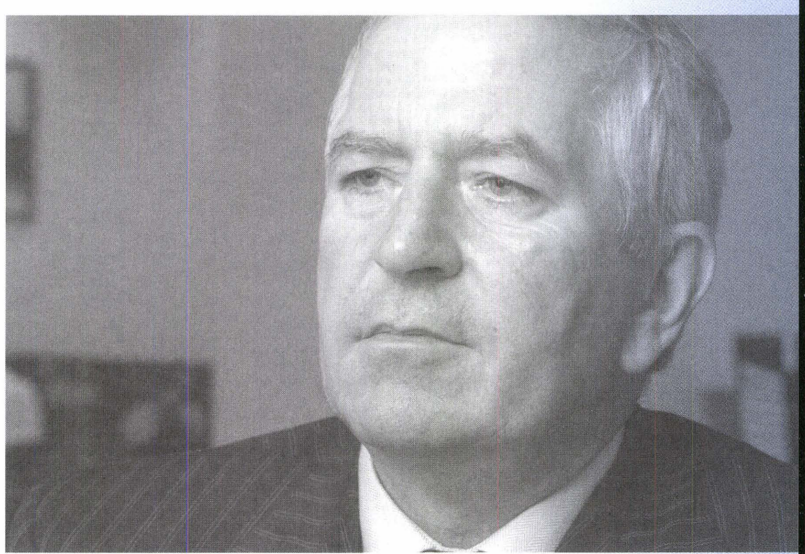
Retail markets

Retail markets, however, are less integrated than wholesale securities markets. Whilst a full-scale FSAP was not on the cards for this area, the Commissioner pointed out that: "if there is convincing economic evidence that targeted legislative action is needed in some areas of the retail market, then I will consult on the options available."

Moreover, the Commissioner saw three priority areas where progress may be needed from 2006 onwards:

- **Clearing and settlement** – "a thorough economic impact assessment…will be a vital element in our decision on whether to propose a Directive and, if so, its content";
- **Asset management** – "the current single market framework for investment funds is in need of considerable improvement…. In the second half of 2005, we will publish the Commission's assessment of priorities… [and] present options for tackling them";
- **Implementation of the MiFID**.

Other current key action areas for capital markets included capital requirements, credit rating agencies (on which the Commission will produce a Communication in the second half of 2005), International Accounting Standards, corporate governance, and the regulatory dialogue with the U.S. and other major financial markets.



Charlie McCreevy, EU Commissioner for the Internal Market & Services: Aiming for a close partnership with all interested parties.

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Resümee

In seiner ersten Grundsatzrede als das für Binnenmarkt und Dienstleistungen zuständige Mitglied der EU-Kommission versicherte Charlie McCreevy dem Publikum des Ausschusses der europäischen Wertpapierregulierungsbehörden ("Committee of European Securities Regulators" /CESR) auf einer Tagung im Dezember 2004 in Paris, dass die Schaffung eines integrierten Kapitalmarktes einer der Hauptpunkte auf der Prioritätenliste der Barroso-Kommission sei, die die Erreichung der Ziele der Lissabon-Strategie zum Gegenstand habe.

Cross-border m

Proposals on the horizon to o

Résumé

Des propositions destinées à donner un coup de fouet à l'intégration du marché des prêts au logement dans l'UE ont été formulées par le groupe de discussion (Forum Group) sur le crédit hypothécaire, mis en place avec le soutien de la Commission. En décembre 2004, la Commission a publié un rapport de ce groupe qui propose une série de mesures, législatives ou non, susceptibles d'ouvrir la voie à un accroissement des activités transfrontalières de crédit hypothécaire. Le rapport est considéré par beaucoup comme un tournant décisif dans le développement de la politique de la Commission en matière de crédit hypothécaire et a suscité des réactions très positives.

Proposals to boost the integration of the EU home loans market have been drawn up by a Commission-created group, the Forum Group on Mortgage Credit. In December 2004, the Commission published a report from the Group which proposes a series of legislative and non-legislative measures which could open the way to greater cross-border mortgage credit activity. The report has received very positive feedback and is seen by many as a landmark in the development of Commission policy on mortgage credit. The Commission will publish its response to the report later in the year.

High priority for 2005

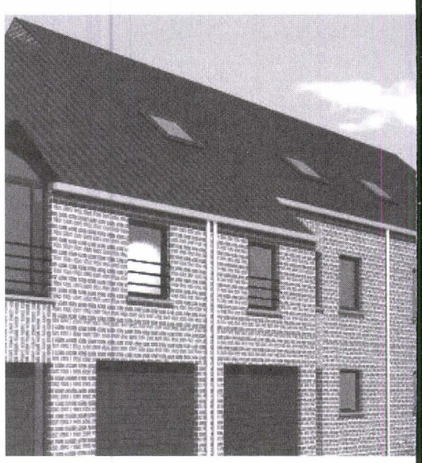
As retail issues move to centre-stage of Internal Market policy, mortgage credit has become a high priority for the Commission in 2005. It merited a mention in the recent Kok Report on the consequences of the enlargement of the EU and will feature prominently in the post-FSAP Green Paper.

Key role of mortgage credit

The EU residential mortgage credit market is substantial and growing. Figures for the end of 2003 show that outstanding residential mortgage balances stood at about 4.26 trillion, which was equivalent to about 44.2% of EU GDP. It is a market that plays a key role in Member States' economies and in the EU economy as a whole. The market is extremely varied, especially since enlargement, and is far from being integrated. Studies show that there is potential for increase in cross-border activity, and that this potential is well worth exploring.

Enhancing choice

Through any future intervention, the Commission would hope to increase integration of this market in a way that enhances choice and value of products for consumers. There is the potential to create a more competitive and attractive market environment for mortgage businesses to operate across borders. In addition to cross-border loan transactions - currently relatively uncommon - greater integration can be achieved and demonstrated through increased activity by mortgage businesses in Member States other than those in which they are based, directly and/or through intermediaries.



Low level of activity

Currently, the level of cross-border mortgage credit activity is very low. A recent Eurobarometer survey concluded that it amounts to less than 1% of all residential mortgage credit activity and is confined mainly to holiday home or border region purchases. Reasons for this include the difficulty of comparing complex products and language barriers. Also cited were differences in national provisions on consumer protection, such as early repayment rules.

No legal instruments

Up until now, Commission intervention has been limited to initiating and sponsoring, by way of recommendation (C(2001) 477), the European Agreement on a voluntary Code of Conduct on Pre-Contractual Information for Home Loans, signed in March 2001. A limited category of secured loans fall within the Commission's proposed Directive on Consumer Credit, an initiative which is currently under review.

Cross-sector input

The Commission set up the Forum Group on Mortgage Credit in March 2003 and the process has brought together industry and consumer representatives from throughout the EU in an unprecedented way. It was given a three-fold mandate:

- to identify the barriers to further integration of the EU mortgage credit market;
- to assess the impact of those barriers on integration;
- to make recommendations to the Commission to tackle those barriers.

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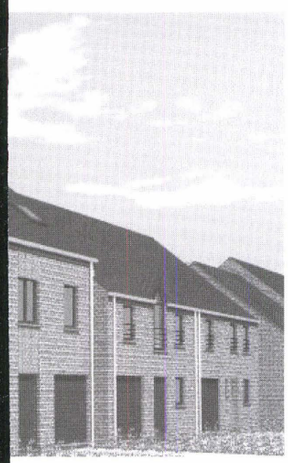

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"Studies show that there is potential for increase in cross-border activity, and that this potential is well worth exploring."

Members of the Forum Group were chosen to reflect the many professional/interest groupings involved in mortgage credit, including the banking sector, consumer representatives, insurers, and civil law notaries. The resulting Forum Group Report, which reflects the views of the Group and not necessarily the Commission's, is a wide-ranging survey of five areas considered by the experts to be key to the further integration of the EU mortgage credit markets:

- consumer confidence
- legal issues
- collateral issues
- distribution issues
- funding

The majority of the 48 Recommendations made are unanimous Forum Group recommendations.

Forum Group recommendations

The Forum Group regards consumer confidence as a pre-requisite for an integrated mortgage credit market, making recommendations on the standardisation of national rules on early repayment fees and calculation of interest rate charges. It considers that confusion about which national law could apply to mortgage credit contracts could discourage both lenders and consumers from entering into cross-border mortgage transactions, with differing views amongst Forum Group members on how this issue could best be resolved.

The Report also asks the Commission to encourage information-sharing between Member States in a number of areas, including credit databases and land registration systems. It reviews the potential for newer distribution channels, such as the Internet, to promote integration and makes recommendations on existing distribution channels, including a recommendation for a unified supervisory system for mortgage brokers based on registration with an authority in their home Member State.

Finally, the Forum Group calls for a deeper and more liquid secondary market for mortgage funding. It recommends equal access to mortgage loan funding mechanisms such as securitisation for lenders in different jurisdictions, with protection of that securitisation in the event of bankruptcy of the lender, and the introduction of rules allowing the cross-border pooling of mortgage collateral.

Follow-up

The Commission is asked to review all the recommendations as a complete package, as action on any single recommendation or cluster of recommendations is considered by the Forum Group to be insufficient to achieve a worthwhile increase in integration. The steps the Commission is asked to take include proposals for legislation as well as proposals for advisory/cooperation measures.

The Commission will continue the process of analysing the recommendations, it will continue the process of consultation begun with the launch of the Forum Group. External input will in particular be sought from Member States, through the newly created Government Expert Group on Mortgage Credit (GEGMC).
At the same time, the Commission has launched an independent study on the costs and benefits of further integration of the EU mortgage credit markets, which will feed into the process of review of the recommendations and policy formulation.

Commission's approach

The Commission's review of the recommendations will result in a Green Paper to be issued in the middle of this year. The Green Paper will put the Commission's response to all 48 recommendations forward for public consultation.

The Commission will intervene in this area if the Internal Market can bring significant added-value to the competitiveness of the EU economy. Potential measures will be subject to a strict 'business case' test and thorough impact assessments, to demonstrate that the future benefits of action outweigh the costs.

Further information at:
http://www.europa.eu.int/comm/internal_market/finservices-retail/home-loans/index_en.htm #mortgage

Resümee

Eine unter Federführung der Kommission eingesetzte Forum-Gruppe "Hypothekarkredit" hat Vorschläge für eine verstärkte Integration des EU-Marktes für wohnwirtschaftliche Kredite ausgearbeitet. Im Dezember 2004 veröffentlichte die Kommission einen Bericht der Gruppe, in dem eine Reihe von Maßnahmen legislativer und nichtlegislativer Art vorgeschlagen werden, die den Weg für eine verstärkte grenzübergreifende Hypothekarkredit-Tätigkeit ebnen könnten. Dieser Bericht wird als Meilenstein in der Entwicklung einer Kommissionspolitik auf dem Gebiet der Hypothekarkredite angesehen und folglich waren die Reaktionen auf diesen Bericht sehr positiv.

Money laundering Directive

Council backs state-of-the art defences against financial crime

Résumé

La proposition de directive visant à renforcer les défenses de l'Union européenne contre le blanchiment de capitaux et le financement du terrorisme a reçu le feu verte du Conseil des Ministres.

Cette proposition actualiserait et améliorerait la Directive anti-blanchiment en vigueur.

En particulier, elle définit le blanchiment de capitaux comme le fait de masquer ou de déguiser les produits d'un large éventail d'infractions graves.

In December 2004, less than six months after adoption by the Commission, the Council has given the green light to the draft Directive on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing - the Third Money Laundering Directive.

The Council's political agreement on the enforcement of the EU defences is a confirmation that the fight against money laundering and terrorist financing more than ever is a political priority for the European Union. The Directive will replace the Directive of 1991, as modified in 2001.

Forefront of international action

Since the first Directive of 1991, the Community has been at the forefront of international efforts to combat the laundering of the proceeds of crime. Massive flows of dirty money can damage the stability and reputation of the financial sector and threaten the single market, while terrorism shakes the very foundations of society.

"This instrument will indeed be an important tool in the fight against financial crime"

The 1991 EU Directive concentrated on combating the laundering of drugs proceeds through the traditional financial sector. It was extended in 2001 to cover the proceeds of a much wider range of criminal activities and a number of non-financial activities and professions, including lawyers, notaries, accountants, estate agents, art dealers, jewellers, auctioneers, and casinos.

The new proposal would ensure that the definition of money laundering includes not only concealing or disguising the proceeds of serious crimes, as defined in the framework of police and judicial cooperation between Member States, but also the financing of terrorism with either criminal or legally acquired money.

State-of-the-art defences

The main purpose of the proposal is to provide the European Union with state-of-the-art defences in this field by giving the force of Community law to the revised 40 Recommendations of the Financial Action Task Force (FATF) on Money Laundering. This instrument will indeed be an important tool in the fight against financial crime, and in particular terrorist financing, which will be addressed for the first time with preventive measures of this kind. Discussions in the Parliament have started.

Anti-terrorist obligations

More specifically, the Directive would extend the anti-money laundering obligations to providers of services to companies and trusts and life insurance intermediaries. It would go beyond the FATF requirements in bringing within its scope all persons dealing in goods or providing services for cash payment of €15,000 or more. The new measures set out much more detailed "know your customer" requirements and, like the FATF Recommendations, would introduce a risk-based approach.

Those subject to the Directive would have to concentrate their efforts on the higher risk situations and should not needlessly duplicate customer identification procedures.

Further information at.: http://www.europa.eu.int/comm/internal_market/company/financial-crime/index_en.htm#moneylaundering

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Resümee

Den Vorschlag der Europäische Kommission zur weiteren Verbesserung der EU Maßnahmen gegen Geldwäsche und Terrorismusfinanzierung wird vom Ministerrat grünes Licht gegeben.

Diese Richtlinie soll die bestehende EU Geldwäscherichtlinie aktualisieren.

Geldwäsche würde demnach definiert als Verheimlichen oder Verschleiern der Erlöse aus schweren Straftaten, deren Spektrum gegenüber der derzeitigen Richtlinie jedoch erweitert wird.

Transparency Directive adopted

Résumé

L'adoption définitive de la Directive sur la transparence

La Commission s'est félicitée de l'adoption définitive de la Directive introduisant des exigences de transparence minimum pour l'information que doivent publier les sociétés cotées en bourse.
Cette directive va améliorer la qualité de l'information dont disposent les investisseurs sur les résultats et la situation financière de la société ainsi que sur les modifications importantes de son actionnariat. Cela devrait contribuer à garantir une meilleure protection aux investisseurs, à renforcer leur confiance et à améliorer le fonctionnement des marchés des capitaux européens.

The Directive on minimum transparency requirements for listed companies 'the Transparency Directive' was finally adopted formally by the Council and the European Parliament on 15 December 20041. The new measures aim to help investors and boost trust in financial markets.

Improving cross-border investment

The Directive will raise the quality of information available to investors on companies' performance and financial position as well as on changes in major shareholdings. It is also expected to improve the European dissemination of information on issuers, removing a barrier to cross-border investment.

Investor information and protection

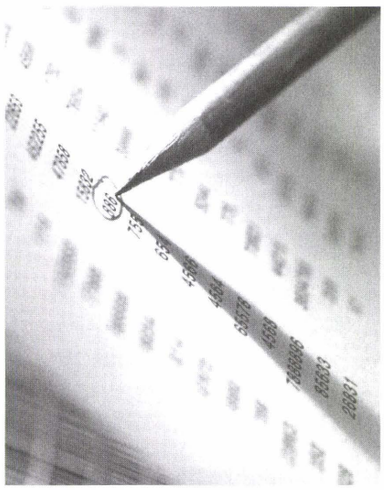
The Directive which was first proposed in March 2003, updates existing EU law on the information provided to shareholders and bondholders for the general meetings, including the use of electronic means. This should contribute to better investor protection, enhanced investor confidence and a better functioning of European capital markets.

Under the Directive, all securities issuers will have to provide annual financial reports within four months after the end of the financial year. Investors in shares will receive more complete half-yearly financial reports.

Those issuers who do not publish quarterly reports will need to provide quarterly management statements. Bond issuers will also be required to publish half-yearly reports.

Financial disclosure regime

The Directive completes a package of Financial Services Action Plan measures adopted over the last two years (notably the IAS Regulation, the Market Abuse Directive, and the Prospectus Directive) to establish a common financial disclosure regime across the EU for issuers of listed securities. It revises and replaces provisions



of Directive 2001/34/EC on the admission of securities to official stock exchange listing.

Member States should implement the Directive within two years of its publication in the EU's Official Journal.

Implementing measures

The Commission will adopt implementing measures on some elements of the directive during this period, following the Lamfalussy procedure.

In this context, the Committee of European Securities Regulators (CESR) was given a mandate by the Commission to provide technical advice on this issue by June 2005.

Internal Market Commissioner Charles McCreevy said "This is another important milestone towards the completion of the Financial Services Action Plan. The Directive is balanced: good for issuers and for investors. It is in companies' own interest to invest in transparency to build loyalty and trust among present and future shareholders.
More frequent, timely and reliable information from issuers will help re-instil confidence in European financial markets ."

Further information at:
http://www.europa.eu.int/comm/internal_market/securities/index_en.htm
CESR http:/www.cesr-eu.org/

Resümee

Endgültige Verabschiedung der Transparenz-Richtlinie

Die Kommission hat die Verabschiedung der Richtlinie über Mindesttransparenzanforderungen für börsennotierte Gesellschaften begrüßt. Die Richtlinie wird die Unterrichtung der Anleger über die Ergebnisse und die Finanzlage dieser Gesellschaften sowie über Änderungen größerer Beteiligungen verbessern. Dies dürfte den Anlegerschutz erhöhen, das Vertrauen der Anleger stärken und zu einem reibungsloseren Funktionieren der europäischen Kapitalmärkte beitragen.

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OPCVM

Le CERVM est appelé à se prononcer sur l'admissibilité

Summary

UCITS are collective investment funds such as unit trusts, common funds and SICAVs. UCITS are established in all Member States and their total assets amount to around four thousand billion euros.

The Committee of European Securities Regulators (CESR), in its capacity as an independent advisory group, has been mandated by the Commission to provide advice and clarification on whether or to what extent some financial instruments could be considered eligible investments for a UCITS in compliance with the relevant provisions of the UCITS Directive.

Les OPCVM sont des organismes de placement collectif tels que les fonds communs de placement et les SICAV; jusqu'en 2004, le passeport européen pouvait être accordé aux organismes de placement harmonisés dûment agréés dans leur pays d'origine et respectant un certain nombre de critères, conformément à la Directive OPCVM (85/611/CEE).

Les organismes de placement collectif (comme les fonds de placement et les SICAV) constituent un secteur majeur du marché, avec des actifs représentant environ 3 500 milliards d'euros.

Les Directives 2001/107/CE et 2001/108/CE, qui sont en vigueur depuis février 2004, ont élargi le champ des investissements pouvant être effectués par un OPCVM (Organisme de placement collectif de valeurs mobilières), et ont créé un passeport européen pour les sociétés de gestion administrant des OPCVM et souhaitant étendre leurs activités au-delà des frontières nationales.

Les OPCVM constituent un secteur majeur du marché, avec des actifs représentant environ 3 500 milliards d'euros.

La mise en œuvre de ces Directives a été clarifiée par deux recommandations de la Commission publiées en avril 2004, qui fournissent, entre autres, des indications destinées à préciser les modalités selon lesquelles les OPCVM peuvent investir dans des instruments financiers dérivés, comme les options, les contrats à terme ou les contrats d'échange.

Cependant les marchés financiers modernes ont vu l'émergence d'un large éventail d'instruments financiers complexes. Dans ce contexte, la question se pose de savoir si, et dans quelle mesure, certains instruments financiers pourraient être considérés comme des placements admissibles pour les OPCVM ("actifs éligibles"), conformément aux dispositions pertinentes de la Directive OPCVM, notamment à la définition des "valeurs mobilières" visée à l'article 1, point 8), ou à celle des "instruments du marché monétaire" visée à l'article 1, point 9), et à la liste des placements autorisés énumérés à l'article 19.

L'application et l'interprétation uniformes de la législation de l'UE sont d'une importance capitale pour la réalisation du marché intérieur des services financiers. La Commission a jugé que la clarification de certaines définitions relatives aux actifs éligibles constitue une priorité à court terme pour parvenir à une mise en œuvre cohérente de la législation sur les OPCVM.

À l'issue du débat qui a eu lieu au sein du Comité européen des valeurs mobilières (CEVM), la Commission a adressé un mandat formel au Comité européen des régulateurs des marchés de valeurs mobilières (CERVM) en sa qualité de groupe consultatif indépendant. Ce mandat confie au CERVM la mission de fournir un avis technique sur les possibilités de modifier la Directive OPCVM dans le sens d'une clarification de certaines définitions concernant les actifs éligibles aux placements des OPCVM.

Cet avis technique est attendu pour octobre 2005. En fonction de son contenu, la Commission envisagera de proposer l'adoption d'une Directive ou d'un règlement en tant qu'instrument de comitologie.

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Resümee

OGAW sind finanzielle Produkte wie Unit Trusts, Investmentfonds oder SICAV. Sie sind in allen Mitgliedstaaten ansässig; ihr Gesamtvermögen beläuft sich auf rund vier Billionen Euro.

Der Ausschuss der Europäischen Wertpapierregulierungsbehörden (CESR) hat in seiner Funktion als unabhängige Gutachterkommission von der Kommission das Mandat erhalten, ein Gutachten darüber zu erstellen, ob oder in welchem Umfang einige Finanzinstrumente als geeignete Investitionen für ein OGAW angesehen werden können gemäß den relevanten Maßnahmen der OGAW-Richtlinie

EP backs motor insurance proposals

At its 12 January session, the European Parliament gave its backing to the proposed Fifth Motor Insurance Directive. These measures once adopted will update and improve the provisions of current EU Motor Insurance Directives.

The Directive sets out to improve protection for accident victims and make it easier for drivers to get insurance and make claims, especially when buying or using vehicles outside their Member State of permanent residence. The Directive will also make it easier for insurers to operate across borders and drivers should also able to change their insurers more easily.

Minimum level of indemnity

The Directive sets a new minimum insurance amount for personal injuries of € 1,000,000 per victim, or a minimum amount of € 5,000,000 per accident. For damage to property, it sets a minimum of € 1,000,000 per accident. These provisions are due to come into force after a transitional period of five years. The minimum insurance amounts will be revised automatically every five years according to the European Index of Consumer Prices.

Under the Directive, pedestrians and cyclists will be designated as specific categories of accident victims. Motor vehicle insurance will have to cover personal injuries suffered by pedestrians and cyclists and other non-motorised users of the roads who, as a consequence of an accident in which a motor vehicle is involved, are entitled to compensation under national civil law. This Directive will help ensure that accident victims get appropriate compensation and it will make it easier for motorists to get adequate insurance cover that works across borders.

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'General approach' agreed on capital adequacy requirements

In July 2004, the Commission adopted a proposal for a Directive for a new capital requirements framework for banks and investment firms which is appropriate for the 21st century. In December, the EU Council of Ministers reached agreement and gave its backing to the 'general approach' towards new capital requirements for banks and investment firms. The Commission proposal aims to ensure the coherent application throughout the EU of the new international capital requirements framework recently agreed by the Basel Committee on Banking Supervision ('Basel II').

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Aligning capital with risks

By making sure that financial institutions' capital is more closely aligned with the risks they face, the new framework will enhance consumer protection and reinforce financial stability.
The Council has maintained the momentum behind this proposal – holding ten working meetings between July and September. This resulted in unanimous agreement by the ECOFIN Council of 7 December on a 'general approach' to the proposal.

Desire to move forward quickly

A number of amendments will be sought by Council, but these will not significantly alter the substance of the proposal. This agreement will form the basis of Council's discussions with the European Parliament over the coming months.

The European Parliament held a first public hearing on 22 November. Speakers from the financial services industry, SMEs, and supervisors spoke positively of the Commission's proposal. The European Parliament has indicated its desire to move forward quickly on this proposal. And it remains hopeful that agreement may be achieved on a single reading.

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

Statutory audit

Council backs general approach

The Council agreed "a general approach" on the Statutory Audit Directive, proposed by the Commission in March 2004. This is an important step towards the final adoption of this Directive in a single reading by mid 2005. The Directive is now in the hands of the European Parliament for examination.

On auditors' independence - a much debated issue - the text agreed prohibits auditors from being the statutory auditor of a company with which they have a relationship that compromises their independence. Statutory auditors of all types of companies have to consider the threats and safeguards implied in the situations of self-review, self-interest, advocacy, familiarity or trust or intimidation. But as far as public interest entities are concerned, the Council's text requires in addition Member States to prohibit, where appropriate, an auditor from being a statutory auditor in cases of self-review or self-interest.

Internal Market Commissioner Charlie McCreevy said: "I am very pleased that the Council has agreed an approach that the Commission can support and I hope the Council and the Parliament will now work together and with the Commission to adopt it quickly. Financial statements have to be reliable and investors have to believe that they are reliable. Further strengthening trust in auditors will help create the stable climate of investor confidence that the EU needs to become more competitive."

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

IFRS2

Accounting standards for stock options adopted

Résumé

La Commission a arrêté un règlement portant approbation de la norme internationale d'information financière IFRS 2 «Paiement fondé sur des actions». Celle ci a pour effet que les sociétés devront faire apparaître plus clairement dans leurs comptes les paiements fondés sur des actions, y compris les plans de stocks options offerts au personnel. Le texte a été approuvé à la quasi unanimité des États membres siégeant au comité de réglementation comptable (CRC) le 20 décembre 2004, ainsi que par le Parlement européen. L'IFRS 2 fait partie de la «plate forme stable» des normes comptables que toutes les sociétés européennes cotées doivent appliquer à l'occasion de leur passage aux normes comptables internationales, depuis ce mois de janvier 2005.

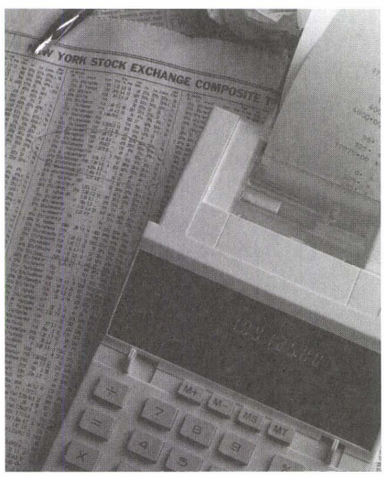
Share-based payments such as stock options - often used as a management incentive - are to be treated in future as expenses as far as company accounting is concerned. The Commission has adopted a Regulation which endorses the International Financial Reporting Standard (IFRS) No. 2 on Share-based Payment. IFRS 2 means that companies will need to reflect share-based payments, including stock options for staff, more clearly in their accounts.

The text was supported almost unanimously by the Member States at the Accounting Regulatory Committee (ARC) in December and by the European Parliament. This standard belongs to the so-called stable platform of accounting standards which all listed European companies will need to use, as they move to international accounting standards from January 2005.

Expense treatment

Granting stock options can be a very effective way for companies to motivate managers and staff, but like any other form of remuneration, it has to be considered as an expense. IFRS 2 aims to improve the quality of financial reporting by giving financial markets a clearer and more complete picture of a company's transactions. It requires for the first time that companies reflect in their income statements the effects of share-based payment transactions, including expenses associated with granting stock options to management and employees.

"In future, 'expensing' stock options in the income statement will have some impact on reported earnings."



In the past, those transactions were not recognised in the company's income statements but were only disclosed separately in the notes to the accounts. In future, "expensing" stock options in the income statement will have some impact on reported earnings.

IFRS 2 does not specify which valuation models for stock options should be used. As a principle-based standard, it only describes the factors that should be at least taken into account when estimating the *fair value* of share based payments.

The Commission will monitor the future effects of IFRS 2 on European companies and review the applicability of the standard by July 2007 at the latest.

The standard applies for annual accounting periods beginning on or after 1 January 2005 for listed companies in their consolidated accounts. For equity-settled share-based payment transactions, the entity shall apply this IFRS to grants of shares, share options and other equity instruments that were granted after 7 November 2002 and had not yet vested at the effective date of this IFRS.

Thus, for most companies the standard will apply for the 2005 accounts to be published in 2006.

For further information:
http://www.europa.eu.int/comm/internal_market/accounting/ias_en/htm

Resümee

Die Kommission hat eine Verordnung angenommen, der zufolge der "International Financial Reporting Standard" (IFRS) 2 - Anteilsbasierte Vergütung übernommen wird. Diesem Standard zufolge müssen die Unternehmen die anteilsbasierten Vergütungen, einschließlich der Aktienoptionen für Mitarbeiter, in ihren Abschlüssen klarer ausweisen. Der Text wurde fast einstimmig von den Mitgliedstaaten im Rahmen des Regelungsausschusses für Rechnungslegung am 20. Dezember 2004 und vom Europäischen Parlament unterstützt. Dieser Standard zählt zur so genannten "stabilen Plattform" von Rechnungslegungsstandards, die alle börsennotierten europäischen Unternehmen zugrunde legen müssen, wenn sie ab Januar 2005 zur Rechnungslegung gemäß internationaler Standards übergehen

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Action Plan for online public purchasing

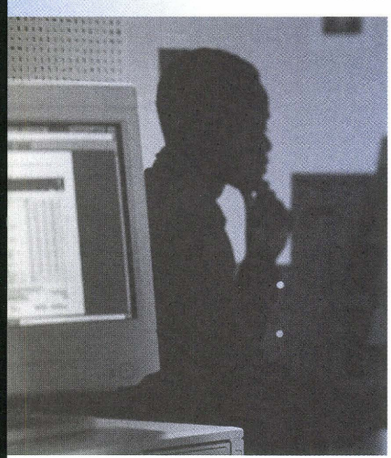
Résumé

La Commission a publié un plan d'action pour les marchés publics électroniques, destiné à aider les États membres à mettre en œuvre les nouvelles directives sur les marchés publics adoptées en 2004. L'objectif est de permettre à toute entreprise équipée d'un PC et d'une connexion Internet de soumettre une offre pour des marchés publics par voie électronique, de n'importe où dans l'UE, selon des conditions et des procédures claires, en offrant toute la sécurité nécessaire. Les directives fournissent pour la première fois un cadre communautaire cohérent pour l'utilisation transparente et non discriminatoire de moyens électroniques lors de la passation de marchés publics, ce qui permettra de rendre ces marchés plus compétitifs et efficaces.

An Action Plan to make the most of electronic public procurement in Europe has been published by the Commission. The Action Plan on electronic public procurement sets out to assist Member States in implementing the new Procurement Directives adopted in 2004. These Directives provide for the first time a coherent EU framework for the transparent and non-discriminatory use of electronic means in public procurement, favouring more competitive and efficient procedures. As a result, any business with a PC and Internet connection can bid electronically for public contracts offered anywhere in the EU in full knowledge of conditions and procedures and with the required security.

Competition and cost saving

The economic importance of the public procurement market is huge. Public purchasing accounts for over 16% of the EU economy, and there is much scope for reducing government spending through increased competitiveness.



The 2004 Procurement Directives set out the relevant procedural guarantees for transparency, non-discrimination and equal access as well as rules for efficient and secure electronic tendering.

They introduce fully electronic procedures and tools such as Dynamic Purchasing Systems and electronic auctions.

Smooth transition

The Action Plan seeks to organise a smooth transition towards electronic public procurement (e-procurement) in the Member States. Moving public procurement online promises substantial savings on expenditure and transaction costs for buyers and suppliers. It is a complex operation, however, and experience is lacking. Inconsistent implementation, with different rules and incompatible systems in different Member States, could hinder its uptake and fragment the Internal Market.

Three objectives

The Action Plan is geared towards three objectives:

- Preventing the emergence of potential legal and technological barriers;
- Promoting efficiency, competition and good governance in Member States' procurement markets, using e-procurement as a lever for progressively reforming their general procurement environment;
- Addressing the global implications of the new EU legislation. While e-procurement continues to grow worldwide, its effect on trade is not yet internationally regulated and many of the regulatory issues currently experienced at EU level could be equally difficult at the international level.

Basic rules

As a first step, the Commission will issue an interpretative document and a list of functional requirements to ensure e-procurement systems in all Member States comply with the same basic legal and technical rules.

Member States are invited to set up comprehensive national plans for the rapid adoption of the Directives and a tailored transition to e-procurement, including measurable performance targets.

Other deliverables include a new generation of online standard forms for the publication of notices and an improved e-procurement compatible product classification (CPV). The development of interoperable technical standards will be promoted, e.g. for advanced electronic signatures. Member States are encouraged to automate steps in all phases of the procurement cycle.

Resümee

Die Europäische Kommission hat einen Aktionsplan für die elektronische Vergabe öffentlicher Aufträge vorgelegt; damit will sie den Mitgliedstaaten helfen, die neuen Vergaberichtlinien aus dem Jahr 2004 umzusetzen. Jedes Unternehmen in der EU, das über einen PC und einen Internet-Anschluss verfügt, soll elektronische Angebote für öffentliche Aufträge abgeben können. Dies erfordert klare Voraussetzungen und Verfahren und entsprechende Sicherheitsvorkehrungen. Mit den Richtlinien wurde erstmalig ein einheitlicher EU-Rechtsrahmen für den transparenten, diskriminierungsfreien Einsatz elektronischer Hilfsmittel bei der Vergabe öffentlicher Aufträge verwirklicht. Dadurch ist mehr Wettbewerb und größere Effizienz im öffentlichen Einkauf möglich.

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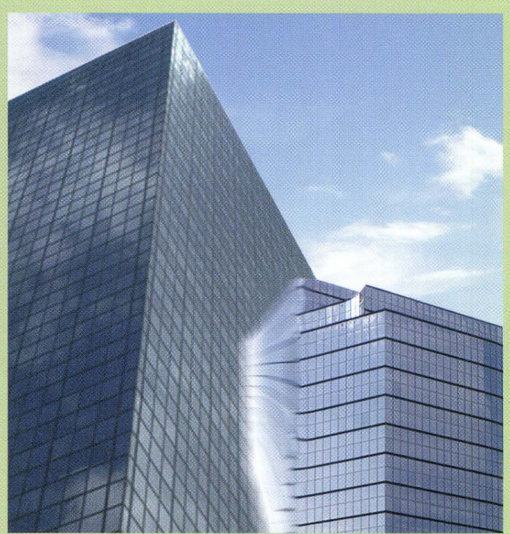
Easier path to cross-border mergers on the horizon

The first of the proposed Directives outlined in the Commission's 2003 Action Plan on company law and corporate governance could soon be on its way to the statute books. The Competitiveness Council at its meeting on 25 November agreed on an exchange of views on the Commission proposal for a 10th Company Law Directive on cross-border mergers[1]. This is a good indication that there could be a swift completion of the negotiations allowing adoption of the Directive in a single reading.

The Directive on Cross-border Mergers, which could be introduced into national law within two to three years, proposes a legal framework which could help thousands of expanding SME's by simplifying the process for undertaking mergers with companies in other Member States.

Differences in national legislation currently make cross-border mergers between EU companies either very complex and costly, or impossible.

The new measures will make them permissible in all EU countries and will introduce appropriate safeguards for the shareholders and employees involved in such cross-border merger operations.



The cross-border mergers legislation will be the first Directive to be adopted under the 2003 Internal Market Action Plan

Long road

The first attempt at legislation to facilitate cross-border mergers in Europe was made by the Commission in 1984, but it failed over disagreement on the issue of employee participation in companies' decision-making bodies.

In 2001, however, the agreements reached in finalising the European Company Statute (ECS) resolved the key blocking points, and the Commission was able to relaunch the discussions. Agreement on a general approach was reached on the new Commission proposal at the November 2004 'Competitiveness Council', setting it on course for rapid adoption.

This progress has been welcomed by politicians and industry groups alike. Laurens Jan Brinkhorst, Dutch Minister for Economic Affairs, who chaired the Council meeting, stressed the importance of the legislative breakthrough for SMEs: "After 20 years, we have finally concluded the political agreement on cross-border mergers. This is very important for the tens of thousands of small and medium-sized businesses in Europe that want to increase profitability and increase knowledge."

Philippe Lambrecht, Secretary General of the industry umbrella group, Federation of Enterprises in Belgium (FEB), emphasises that industry had been waiting many years for these measures and is pleased to see the progress made in developing a legal framework which permits companies to operate across the EU as they do domestically.

Private and public companies

The new measures are designed to make mergers simpler for all companies with share capital and the new Commission proposal covers both public and private

[1] COM (2003) 703 final

companies who want to merge their operations across EU borders.
The current options for doing this are complex and costly. Mergers often in effect take place via the winding-up of the companies concerned and the creation of a new company, which is time-consuming and very expensive. Another option is to reorganise totally and seek incorporation under the European Company Statute. Under the new Commission proposal, cross-border mergers would be carried out under the law of the Member State in which the merged entity is to be registered.

Scope

The proposal applies to any merger (whether done by the acquisition of one company by another or by the creation of a new company) between two or more EU companies, provided at least two of them are governed by the laws of different Member States.

The basic principle is that, subject to certain exceptions, each company taking part in a merger will do so in accordance with its own national laws which are applicable.

Safeguards

The proposed Directive sets down common draft merger terms which afford the minimum provisions for the protection of employees and shareholders alike. Protection for other parties (creditors, debenture holders, etc.) would be maintained as it is under the applicable national law.

Regarding the issue of employees' participation rights, a special negotiation procedure would apply.

Worker participation

EU Member States have widely differing worker participation (co-determination) systems. Some have compulsory schemes granting representation on the management board (DE, AT, SE, LU, SK, CZ).

Co-determination is more frequent in countries with two-tier board structures (supervisory and management boards). Mergers involving companies operating under both one-tier or two-tier systems are covered under the Commission's proposals.

The basic principle established is that the scheme where the new company is registered is the one that is applied (i.e. the host Member State). Where the merger implies a loss or reduction of employee participation, the mechanism set up under the European Company Statute (Regulation and Directive) should be applied. In such cases a special negotiating body is established to agree on participation arrangements. If negotiations fail, the standard rules laid down under the European Company Statute would apply.

Under the terms of the new Directive, companies and workers representatives are free to negotiate arrangements for employee participation different from those existing in either company. Only if no agreement could

Cross-border merging in practice

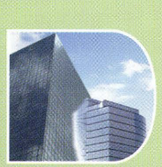
Each merging company will be required to draw up draft terms of the cross-border merger. These terms must include:

- the form, name and registered office of the merging companies and those proposed for the company created by the merger;
- the ratio applicable to the exchange of securities or shares representing the companies' capital and the amount of any compensation;
- the terms for the allotment of securities or shares representing the capital of the companies created by the merger;
- the date from which shareholders will be able to share in the profits, and any special conditions affecting that entitlement;
- the date from which transactions of the merging companies will be treated for accounting purposes as being those of the company created by the merger;
- the rights conferred by the company created by the merger on members enjoying special rights;
- any special advantages granted to the expert (see below);
- the statutes of the company created by the merger;
- information on how the employees' participation in the company created by the merger is to be determined.

Expert's Report

An expert report intended for the members of each of the merging companies shall be made available at least one month before the general meeting. Alternatively, one expert can be appointed to draw up a single report for all companies involved in the cross-border merger. Member States must designate the competent authority which will consider the legality of any merger under its national law and which will issue a certificate confirming proper completion of the pre-merger acts and formalities. Member States must also designate a competent authority to check the proper completion of the merger, in particular, that the terms of cross-border merger were approved and that the arrangements for employee participation were determined properly.

Special Feature



be reached would the "default" arrangements be invoked which apply the provisions of the most stringent Member State.

Exemptions

Through agreements with national governments, a five year opt-out has been agreed for cooperative societies. Member States will have the power to decide whether or not cooperative companies which fall within their jurisdiction are covered by the provisions of the Directive. UCITS (collective investment funds such as unit trusts, SICAVs etc.) are also excluded, for consumer protection reasons.

National systems

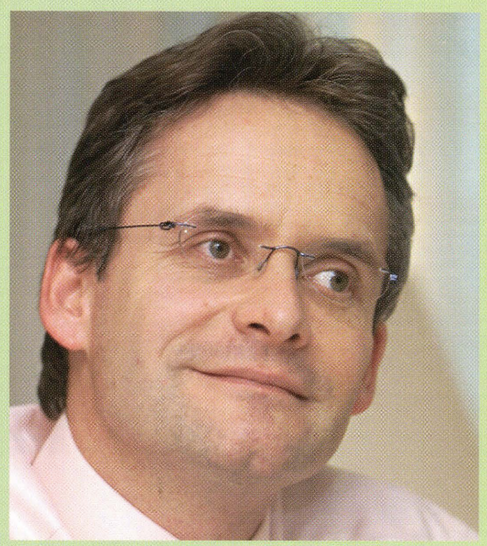
Each company taking part in a cross-border merger would be governed, as far as the merger formalities are concerned, by the provisions of national law which would apply if it were merging with a company from the same Member State. This would include those provisions governing the decision-making process relating to the merger and the protection of creditors, debenture holders and the holders of securities other than shares to which special rights are attached.

The only exceptions to the principle that national law would apply to all merging companies, are those provided in the Directive for reasons to do with the cross-border nature of the operation. For example, the name and registered office proposed for the new company - an important piece of information as far as all interested parties, including creditors, are concerned - are points that have to be included in the draft terms of cross-border merger.

European Company Statute alternative

The new Directive will provide an interesting alternative for companies which are not interested in forming a European Company or cannot incorporate under the European Company Statute - for the most part small and medium-sized enterprises.

Indeed, due to the current complexity of the merger process, an alternative route is to operate under the European Company Statute. The ECS, however, is aimed at companies which need to reorganise their business on a Europe-wide scale. There are many companies, predominantly SMEs, who may wish to undertake a cross-border merger without creating a European company, particularly if they do not intend to operate in many Member States. The Directive would allow them to do so.



Philippe Lambrecht, Secretary General of the FEB:
"...industry had been waiting many years for these measures."

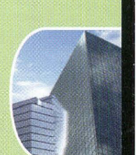
Cross-border restructuring

The need for EU company law provisions to facilitate cross-frontier restructuring figured as a high priority in the November 2002 report of the High Level Group of Company Law Experts chaired by Jaap Winter, which was based on extensive consultation.

Industry has been asking for years for better rules on cross-border mergers which are viewed as a basic essential for an integrated European market. "We are naturally delighted that something has finally happened though the time it has taken - nearly twenty years - is naturally disappointing," says Philippe Lambrecht, Secretary General of the Belgium's industry federation, FEB (Federation of Enterprises in Belgium).

"It is indeed difficult for anyone to gauge at this stage the potential impact of the legislation. The 'proof of the pudding' will be in the eating, by which I mean that once it is implemented, we will see how valuable it is through the number of companies which choose this route for cross-border mergers."

There are indeed various ways to coordinate businesses internationally and work-arounds are possible, Lambrecht explains. Companies can be wound up and new ones incorporated. The European Company Statute is another route. "Many companies would like a simple, straightforward facility to merge in the same way they do at the national level. The solution proposed will hopefully be a cost-efficient solution."



In addition to cost, there may be other factors that come into play, Lambrecht points out: "In opting for a merger approach, companies may also take into consideration other commercial aspects such as image and market positioning, where their legal status as a European company or a national operator, could play a role."

"Some areas of industry are indeed concerned by the employee participation issues. The current agreement is an acceptable compromise and once we can all see it working in practice, we will all be able to see if adjustments are necessary. On matters of company law, at the end of the day we need to be working towards a total solution which incorporates the issues of company law, taxation and social provisions."

Next Steps

The Commission has called for a swift adoption of the Directive.

Following the agreement on an exchange of view adopted in the Council, the proposed Directive is currently being examined in Parliament, where Mr Klaus-Heiner Lehne has been appointed Rapporteur by the competent committee, the Legal Affairs Committee.

His report to the Parliament is expected to follow the line agreed in Council.

The vote in the Parliament's Plenary is expected to take place in the Spring. The Directive is on the agenda of the Luxembourg Presidency with the aim of reaching adoption at first reading in the first half on 2005.

The new measures are designed to make mergers simpler for all companies with share capital and the new proposal covers both public and private companies.

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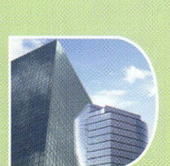
Special Feature

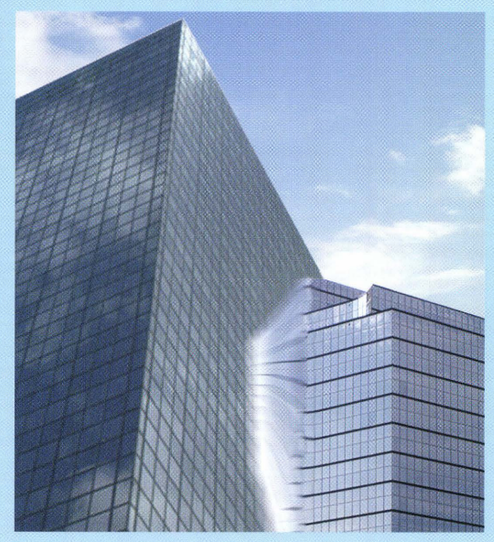


Vers une simplification des fusions transfrontalières

La première des propositions de Directives s'inscrivant dans le cadre du Plan d'Action de la Commission sur le droit des sociétés et le renforcement du gouvernement d'entreprise pourrait bientôt entrer dans les législations nationales. Le Conseil Compétitivité, lors de sa réunion du 25 novembre, est parvenu à un accord sur un échange de vues sur la proposition de la Commission pour une 10ème Directive sur le droit des sociétés sur les fusions transfrontalières[1]. C'est une bonne indication que les négociations pourraient être rapidement menées pour permettre l'adoption de la Directive en une lecture unique.

La Directive sur les fusions transfrontalières qui pourrait être introduite dans les ordres juridiques nationaux dans les deux à trois prochaines années propose un cadre juridique répondant aux besoins de milliers de PME en expansion en simplifiant le processus de fusion avec des sociétés situées dans d'autres États membres. Les fusions transfrontalières entre sociétés de l'UE sont très complexes et coûteuses, voire impossibles en raison de différences entre les législations nationales.

Les nouvelles mesures vont les rendre possibles dans tous les pays de l'UE et apporteront des garanties appropriées pour les actionnaires comme pour les salariés concernés par ce genre d'opération.



La législation sur le droit des sociétés sur les fusions transfrontalières, sera la première Directive adoptée s'inscrivant dans le cadre du Plan d'Action de la Commission sur le droit des sociétés et le renforcement du gouvernement d'entreprise

Un long chemin parcouru

La première tentative d'élaborer une législation visant à faciliter les fusions transfrontalières en Europe a été faite par la Commission en 1984 mais elle échoua en raison d'un désaccord sur la question de la participation des travailleurs dans les organes de décision des entreprises.

En 2001 toutefois, les accords aboutissant au statut de la société européenne ont supprimé les principaux points de blocage, ce qui a permis à la Commission de relancer les discussions. Le Conseil Compétitivité est parvenu à un accord sur une approche générale sur la proposition de la Commission en novembre 2004, ouvrant la voie à une adoption rapide de la Directive.

Ce progrès décisif a été salué par les responsables politiques comme par les groupes industriels. Laurens Jan Brinkhorst, Ministre Néerlandais des Affaires Economiques qui présidait la réunion du Conseil a souligné l'importance de cette avancée législative pour les PME: "au bout de vingt années, nous sommes enfin parvenus à conclure un accord politique sur les fusions transfrontalières. Ceci est très important pour les dizaines de milliers de petites et moyennes entreprises en Europe qui veulent accroître leur profitabilité et leur compétence".

Philippe Lambrecht, Secrétaire Général de l'organe fédérateur "Fédération des Entreprises de Belgique (FEB)" insiste sur le fait que l'industrie attendait ces mesures depuis de nombreuses années et se félicite du progrès accompli dans le développement d'un cadre juridique permettant aux sociétés d'opérer dans toute l'Union européenne comme elles le font sur le territoire national.

Entreprises publiques et privées

Les nouvelles mesures visent à faciliter les fusions entre les sociétés de capitaux et la nouvelle proposition s'applique aux entreprises publiques et privées qui souhaitent fusionner dans l'Union européenne.

[1] COM (2003) 703 final

Les options disponibles à cet effet sont complexes et onéreuses. Les fusions se réalisent souvent par la mise en liquidation des entreprises concernées et la création d'une nouvelle société, ce qui est une procédure longue et très coûteuse. Une autre option est de procéder à une réorganisation générale et de constituer une société européenne. La proposition de la Commission prévoit que les fusions transfrontalières se dérouleront selon le droit en vigueur dans le pays d'enregistrement de la nouvelle entité.

Champ d'application

La proposition s'applique à toute fusion (qu'elle se produise par l'acquisition d'une société par une autre ou par la création d'une nouvelle société) entre deux ou plusieurs entreprises européennes, pourvu qu'au moins deux d'entre elles relèvent de législations nationales différentes.
Le principe de base est qu'en dehors de certaines exceptions, chaque entreprise participant à une fusion procédera conformément au droit national applicable.

Garanties

La Directive fixe les dispositions communes des projets de fusion qui prévoient les conditions minimales de protection des salariés et des actionnaires. La protection des créanciers, obligataires, porteurs de titres autres que les actions, des actionnaires minoritaires et des salariés sera maintenue telle quelle étant donné qu'elle relève du droit national applicable. En ce qui concerne les droits des salariés, et en particulier la participation des travailleurs, une procédure de négociation spéciale s'appliquera.

Participation des travailleurs

Les États membres appliquent des systèmes de participation des travailleurs (codétermination) qui diffèrent largement. Il existe dans certains Etats des mécanismes obligatoires prévoyant une représentation au Conseil d'administration (DE, AT, SE, LU, SK, CZ).
La codétermination est plus fréquente dans les pays où l'organe de direction de la société peut avoir une structure duale (Conseil de surveillance et Conseil d'administration). La proposition de la Commission vise les fusions entre sociétés dotées d'un organe de direction à structure duale ou non.

Le principe de base établi est que le régime sous lequel la nouvelle société est inscrite est celui appliqué (c'est-à-dire dans l'État membre d'accueil). Lorsque la fusion implique une perte ou une réduction du niveau de participation des salariés, le mécanisme prévu par le statut de la société européenne (règlement et Directive) devrait être appliqué. Dans de tels cas, un organe de négociation spécial est créé pour convenir d'accords de participation. En cas d'échec des négociations, les règles standard définies dans le statut de société européenne seraient d'application.

Selon les termes de la proposition de Directive, les sociétés et représentants des travailleurs sont libres de négocier de nouveaux accords de participation des travailleurs qui diffèrent de ceux en vigueur dans chacune des sociétés. Ce n'est que lorsqu'aucun accord ne pourrait être atteint qu'un modèle «standard» conforme aux pratiques nationales les plus avancées serait appliqué.

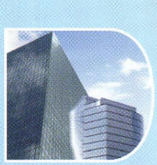
La fusion transfrontalière en pratique

Chaque entreprise participant à la fusion établit un projet de fusion transfrontalière. Ce projet comprend:

- **la forme juridique, la raison sociale et le siège statutaire des sociétés qui fusionnent et ceux envisagés pour la société issue de la fusion;**
- **le rapport d'échange des titres ou parts représentatifs du capital social et le montant de la soulte;**
- **les modalités de remise des titres ou parts représentatifs du capital social de la société issue de la fusion;**
- **la date à partir de laquelle les actionnaires pourront participer aux bénéfices ainsi que toute modalité particulière relative à ce droit:**
- **la date à partir de laquelle les opérations des sociétés qui fusionnent sont considérées du point de vue comptable comme accomplies pour le compte de la société issue de la fusion;**
- **les droits conférés par la société issue de la fusion aux associés ayant des droits spéciaux;**
- **tous avantages particuliers attribués aux experts;**
- **les statuts de la société issue de la fusion;**
- **des informations sur les procédures selon lesquelles sont fixées les modalités relatives à l'implication des salariés dans la société issue de la fusion.**

Rapport d'experts

Un rapport d'expert indépendant destiné aux associés doit être disponible au minimum un mois avant l'assemblée générale. En lieu et place des experts agissant pour le compte de chacune des sociétés qui fusionnent, il est possible de charger un expert unique d'établir un rapport unique pour les sociétés participant à la fusion. Les États membres doivent désigner l'autorité compétente pour contrôler la légalité de la fusion en vertu de son droit national. Celle-ci devra délivrer un certificat confirmant l'achèvement dans les règles des actes et formalités précédant la fusion.
Les États membres doivent également désigner l'autorité compétente chargée de contrôler la réalisation dans les règles de la fusion, et en particulier que les conditions de la fusion transfrontalière ont été approuvées et que les dispositions relatives à la participation des salariés ont été déterminées de façon appropriée.



Exemptions

À la suite d'accords entre les gouvernements nationaux, une disposition autorisant un opt-out pour une période de cinq ans a été insérée pour les sociétés coopératives. Les Etats membres auront la possibilité de décider si les coopératives soumises à leur juridiction peuvent ou non bénéficier des dispositions de la Directive. Les OPCVM (organismes de placement collectifs de valeurs mobilières tels que des SICAVs etc) sont également exclus pour des raisons relatives à la protection des consommateurs.

Systèmes nationaux

Toute société prenant part à une fusion transfrontalière est soumise aux dispositions du droit national en matière de fusion qui seraient d'application si elle fusionnait avec une société du même État membre. Cela inclut les dispositions régissant le processus de prise de décisions relatif à la fusion et la protection des intérêts des créanciers, des obligataires et des porteurs de titres autres que les actions auxquels les droits spéciaux s'appliquent. Les seules exceptions à ce principe de l'application du droit national à toute société participant à une fusion sont celles prévues dans la Directive pour des raisons liées à la nature transfrontalière de l'opération. Par exemple, la raison sociale et le siège statutaire proposés pour la nouvelle société – un important élément d'information pour tous les intéressés, parmi lesquels les créanciers – sont des éléments qui doivent être inclus dans le projet de fusion transfrontalière.

Une alternative au statut de la société européenne

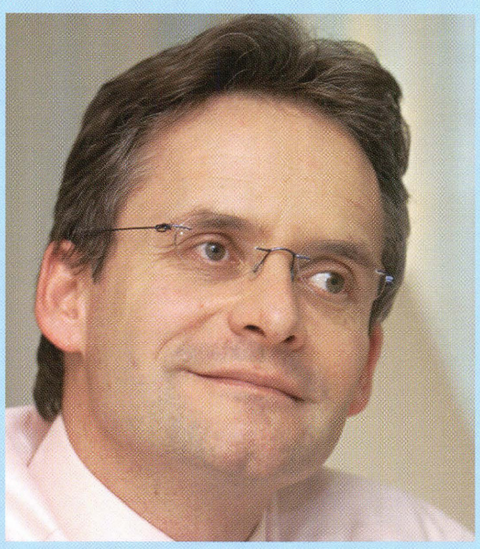
La nouvelle Directive va offrir une alternative intéressante aux sociétés qui ne sont pas intéressées par la création d'une société européenne ou qui n'ont pas la possibilité de constituer une telle société – pour la plupart les petites et moyennes entreprises.

De fait, en raison de la complexité actuelle du processus de fusion, une solution alternative est d'opérer selon le statut de société européenne. Ce statut s'adresse toutefois aux sociétés qui doivent réorganiser leurs activités à l'échelle européenne.

D'autres sociétés, pour l'essentiel des petites et moyennes entreprises, peuvent souhaiter participer à une fusion transfrontalière sans création d'une société européenne si, par exemple, elles n'envisagent pas d'exercer d'activité dans un grand nombre d'États membres. La Directive leur en donne également la possibilité.

Restructuration transfrontalière

Les dispositions du droit européen des sociétés visant à faciliter les restructurations transfrontalières figuraient en bonne place dans le rapport rédigé en novembre 2002 par le groupe de haut niveau d'experts en droit des sociétés présidé par Jaap Winter, rapport fondé sur des consultations approfondies.



Philippe Lambrecht, secrétaire général de la Fédération des Entreprises de Belgique (FEB) : "L'industrie réclame depuis des années une législation européenne en matière de fusion transfrontalière."

L'industrie réclame depuis des années une législation européenne en matière de fusion transfrontalière. Celle-ci peut être considérée comme le strict minimum pour un marché européen intégré. «Nous nous félicitons naturellement d'être finalement parvenus à quelque chose bien que nous soyons déçus que cela ai duré si longtemps», déclare Philippe Lambrecht, secrétaire général de la Fédération des Entreprises de Belgique (FEB).

«Il est effectivement difficile d'évaluer à ce stade l'incidence potentielle de la législation. La «preuve par le pudding» sera faite en le mangeant ce qui signifie qu'une fois celle-ci mise en œuvre, nous jugerons de sa valeur par le nombre de sociétés ayant adopté cette démarche pour les fusions transfrontalières».

« Il existe en effet différentes manières de coordonner les entreprises au niveau international et l'on dispose de moyens permettant de contourner le problème », explique Lambrecht. «Des entreprises peuvent être liquidées tandis que de nouvelles sont constituées en société. Le statut de la société européenne est effectivement une autre voie. Beaucoup de sociétés souhaiteraient disposer d'un moyen simple et direct de fusionner, comme elles le font au niveau national. Espérons que la solution proposée se révélera performante compte tenu des ressources disponibles».

Outre le coût, d'autres facteurs peuvent également entrer en jeu. Lambrecht remarque: «en optant pour la fusion, les sociétés sont susceptibles de prendre également en considération d'autres aspects commerciaux tels que l'image et le positionnement sur le marché, dans lesquels leur statut juridique de société européenne ou d'opérateur national pourrait jouer un rôle».

Certains secteurs de l'industrie sont effectivement préoccupés par les questions de participation des salariés. L'accord actuel représente un compromis acceptable et une fois qu'il sera mis en vigueur, nous serons tous en mesure de voir s'il convient de le modifier. En ce qui concerne le droit des sociétés, nous devons, au bout du compte, nous efforcer de trouver une solution globale intégrant les aspects du droit des sociétés, de la fiscalité et des dispositions sociales».

Prochaines étapes

La Commission souhaite parvenir à une adoption rapide de la Directive.

Suivant l'accord sur un échange de vue adopté au Conseil, la proposition de Directive est en ce moment même examinée au Parlement. M. Klaus-Heiner Lehne a été nommé rapporteur par la commission compétente du Parlement européenne, la Commission des Affaires Juridiques.

Le projet de rapport de M. Lehne est favorable, dans l'ensemble, au compromis adopté par le Conseil le 25 novembre 2004

Le vote en session plénière devrait avoir lieu au printemps. La Directive figure à l'agenda de la Présidence luxembourgeoise, avec l'objectif de parvenir à son adoption en première lecture au courant du premier semestre 2005.

Les nouvelles mesures visent à faciliter les fusions entre les sociétés de capitaux et la nouvelle proposition s'applique aux entreprises publiques et privées.

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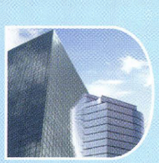


Vereinfachung von Fusionen innerhalb der EU in Sicht

Der erste der Richtlinienvorschläge, die die Kommission 2003 in ihrem Aktionsplan zum Gesellschaftsrecht und zur Corporate Governance angekündigt hatte, könnte bald schon seinen Weg in die Gesetzbücher finden. Der Rat 'Wettbewerbsfähigkeit' hat sich auf seiner Sitzung vom 25. November auf einen Gedankenaustausch zum Vorschlag der Kommission zur 10. Richtlinie über die Verschmelzung von Kapitalgesellschaften[1] verständigt. Das ist ein gutes Anzeichen dafür, dass die Verhandlungen schnell zu Ende gebracht werden könnten, was die Annahme der Richtlinie in einer einzigen Lesung erlauben würde.

Die Richtlinie über die Verschmelzung von Kapitalgesellschaften aus verschiedenen Mitgliedstaaten, die in zwei bis drei Jahren in nationales Recht umgesetzt sein könnte, schlägt einen gesetzlichen Rahmen vor, der Fusionen über die Landesgrenzen hinaus einfacher machen und Tausenden von expandierenden KMU das Leben erleichtern würde.

Fusionen zwischen Kapitalgesellschaften aus verschiedenen EU-Staaten sind derzeit aufgrund der Unterschiede zwischen den einzelstaatlichen Rechtsordnungen sehr kompliziert und kostspielig, wenn nicht gar unmöglich.

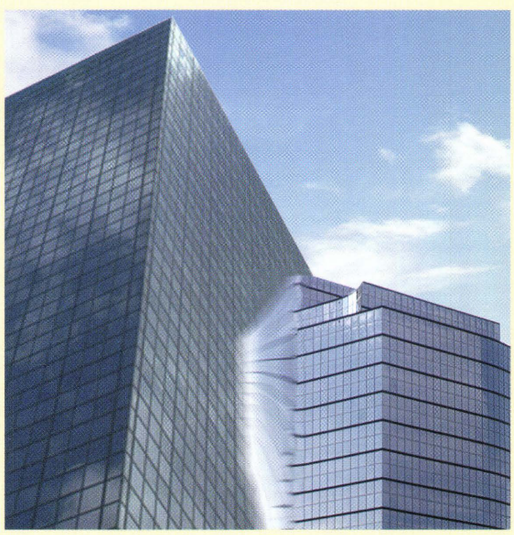
Die neue Regelung wird in allen EU-Mitgliedstaaten die gesetzlichen Voraussetzungen für grenzüberschreitende Fusionen schaffen und gleichzeitig für die an solchen Fusionen Beteiligten - Gesellschafter wie Arbeitnehmer - angemessene Schutzvorkehrungen vorsehen.

Ein weiter Weg

Den ersten Versuch, grenzüberschreitende Fusionen in Europa zu erleichtern, unternahm die Kommission bereits 1984, scheiterte aber an der Frage der Arbeitnehmermitbestimmung in den Entscheidungsgremien der Gesellschaften.

Die Einigung im Jahr 2001 über das Statut der Europäischen Gesellschaft (SE-Statut) beseitigte jedoch die wichtigsten Blockadepunkte und erlaubte der Kommission, die Diskussion wieder in Gang zu setzen. Im November 2004 verständigte sich der Rat 'Wettbewerbsfähigkeit' auf eine allgemeine Richtung in Bezug auf den neuen Kommissionsvorschlag und bereitete damit den Weg für eine schnelle Annahme.

[1] COM (2003) 703 final



Die Richtlinie über die Verschmelzung von Kapitalgesellschaften aus verschiedenen Mitgliedstaaten : die erste Richtlinie, die unter Aktionsplans zum Gesellschaftsrecht und zur Corporate Governance von 2003 verabschiedet wird.

Der Durchbruch ist von Politik und Wirtschaft gleichermaßen begrüßt worden. Der niederländische Wirtschaftsminister Laurens Jan Brinkhorst, der die Ratstagung leitete, unterstrich die Bedeutung dieses Ratsergebnisses insbesondere für die KMU: „Nach 20 Jahren haben wir endlich eine politische Einigung über grenzüberschreitende Fusionen erzielt. Diese Einigung ist von großer Bedeutung für Zehntausende kleiner und mittlerer Unternehmen in Europa, die ihre Ertragskraft steigern und ihr Know-how verbessern wollen."

Philippe Lambrecht, Generalsekretär des Verbands belgischer Unternehmen (FEB), zeigt sich über die Fortschritte erfreut und erklärt, die Wirtschaft habe seit Jahren auf eine solche Regelung gewartet, die es Unternehmen ermöglicht, EU-weit genauso zu operieren wie im Inland.

Personenbezogene Kapitalgesellschaften und Publikumsgesellschaften

Mit den neuen Bestimmungen sollen Fusionen für alle Kapitalgesellschaften einfacher werden. Die neuen Vorschläge gelten sowohl für personenbezogene Kapitalgesellschaften als auch für Publikumsgesellschaften, die Geschäftsbereiche innerhalb der EU länderübergreifend zusammenlegen wollen.

Die derzeit zur Verfügung stehenden Möglichkeiten für Fusionen dieser Art sind komplex und kostenträchtig. Im

Ergebnis werden die beteiligten Unternehmen hierzu häufig aufgelöst und in eine neue Gesellschaft eingebracht, was sehr zeitaufwändig und teuer ist.

Eine andere Möglichkeit besteht in einer völligen Reorganisation des Unternehmens und Umwandlung in eine Europäische Aktiengesellschaft auf der Grundlage des SE-Statuts.

Dem neuen Kommissionsvorschlag zufolge sollen grenzübergreifende Fusionen nach dem Recht des Mitgliedstaates vollzogen werden, in dem das aus der Fusion hervorgegangene Unternehmen eingetragen wird.

Anwendungsbereich

Der Vorschlag gilt für Verschmelzungen (durch Übernahme einer anderen Gesellschaft oder durch Gründung einer neuen Gesellschaft), an denen zwei oder mehr Gesellschaften aus der EU beteiligt sind, sofern mindestens zwei dieser Gesellschaften dem Recht verschiedener Mitgliedstaaten unterliegen.

Grundsätzlich gilt (mit gewissen Ausnahmen), dass jede der beteiligten Gesellschaften die Fusion nach Maßgabe ihres einzelstaatlichen Rechts vollzieht.

Schutzbestimmungen

Die vorgeschlagene Richtlinie bestimmt, welche Angaben der gemeinsame Verschmelzungsplan enthalten muss (siehe Kasten), um für Arbeitnehmer und Gesellschafter gleichermaßen einen gewissen Mindestschutz zu gewährleisten.

Der Schutz der anderen Beteiligten (Gläubiger, Anleihegläubiger usw.) würde sich weiterhin nach einzelstaatlichem Recht bestimmen.

Im Hinblick auf Mitbestimmungsrechte der Arbeitnehmer würde ein besonderes Verhandlungsverfahren Anwendung finden.

Mitbestimmung

Die Beteiligung der Arbeitnehmer an den Entscheidungsprozessen im Unternehmen (Mitbestimmung) ist in den Mitgliedstaaten sehr unterschiedlich geregelt. In einigen Mitgliedstaaten ist die Vertretung der Arbeitnehmer im Aufsichtsrat gesetzlich vorgeschrieben (DE, AT, SE, LU, SK, CZ).

Die Arbeitnehmermitbestimmung ist in Ländern mit einer dualistischen Struktur der Unternehmensleitung (Vorstand und Aufsichtsrat) häufiger. Der Kommissionsvorschlag gilt sowohl für dualistisch als auch für monistisch verfasste Gesellschaften.

Grundsätzlich richtet sich die Arbeitnehmermitbestimmung nach dem Recht des Landes, in dem die neue Gesellschaft eingetragen worden ist (Sitzmitgliedstaat).

Zieht die Verschmelzung den Verlust oder die Verminderung der Mitbestimmungsrechte nach sich, sollte der

Der Fusionsvorgang in der Praxis

Jedes fusionierende Unternehmen muss einen Verschmelzungsplan aufstellen. Der Verschmelzungsplan muss folgende Angaben enthalten:

- Rechtsform, Firma und Sitz der miteinander verschmelzenden Gesellschaften sowie Rechtsform, Firma und Sitz, wie sie für die aus der Verschmelzung hervorgegangene Gesellschaft vorgesehen sind;
- das Umtauschverhältnis der Gesellschaftsanteile, die das Gesellschaftskapital verkörpern, und die Höhe einer etwaigen Ausgleichszahlung;
- die Einzelheiten hinsichtlich der Übertragung der Anteile der aus der Verschmelzung hervorgegangenen Gesellschaft;
- den Zeitpunkt, von dem an diese Anteile das Recht auf Beteiligung am Gewinn gewähren, sowie alle Besonderheiten in Bezug auf dieses Recht;
- den Zeitpunkt, von dem an die Handlungen der miteinander verschmelzenden Gesellschaften unter dem Gesichtspunkt der Rechnungslegung als für Rechnung der aus der Verschmelzung hervorgegangenen Gesellschaft vorgenommen gelten;
- die Rechte, welche die aus der Verschmelzung hervorgegangene Gesellschaft den mit Sonderrechten ausgestatteten Gesellschaftern gewährt;
- alle besonderen Vorteile, die den Sachverständigen gewährt werden (siehe unten);
- die Satzung der aus der Verschmelzung hervorgegangenen Gesellschaft;· Angaben darüber, wie die Beteiligung der Arbeitnehmer in der aus der Verschmelzung hervorgegangenen Gesellschaft festgelegt werden wird.

Sachverständigenbericht

Ein Sachverständigenbericht für jede der fusionierenden Gesellschaften muss deren jeweiligen Anteilseignern spätestens einen Monat vor der Hauptversammlung zur Verfügung gestellt werden. Alternativ dazu kann ein Sachverständiger beauftragt werden, einen gemeinsamen Bericht für alle fusionierenden Gesellschaften zusammen zu erstellen. Die Mitgliedstaaten müssen eine Behörde bestimmen, die die Rechtmäßigkeit jeder ihrem Recht unterliegenden Verschmelzung prüft und bescheinigt, dass die Rechtshandlungen und Formalitäten, die der Verschmelzung voranzugehen haben, ordnungsgemäß vollzogen wurden. Die Mitgliedstaaten müssen darüber hinaus eine Behörde bestimmen, die den ordnungsgemäßen Vollzug der Verschmelzung kontrolliert, insbesondere, ob ein Verschmelzungsplan angenommen wurde und ob die Modalitäten hinsichtlich der Beteiligung der Arbeitnehmer ordnungsgemäß festgelegt wurden.

durch das SE-Statut (Verordnung und Richtlinie) eingeführte Mechanismus Anwendung finden. In diesem Fall würde ein besonderes Verhandlungsgremium eingesetzt, um eine Vereinbarung über die Beteiligung der Arbeitnehmer auszuhandeln. Käme keine Einigung zustande, fände die Auffangregelung des SE-Statuts Anwendung.

Nach der neuen Richtlinie steht es den Gesellschaften und Arbeitnehmervertretern frei, Mitbestimmungsvereinbarungen auszuhandeln, die es in dieser Form in keiner der fusionierenden Gesellschaften gab. Nur wenn keine Vereinbarung zustande kommt, käme die Auffangregelung zum Zuge, der zufolge die Bestimmungen des strengsten Mitgliedstaats Anwendung finden.

Ausnahmen

In Absprache mit den nationalen Regierungen wurde für genossenschaftlich organisierte Unternehmen eine 5 Jahre gültige Ausnahmeregelung (opt-out) festgelegt. Mitgliedstaaten werden das Recht haben zu entscheiden, ob ein genossenschaftlich organisiertes Unternehmen, das unter ihre Gesetzgebungsgewalt fällt, von den Bestimmungen der Direktive erfasst werden sollen.

Aus Gründen des Verbraucherschutzes gilt die Ausnahme auch für OGAWs (kollektive Investmentfonds wie unit trusts, SICAVs usw.).

Nationales Recht

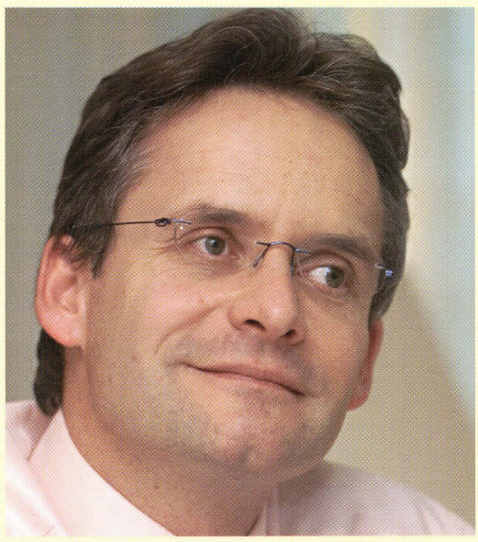
Jede an einer grenzübergreifenden Fusion beteiligte Gesellschaft würde im Hinblick auf den Fusionsvorgang dem einzelstaatlichen Recht unterliegen, das für sie maßgebend wäre, wenn sie mit einer Gesellschaft desselben Mitgliedstaats fusionieren würde. Dies gilt u.a. für die Art und Weise, wie der Verschmelzungsbeschluss zustande kommt, sowie für den Schutz der Gläubiger, der Anleihegläubiger und der Inhaber von anderen Wertpapieren als Aktien, die mit besonderen Rechten ausgestattet sind.

Die einzigen Ausnahmen von dem Grundsatz, dass alle fusionierenden Gesellschaften ihrem nationalen Recht unterliegen, wären die, die die Richtlinie aufgrund des grenzübergreifenden Charakters der Fusion vorsehen würde. So müsste der gemeinsame Verschmelzungsplan beispielsweise Firma und Sitz der neuen Gesellschaft enthalten: Bei diesen Angaben handelt es sich um für alle Beteiligte, einschließlich der Gläubiger, wichtige Informationen.

Alternative zum SE-Statut

Die neue Richtlinie wird sich hauptsächlich an Unternehmen richten, die an der Gründung einer SE nicht interessiert sind oder sich nicht unter dem SE-Statut zusammenschließen können - vor allem kleine und mittlere Unternehmen.

Das SE-Statut bietet zwar eine Alternative zu den derzeit höchst komplizierten Fusionsverfahren, richtet



Philippe Lambrecht, Generalsekretär des Verbands belgischer Unternehmen (FEB): "...die Wirtschaft hat seit Jahren auf eine solche Regelung gewartet."

sich aber an Unternehmen, die ihr Geschäft europaweit neu strukturieren wollen. Andere Unternehmen, vor allem KMU, hingegen wollen zwar mit Unternehmen aus anderen Mitgliedstaaten fusionieren, aber nicht unbedingt eine SE gründen, weil sie ihre Tätigkeit auf wenige Mitgliedstaaten beschränken wollen. Die Richtlinie würde ihnen diese Möglichkeit eröffnen.

Neuordnung über die Landesgrenzen hinaus

In dem Bericht, der im November 2002 von der Hochrangigen Expertengruppe auf dem Gebiet des Gesellschaftsrechts (unter dem Vorsitz von Jaap Winter) nach einer umfassenden Konsultation aller Interessengruppen vorgelegt wurde, stand die Erleichterung grenzübergreifender Restrukturierungsvorgänge ganz oben auf der Prioritätenliste.

Seit Jahren fordert die Wirtschaft eine bessere Regelung grenzübergreifender Fusionen, die für einen integrierten europäischen Markt als wesentlich angesehen wird. „Wir sind natürlich hoch erfreut, dass endlich was passiert, obwohl es natürlich enttäuschend ist, wenn man bedenkt, wie lange – fast 20 Jahre lang - das gedauert hat", so FEB-Generalsekretär Philippe Lambrecht. „Zum jetzigen Zeitpunkt kann wohl niemand sagen, wie sich die neue Regelung auswirken wird. Probieren geht über Studieren, d. h. wenn die Richtlinie erst einmal umgesetzt ist, werden wir anhand der Zahl der Unternehmen, die sich für diesen Weg entscheiden, sehen, was sie wirklich wert ist."

Es gibt in der Tat mehrere Möglichkeiten, Wirtschaftsaktivitäten international zu koordinieren, auch ohne die Richtlinie, so Lambrecht. Unternehmen können aufgelöst und neu gegründet werden. Das SE-Statut ist ein weiterer Weg. „Viele Unternehmen wollen eine einfache, unkomplizierte Regelung, um auf europäischer

Ebene in derselben Weise wie auf nationaler Ebene fusionieren zu können. Mit der vorgeschlagenen Lösung werden sich die Kosten hoffentlich in Grenzen halten."

Aber abgesehen von den Kosten können noch andere Faktoren eine Rolle spielen, betont Lambrecht: „Bei der Entscheidung für oder gegen eine bestimmte Fusionsstrategie tragen Unternehmen auch anderen wirtschaftlichen Aspekten Rechnung wie dem Firmenimage und der Marktpositionierung, wo ihr rechtlicher Status als Gesellschaft europäischen oder nationalen Rechts von Bedeutung sein kann", so Lambrecht weiter.

„In einigen Wirtschaftsbereichen wird die Frage der Arbeitnehmermitbestimmung durchaus mit Sorge betrachtet. Die politische Einigung ist als Kompromiss akzeptabel. In der Praxis wird sich dann schnell herausstellen, ob Korrekturen erforderlich sind. Im Gesellschaftsrecht werden wir letzten Endes auf eine Gesamtlösung hinarbeiten müssen, die sowohl das Gesellschaftsrecht als auch das Steuer- und Sozialrecht umfasst."

Die nächsten Schritte

Die Kommission drängt auf eine rasche Annahme der Richtlinie.

Auf der Grundlage der vom Rat erzielten Einigung über einen Gedankenaustausch wird die vorgeschlagene Richtlinie gerade im Parlament geprüft, wo Herr Klaus-Heiner Lehne vom zuständigen Ausschuss, dem Rechtsausschuss, zum Berichterstatter bestimmt worden ist.

Es wird erwartet, dass sein Bericht an das Parlament der Linie, die der Rat beschlossen hat, folgen wird.

Die Abstimmung im Parlamentsplenum soll im Frühjahr stattfinden. Die Richtlinie steht auf der Agenda der luxemburgischen Präsidentschaft mit dem Ziel einer Annahme in erster Lesung während des ersten Halbjahres 2005.

Die neuen Bestimmungen sollen Fusionen für alle Kapitalgesellschaften vereinfachen. Sie gelten sowohl für personenbezogene Kapitalgesellschaften als auch für Publikumsgesellschaften.

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http://europa.eu.int/comm/internal_market/en/company/company/mergers/mergers_de.htm

Generic medicines

Go-ahead proposed to countries in need

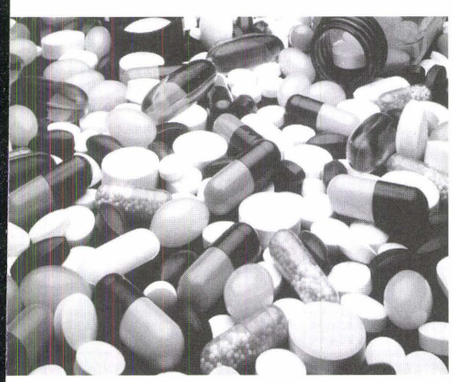
Résumé

a Commission a proposé
n règlement visant à per-
ettre aux fabricants de
édicaments génériques de
roduire des médicaments
revetés en vue de l'expor-
tion vers les "pays dans
besoin" ne possédant pas
e capacités de production
uffisantes. Le règlement
net en œuvre dans l'UE
ne décision de l'OMC du
0 août 2003 en vertu de
aquelle les autorités natio-
ales peuvent octroyer des
licences obligatoires" pour
ette production si certaines
onditions sont réunies.
'une des exigences est
ue le pays de destination
otifie à l'OMC sa demande
u médicament couvert par
a licence.

A new Regulation has been proposed by the Commission to allow manufacturers of generic pharmaceuticals to produce patented medicines for export to "countries in need" which do not have sufficient capacity to produce such medicines themselves. The Regulation would implement within the EU a 2003 decision of the World Trade Organisation (WTO) under which national authorities can grant "compulsory licences" for such production if certain conditions are fulfilled. One requirement is that the destination country must have notified the WTO that it is seeking the medicine covered by the licence.

No restriction on diseases or medicines covered

The proposed Regulation puts no further restriction on the medicines and diseases to be covered. To help ensure that medicines get to the patients who need them and to protect patent holders, customs authorities will be able to prevent the re-importation into the EU of medicines produced under the system.



The proposed Regulation would set up a system for companies who wish to manufacture medicines for export to apply to national authorities for the grant of a "compulsory licence" from a patent holder who has exclusive rights over the manufacture and sale of the products concerned. Most national laws at present do not allow compulsory licences for export because until recently the WTO TRIPS Agreement provided for compulsory licences only "predominantly for the supply of the domestic market". The Doha declaration on trade and health adopted in November 2001 agreed to address the difficulties raised by this restriction for developing countries with no manufacturing capacity.

After long negotiations, on 30 August 2003 WTO members agreed on a waiver giving these countries access to much needed generics. Provided countries in need notify to the WTO the medicines they need, it would be up to generic companies to decide to apply for licences to manufacture them. Once export takes place, all parties have an interest in seeing that medicines are not diverted from those who need them.

Ban on re-imports

The Commission's proposal would prohibit re-importation into the EU and provide for customs authorities to take action against goods being re-imported. The patent holder could use existing national procedures to enforce its rights against re-imported goods if they do enter the EU, and the licence could be terminated.

> ***"Provided countries in need notify to the WTO the medicines they need, it would be up to generic companies to decide to apply for licences to manufacture them."***

While the EU does not require a medicinal marketing authorisation for exported products, importing countries may want to ensure that medicines are safe and effective. In the proposal provision is made for use of the EU's scientific opinion procedure for evaluating medicines under Regulation (EC) no 726/2004.

The rules also ensure that marketing authorisations do not lapse for reason of non-use in the EU, and set out exemptions from data protection rules which usually require manufacturers of generic medicines to wait for eight years before they can obtain authorisations using data from previous clinical trials conducted by others.

Resümee

Die Kommission hat eine Verordnung vorgeschlagen, die es den Herstellern von Arzneimittel-Nachahmerpräparaten, so genannten Generika, erlauben soll, patentierte Arzneimittel herzustellen und in „bedürftige Länder" auszuführen, die nicht über ausreichende Produktionskapazitäten verfügen. Mit der Verordnung würde ein Beschluss der Weltgesundheitsorganisation WTO vom 30. August 2003 in der EU umgesetzt, der den nationalen Behörden die Möglichkeit einräumt, „Zwangslizenzen" für die Herstellung zu erteilen, falls bestimmte Voraussetzungen erfüllt sind.
Eine der Voraussetzungen ist, dass das Bestimmungsland der WTO gemeldet haben muss, dass es das Arzneimittel benötigt, auf das sich diese Lizenz erstreckt.

Further information at:
http://europa.eu.int/comm/internal_market/en/indprop/patent/index.htm
http://europa.eu.int/comm/trade/issues/sectoral/intell_property/index_en.htm

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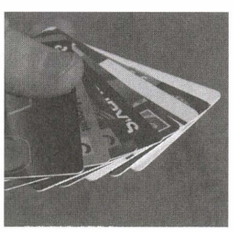
New guidelines for payment card fraud prevention

Résumé

Sur demande des banques européennes et par l'intermédiaire des services de la Commission européenne, les Commissaires nationaux pour la protection des données ont préparé et approuvé des nouvelles orientations sur l'utilisation de bases de données sur les commerçants. Ces bases de données contiennes des informations sur les fraudes effectuées par carte bancaire auprès des commerçants. Les orientations donneront au secteur bancaire une plus grande sécurité juridique concernant la possibilité de transférer des données dans l'UE et contribueront à une meilleure prévention des fraudes. Elles assureront aussi que des protections adéquates soient préservées.



At the request of EU banks and with the mediation of the Commission, the data protection commissioners have drawn up and endorsed new guidelines on the use of databases which contain information on credit card fraud detected at merchants. The guidelines will provide the banking sector with greater legal certainty when transferring relevant information across the EU and will help prevent further credit card fraud. They will also ensure that adequate privacy safeguards are maintained.

Fraud prevention with safeguards

VISA Europe, Mastercard Europe and the European Payment Council have been involved in negotiating these guidelines with the Commission and data protection experts over the last two and a half years. The resulting guidelines, prepared under the guidance of Irish Data Protection Commissioner Joe Meade, have now been endorsed by the EU Committee of Data Protection Authorities ('Data Protection Article 29 Working Party'). They set out to clarify the data protection principles applicable to the collection and processing of data on merchants accepting payment cards whose contracts have been terminated by their banks.

The guidelines will allow the banking sector to operate these databases and transfer data across the European Union thereby preventing payment card fraud more effectively and establishing greater legal certainty. At the same time, the guidelines will provide adequate safeguards regarding the lawful processing and use of such data, and ensure that the privacy of merchants will be properly protected. The transfer of personal data to non-EU countries will still be subject to further safeguards.

Clarification of principles

These guidelines are seen as a positive first step towards the clarification of data protection principles in the area of financial services. It is also an excellent example of cooperation between businesses and data protection authorities. The EU banking community has shown a serious commitment towards complying with data protection rules and the Commission has carefully listened to business needs.

The clarification of EU data protection legislation on fraud prevention activities has been included as one of the main objectives of the EU Commission Action Plan 2004-2007 to prevent payment fraud.

Making informed decisions

To prevent fraud, the payment card business operates national and cross-border fraud prevention databases which provide information on high-risk and fraudulent merchants. The data collected is to enable acquiring banks to make an informed decision when entering into an agreement with merchants whose contracts have been terminated by another acquiring bank. Given the non-uniform implementation of the EU Data Protection Directive into national legislation, banks in certain Member States have been reluctant to report fraudulent merchants in these databases, concerned that such reporting might be contrary to their national data protection laws.

The guidelines which have been endorsed are a comprehensive catalogue of data protection rules that VISA and Mastercard are committed to respect in the future: for example, on who could access the database, for what purposes, how long can the data be kept, how and when should merchants be informed and how and when they can obtain the correction or deletion of incorrect information.

The operation of databases on terminated merchants is extremely important for the banking industry In the United Kingdom, one of the countries where the operation of these databases did not pose any problems, substantial fraud savings have been made over the years.

The guidelines will be implemented by Visa and Mastercard in 2005 and its implementation will be reviewed by the Article 29 Working Party in early 2006.

Further information at:
http://europa.eu.int/comm/internal_market/privacy/en.htm

Resümee

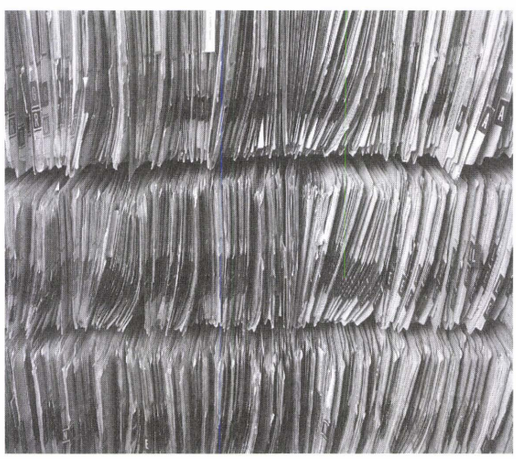
Auf Ersuchen von EU Banken und durch Vermittlung der Kommission, hat die Datenschutz Kommission einen Leitfaden betreffend den Einsatz von Datenbanken zur Verhinderung von Kreditkartenbetrug durch Händler erlassen. Dieser Leitfaden wird Banken eine größere Rechtssicherheit beim Austausch relevanter Daten in der EU bieten und soll helfen weiteren Kreditkartenbetrug zu verhindern. Außerdem soll der Leitfaden sicherstellen, dass adäquate Datenschutzmaßnahmen eingehalten werden.

New standard clauses for data transfer to non-EU countries

Résumé

La Commission européenne a approuvé de nouvelles clauses contractuelles types que les entreprises peuvent utiliser pour assurer des garanties adéquates lors du transfert de données à caractère personnel de l'UE vers des pays tiers. Ces nouvelles clauses, soumises par une coalition d'entreprises, seront ajoutées à celles qui existent déjà dans le cadre de la décision de la Commission de juin 2001. L'utilisation de clauses contractuelles types permet aux entreprises et autres organismes de s'acquitter facilement de leur obligation, au titre de la directive communautaire de 1995 sur la protection des données, d'assurer une "protection adéquate" des données à caractère personnel transférées à l'extérieur de l'UE.

Approval has been given to a new set of standard contractual clauses which businesses can use to ensure adequate safeguards when personal data is transferred from the EU to non-EU countries. The new clauses, submitted by a business coalition, will be added to those already available under the Commission's June 2001 decision. The use of standard contractual clauses offers companies and other organisations a straightforward means of complying with their obligation under the 1995 EU Data Protection Directive to ensure 'adequate protection' for personal data transferred outside the EU.



Over the past three years, a coalition of business associations led by the International Chamber of Commerce has negotiated these new standard contractual clauses with the EU Commission and with the committee of EU data protection authorities (the "Article 29 Working Party").

Companies believe that some of the new clauses, such as those on litigation, allocation of responsibilities or auditing requirements, are more business-friendly. Yet they provide a similar level of data protection as those of 2001, and to prevent abuses, the data protection authorities are given more powers to intervene and impose sanctions where necessary. The implementation of this new set of clauses will be reviewed in 2008.

'Adequate protection' regimes

Contractual clauses are not necessary, however, to transfer data to Switzerland, Canada, Argentina and the UK territories of Guernsey and the Isle of Man, whose own regimes are recognised by the Commission as offering adequate data protection. Neither are they needed for transfers to U.S. companies adhering to the 'Safe Harbor' Privacy Principles issued by the U.S. Department of Commerce.

For transfers to other countries, standard contractual clauses are one of a range of means under the 1995 Directive to ensure appropriate data protection.

More clauses possible

This is the third set of standard contractual clauses made available to operators since the Directive entered into force in 1998. Should other interested parties submit other sets of clauses in the future, the Commission may consider them if they contribute to further simplification and ensure adequate safeguards.

The Commission is also working with the data protection authorities on other possible alternatives, such as "Binding Corporate Rules", that is, the use of codes of conduct instead of model contracts for the transfer of personal data to third countries. All these efforts are part of the Commission's work programme for a better implementation of the Data Protection Directive, the results of which will be assessed by the Commission in 2005.

Single Market Commissioner Charlie McCreevy, said: "The business community has shown a serious commitment towards data protection and the Commission has carefully listened to business needs. This is a good example of regulating in cooperation with business."

Resümee

Die Kommission hat einen neuen Standardvertrag genehmigt, der es Unternehmen ermöglicht, ein angemessenes Datenschutzniveau zu gewährleisten, wenn sie personenbezogene Daten aus der EU in Nicht-EU-Länder übermitteln. Der neue Standardvertrag, der von mehreren Wirtschaftsverbänden gemeinsam vorgeschlagen wurde, kommt zu dem Standardvertrag hinzu, der bereits mit der Kommissionsentscheidung vom Juni 2001 eingeführt wurde. Standardvertragsklauseln sind ein Instrument mit dem Unternehmen und Organisationen auf unkomplizierte Weise ihren Verpflichtungen aus der EU-Datenschutzrichtlinie von 1995 nachkommen können, wonach sie personenbezogene Daten, die in Nicht-EU-Länder übermittelt werden, „angemessen schützen" müssen.

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Internal Market Scoreboard - N

Résumé

Dans la perspective du Conseil européen de printemps, qui procédera à une évaluation à mi parcours des progrès accomplis sur la voie de la réalisation des objectifs de Lisbonne, la Commission a élaboré un rapport d'étape – le tableau d'affichage du marché intérieur – sur la mise en œuvre de la stratégie pour le marché intérieur, laquelle est généralement considérée comme l'un des éléments clés pour atteindre les objectifs de compétitivité définis dans le cadre du programme de Lisbonne.

Le rapport fait ressortir une nette amélioration dans la mise en œuvre de la législation de l'UE en France et en Allemagne, bien que l'Espagne et la Lituanie, nouvel État membre, soient les seuls pays de l'UE à se situer au dessous du seuil convenu de 1,5 % de dispositions législatives du marché intérieur non mises en œuvre.

In the run-up to the Spring European Council which will undertake a mid-term review of progress towards achieving the Lisbon economic competitiveness objectives, the Commission has drawn up a progress report on the implementation of the Internal Market Strategy – widely seen as one of the key elements for achieving the EU's competitiveness.

The IM Scoreboard section of the report shows great improvement in the implementation of EU laws in France and Germany. Spain and new Member State Lithuania, however, are the only EU countries to be below the agreed 1.5% threshold of internal market laws which have not been implemented.

Implementing EU law

Each year the Commission draws up a 'Scoreboard' which tracks progress made in putting agreed EU law into practice. In the latest analysis, the new Member States lead the field with both the best and worst track records. Three of the new Member States, Lithuania, Hungary and Poland, are among the top twelve performers (see Graph 1 below).

Since Accession in May 2004, all the new Member States have reduced their deficits. Lithuania is now one of the two Member States below the 1.5% threshold. This creditable performance contrasts starkly with that of the Czech Republic which still has 151 Directives awaiting implementation but at the time of enlargement, Prague had 209 laws to implement, so substantial progress has been made. At enlargement, Malta was still well behind with 522 EU laws in the pending tray but this has now been reduced to 95.

EU-15 disappointment

The improvements by new Member States mask the worsening performance of some of the 'old' ones, with a deteriorating position evident in Denmark, Finland the UK and Ireland. Belgium, Luxembourg, Italy and Greece all seem to have gone into reverse gear.

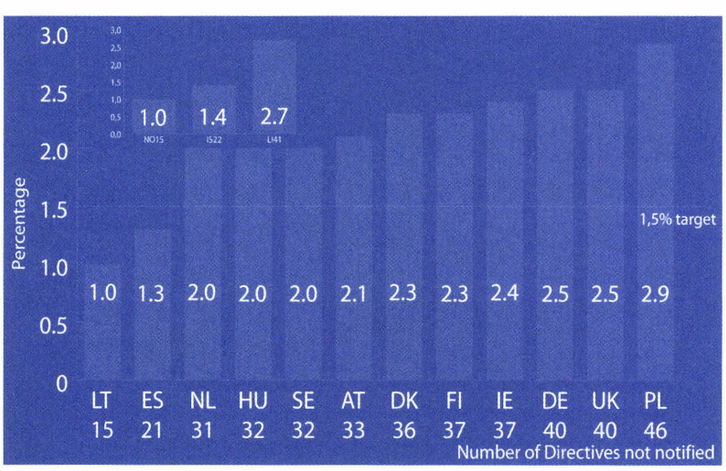
On the positive side, Spain has maintained its good performance and the Netherlands has improved significantly.

The countries which were leading the field last year - including Denmark, Finland, the UK and Ireland - have subsequently slipped down the scale. The worst performer of the 'old' Member States is Greece with 80 laws still awaiting transposition.

Presenting the results, Commissioner for the Internal Market & Services, Charlie McCreevy, praised Germany and France - with 40 and 50 laws respectively to be implemented - for the big improvement since the last Internal Market Scoreboard. But he called the performance of those who had slipped down the scale a "disappointing score". According to Mr McCreevy, much of the progress or lack of it, comes down to political will. "When the political will is there, they are able to make dramatic progress."

Significant step backwards

The overall deficit for the EU-15 Member States is 2.9%, which represents a very significant step backwards after their progress in reducing the deficit since the Lisbon Summit in 2000. When all 25 Member States are included in the calculation, the deficit rises to 3.6% - too high,



Graph 1. *The leading twelve Member States in terms of agreed EU laws which have been transposed into national law. Lithuania and Spain are the only countries below the target 1.5% threshold.*

Member States show the way

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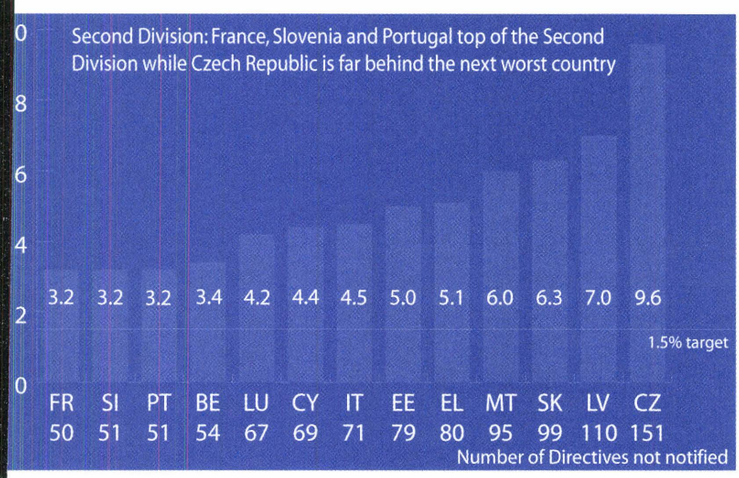
but still considerably better than the 7.1% deficit which was evident at the time of Enlargement. This is credit to the considerable notification efforts of the new Member States. This is nevertheless a long way from the 1.5% interim target set by successive European Councils, Commissioner McCreevy stressed.

In concrete terms, this means that the Commission is still awaiting 1,428 notifications of national implementing measures. Of all Internal Market Directives, over a quarter (27% or 427 Directives) have not been fully transposed in at least one Member State.

Commissioner McCreevy stressed the importance of making progress: "The vast majority of internal market laws reduce red tape. Without them, there would often be 25 sets of rules instead of one for businesses to comply with. There is a huge economic dividend up for grabs if we can get rid of remaining barriers which deprive businesses of bigger markets and consumers of choice and better value."



Graph 2. *A number of Member States of the 'second division' still have plenty of EU laws to transpose into national legislation.*

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"The single market cannot function if Member States do not write Directives into national law on time...I take the old-fashioned view that a Minister's signature on a Directive should be a firm commitment, not a vague aspiration."

Effective redress

"Implementation does not just mean passing laws in Brussels. It means getting those laws onto national statute books on time. It means national, regional and local authorities applying them properly," he said. It also means giving businesses and citizens a quick and effective means of redress. "Someone who is being unjustly denied the right to work in another Member State, or a business refused access to a national market, cannot wait years for an infringement case to meander its way to the European Court of Justice. That is why the Commission has set up the SOLVIT network, to get the misapplication of internal market law put right,."

It is the Member States who have a crucial role to play in making the Internal Market work on a day-to-day basis. In particular, this involves co-operating more with each other and with the Commission, exchanging information, providing mutual assistance and solving problems.

Blockages in EU pipeline

The report also looks at progress made in moving legal initiatives along the EU pipeline. Here there are positives to report. For example, 40 out of 42 Financial Services Action Plan measures have been adopted and there is a new public procurement framework.

But there are still some key measures which have been held up in the Council and the Parliament, notably the Community Patent and the Directive on patents for computer-implemented inventions, and the Directive simplifying the system for the recognition of professional qualifications. All of those measures, the Commissioner stressed, are crucial to stimulating innovation and competitiveness.

Resümee

Im Vorfeld zum Frühjahrsgipfel des Europäischen Rates, der eine Zwischenbilanz der Fortschritte auf dem Weg zur Bewerkstelligung der Zielsetzungen von Lissabon ziehen wird, hat die Kommission einen Fortschrittsbericht - den Binnenmarktanzeiger - über die Umsetzung der Binnenmarktstrategie erstellt, der von vielen als eines der Schlüsselelemente zur Erreichung der im Lissabon-Programm festgeschriebenen Wettbewerbsfähigkeitsziele angesehen wird.

Aus dem Bericht geht hervor, dass in Frankreich und in Deutschland große Verbesserungen bei der Umsetzung der EU-Rechtsvorschriften erzielt wurden, wohingegen Spanien und der neue Mitgliedstaat Litauen die einzigen EU-Länder sind, die unter dem vereinbarten Schwellenwert von 1,5% der nicht umgesetzten Binnenmarktvorschriften liegen.

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Further information at:
http://www.europa.eu.int/comm/internal_market/score/index_en.htm

New study on impact of the Services Directive

Résumé

Les avantages économique de la Directive sur les Services

La bureau d'étude économique danois 'Copenhagen Economics' a évalué l'impact économique de la proposition de Directive «Services» pour le compte de la Commission.

L'évaluation en question montre que l'implémentation des mesures pourrait entraîner la création de 600.000 emplois.

Il pourrait aussi stimuler une croissance en consommation de €37 milliards et de €33 milliards en production.

A new study produced by economic researchers in Denmark shows that the Commission proposal for a Directive on services in the internal market would create over half a million jobs, raise productivity and reduce consumer prices. According to the report "Economic Assessment of the Barriers to the Internal Market for Services", net employment could increase by up to 600,000 jobs across the EU, mainly in sectors where barriers are reduced most.

Established research institute

The study was conducted by the Danish consultancy 'Copenhagen Economics' at the request of the Commission and published in January. "We have developed a novel approach to impact analysis that allows us to describe and estimate the nuances of the European Commission's proposal to facilitate trade and investment in services across the EU, say the researchers. "The methodology is based on a detailed company database approach that explicitly links legal changes due to the proposed Services Directive to economic effects."

Their analysis suggests that stronger competition will cut down artificially high prices of services and so will benefit both consumers and firms using services.

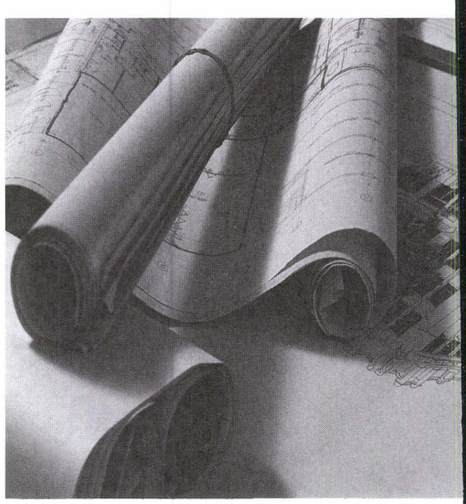
The net effect of the Services Directive could be to increase total consumption in the EU by € 37 billion, while output in the EU economy could rise by € 33 billion, leading to more jobs and higher wages.
The analysis concludes that new jobs would be created Europe-wide and also across various sectors. No EU countries are likely to be losers, as removing of the barriers in the services sector would give a great impetus to the EU economy.
The document allays fears in some "rich" countries that the Services Directive would only benefit new Member States that have less labour regulation and a low-cost workforce.

Barriers facing a major sector

Services represent almost 70% of GNP and jobs in the EU, the report states, but the full economic potential of the service sector is currently hampered by many internal market barriers. Examples of barriers to service provision are abundant. They are often caused by obligations and administrative burdens imposed by national and local regulations.

The proposed Directive covers a wide range of services provided to both consumers and businesses. These include pure business services (management consultancy, recruitment etc.), services provided to both business and consumers (legal advice and distributive trades) and pure consumer services (e.g. leisure services and some healthcare services).

The Danish study looks at three key groups: regulated professions (such as accountancy), distributive trades (retail/wholesale) and business services (such as IT services). The study estimates that on average the Directive will reduce current barriers to service provision by more than 50%. The reductions are largest for regulated professions.



The analysis is based on an analytical framework that explicitly links legal changes to economy-wide effects. It includes a dataset containing more than 275,000 firms in the EU and utilises a sophisticated (econometric) simulation model. The analysis includes approximately two-thirds of the economic activity covered by the Services Directive and may therefore underestimate its economic effects, the researchers point out.

"...new jobs would be created Europe-wide and also across various sectors. No EU countries are likely to be losers..."

info

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http://www.copenhageneconomics.com

Resümee

Vorteile der Richtlinie über Dienstleistungen

Die Wirtschaftsberatungsagentur 'Copenhagen Economics' in Dänemark hat eine Studie zur Abschätzung der wirtschaftlichen Auswirkungen der vorgeschlagenen Richtlinie über Dienstleistungen im Auftrag der EU Kommission durchgeführt.

Die Studie zeigt, dass die Durchführung der Maßnahmen zur Schaffung von ungefähr 600.000 Arbeitsplätzen führen würde.
Der Verbrauch würde um €37 Milliarden steigen und die Produktion um €33 Milliarden wachsen.

Support for EU at UPU Congress

Résumé

n novembre 2004, la Com-ission européenne a participé u Congrès Mondial de l'Union ostale universelle (UPU).

réée en 1874, l'UPU, dont e siège se trouve à Berne, Suisse), est, avec 189 pays embres, le principal forum e coopération entre les postes, ui permet d'entretenir un véritable réseau universel ffrant des produits et services odernes.

lle fixe des règles pour es échanges de courrier nternational et formule des ecommandations pour stimuler a croissance des volumes de ourrier et améliorer la qualité u service offert aux clients.

Every five years, the Universal Postal Union (UPU) organises a World Congress to review its international conventions and adopt decisions on the world-wide operation of postal services. The Commission was present in force at the latest event in Bucharest, 15 September to 5 October 2004.
At stake at the 23rd UPU Congress were a number of Community interests regarding the Internal Market for postal services and other EU policies, such as trade in services and competition policy.

As a specialised agency of the United Nations system, the Universal Postal Union is in charge of the regulation of postal services at international level. The postal sector is an area of shared Community competence, based on Directive 97/67/EC, as amended in 2002 (the "Postal Directive"), which aims to progressively develop the internal market of Community postal services and improve the quality of services provided.

This Congress was prepared in advance through a Commission Communication to Council, a Council Resolution, and an external study. Coordination was also undertaken at Community level with a view to ensuring respect for Member States' obligations arising from trade agreements and from existing Community legislation, with EEA countries and other members of the Committee of European Postal regulators (CERP) and the Association of European Public Postal Operators (Posteurop).

Objectives achieved

The main Congress objectives as identified by the Commission were achieved, and due account was taken of Community positions throughout the negotiations and during votes. In particular, Member States and EEA countries presented a declaration stating that they will respect their UPU commitments in accordance with their obligations pursuant to EC Law and WTO/GATS.
The challenge for the Community in this Congress was to secure the short and long term compatibility between the developing EC and international postal regulatory models. Some key decisions in that regard can be highlighted:

- A new Terminal Dues system (which regulates payments between public operators for the conveyance of cross border mail) was approved. The new system will increasingly be based on the costs and the quality of the service provided, which will bring it closer to what is already the norm of Community postal regulation.

- A new committee within UPU was created to reflect the increasing role of users and private operators in the development of the regulatory framework. This decision was supported by the Commission as it is in line with existing Community policy.

- A quality of service objective for priority letter mail was decided (50% of priority letters must arrive within 5 days after the letter has been sent). This decision, albeit less ambitious than Community targets, is in line with the objective of improving the quality of postal services, which is an essential part of Community policy.

- To prepare the direction to be followed in the next Congress, it was decided to study the possibility of fostering the separation between the functions of the regulation of the postal market and the provision of postal services, a principle included in the Postal Directive.

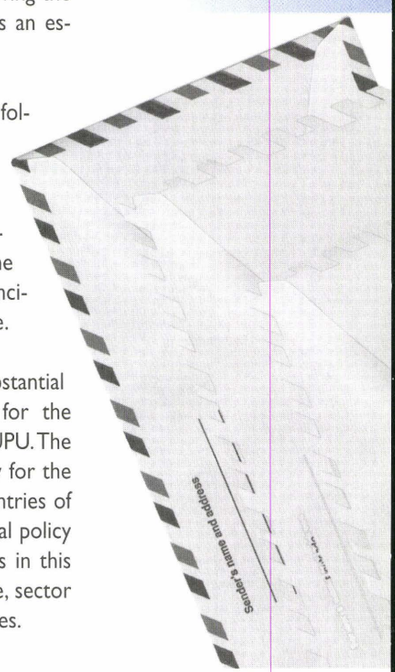
EU Member States obtained substantial representation in the elections for the main working Institutions of the UPU. The Congress was also an opportunity for the Commission to inform other countries of developments in Community postal policy and of the Commission's activities in this area including the Postal Directive, sector studies and standardisation activities.

Resümee

Im November 2004 nahm die Kommission am Weltkongress des Weltpostvereins (UPU) teil. Dieser wurde 1874 gegründet und hat seinen Hauptsitz in der Schweizer Hauptstadt Bern.

Er ist mit seinen 189 Mitgliedsstaaten das Hauptforum für Zusammenarbeit zwischen den Postdiensten, deren Aufgabe es ist, ein universelles Netzwerk zu unterhalten, das moderne Produkte und Dienstleistungen anbietet.

Er legt die Regeln für den Austausch internationaler Postdienste fest und gibt Empfehlungen zum Wachtums der Volumnia im Postbereich und zur Verbesserung der Qualität der angebotenen Dienstleistungen.



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http://www.europa.eu.int/comm/internal_market/post/intactivities_en.htm

Reconnaissance des qualifications professionnelles

Le Conseil adopte une position commune

Summary

The Council reached agreement in December on a common position on the future system for the recognition of professional qualifications.

The new text represents, in the Commission's view, an acceptable balance between facilitating the offer of services and the possibility for control by the host Member State of services performed on its territory.

Le Conseil a adopté une position commune le 21 décembre 2004 concernant le futur système de reconnaissance des qualifications professionnelles, suite à son accord politique du mois de mai. Ce texte a été transmis au Parlement, en vue de sa deuxième lecture, qui devra être finalisée avant l'été 2005.
Les principales modifications apportées par le Conseil concernent le régime pour la prestation temporaire et occasionnelle de services. La Commission a soutenu la position commune, qui préserve pour l'essentiel sa proposition et reprend dans l'ensemble les éléments clés contenus dans les amendements du Parlement européen.

Le principe d'un contrôle par l'Etat membre d'accueil

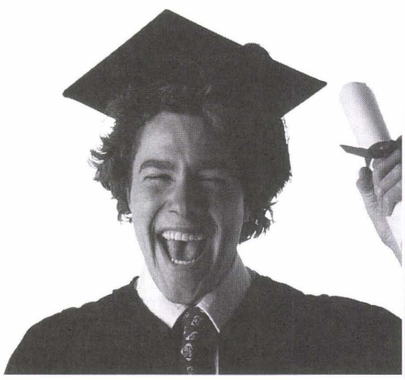
S'agissant de la prestation de services, bien qu'elle ait regretté que la position commune n'allège pas davantage les conditions imposées au prestataire de services, la Commission a accepté le principe d'un contrôle par l'Etat membre d'accueil, fondé sur une déclaration préalable suivie, le cas échéant, d'une inscription pro forma.

Le contrôle préalable et suspensif des qualifications est limité aux professions ayant des implications sur la santé ou la sécurité publiques pour lesquelles les conditions minimales de formation ne sont pas coordonnées.

Un équilibre acceptable

La Commission considère en effet qu'en l'état actuel de la coopération administrative entre les Etats membres, le texte de la position commune constitue un équilibre acceptable entre la facilitation de la prestation de services et la possibilité d'un contrôle par l'Etat membre d'accueil des prestations effectuées sur son territoire.

La Commission a présenté une proposition de Directive destinée à clarifier et à simplifier les règles afin de faciliter la libre circulation des personnes qualifiées entre les Etats membres, notamment dans la perspective d'une Union européenne élargie.



La proposition constitue la première modernisation d'ensemble du système communautaire depuis sa conception.

Cette proposition remplacerait les quinze Directives existantes dans ce domaine. La proposition constitue la première modernisation d'ensemble du système communautaire depuis sa conception, il y a quarante ans.

Plus grande automaticité

Plusieurs modifications sont proposées par rapport aux règles existantes y compris une libéralisation accrue de la prestation de services, une plus grande automaticité dans la reconnaissance des qualifications et une plus grande flexibilité des procédures de mise à jour de la Directive.

La Commission propose également de développer sa coopération avec les Etats membres, afin de mieux informer les citoyens sur leurs droits et de mieux les aider à faire reconnaître leurs qualifications.

Resümee

Im Dezember ist der Rat im Hinblick auf die Annahme einer Richtlinie des Europäischen Parlaments und des Rates über die Anerkennung von Berufsqualifikationen zu einem gemeinsamen Standpunkt gekommen.

Der neue Text bietet, nach Ansicht des Kommissions, ein annehmbares Gleichgewicht zwischen der Erleichterung Diensten anzubieten zu können, und der Kontrollmöglichkeiten der Mitgliedstaaten, in denen die Dienste angeboten werden.

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Dialoguer pour faire mieux respecter le droit européen

Summary

ackage meetings - dia-gue to bring about im-ementation of EU laws

hen necessary, DG Inter-l Market opens infringe-ent procedures against ember States that do not mply with their Internal arket law obligations. Di-ogue with Member States often a better solution to lve the practical problems at citizens and compa-es face to exercise their ghts. Package meetings e a must in this respect. rganised in the Member tates capitals, they bring ogether Commission and ational officials and help oth sides to better under-tand the cases and find ractical solutions. These eetings have been quite seful in the areas of free ovement of goods and ublic procurement. They ave now been extended o the specific issue of the mplementation of Internal Market Directives with a iew to anticipate problems Member States face in this espect.

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La Direction générale du Marché intérieur attache une grande importance à la bonne application par les Etats membres des lois européennes dont elle a la responsabilité. Il s'agit d'un principe de bon sens et de bonne gouvernance qui veut qu'une loi n'est utile que si elle appliquée dans les faits.

Les traités européens ont donné à la Commission un instrument juridique lui permettant, si nécessaire, de poursuivre devant la Cour européenne de justice les Etats membres n'ayant pas respecté les obligations qui sont les leurs en vertu des traités et des lois européens. Il s'agit de la procédure « en manquement », encore appelée « procédure d'infraction ». La Commission estime cependant que cette procédure, longue et coûteuse en ressources, ne doit constituer qu'un dernier recours.

Rapide et pragmatique

Particulièrement pour ce qui concerne les dossiers de mauvaise application du droit européen, elle privilégie le dialogue avec les Etats membres pour résoudre ces problèmes de manière rapide et pragmatique.

Les « réunions paquet » constituent l'un des instruments les plus efficaces de ce dialogue. Lors de ces réunions informelles organisées dans les capitales des Etats membres, les fonctionnaires de la Commission rencontrent leurs homologues nationaux pour discuter de l'ensemble des dossiers d'infraction en cours.

Ces discussions permettent de bien circonscrire les problèmes posés, de préciser les règles nationales et européennes qui s'y appliquent et d'identifier une solution pratique pour les résoudre.

Ces solutions devront être à la fois conformes aux règles européennes mais aussi répondre aux besoins des personnes ou des entreprises dont les droits ont été violés.

Réussite à Rome...

Une réunion paquet, consacrée aux dossiers « marchés publics » italiens, a été organisée à Rome le 4 juin 2004.

12 affaires figuraient à l'ordre du jour de cette réunion. Pour sept d'entre eux, des solutions concrètes ont été trouvées : respect du principe de l'égalité de traitement pour la réalisation d'une autoroute, reconnaissance par l'Italie d'une infraction lors d'une passation d'un marché public de services pour la gestion d'un Théâtre public, etc.

Ce sont autant de procédures en moins à engager devant la Cour de justice!

Des secteurs pionniers.

La DG Marché intérieur a inauguré les réunions paquet ('package meetings'), il y a déjà plusieurs années, dans les secteurs de la libre circulation des marchandises et des marchés publics. Depuis lors, plusieurs centaines de dossiers, d'une très grande variété, ont été discutés avec les Etats membres et de nombreuses solutions concrètes ont été trouvées en commun accord avec ces Etats (voir encadré).

Un effort particulier en faveur des Directives 'Marché intérieur'

Depuis deux ans, la DG Marché intérieur a également lancé une nouvelle série de réunions paquet consacrée spécifiquement à la transposition des Directives « Marché intérieur ». L'objet principal de ces réunions est d'anticiper avec les Etats membres les problèmes éventuels de transposition des directives et ceci bien avant la date d'échéance de la transposition (en moyenne deux ans après l'adoption).

Plusieurs réunions de ce type devraient être organisées en 2005, en particulier dans les nouveaux Etats membres de l'Union.

Further information at:
http://europa.eu.int/comm/secretariat_general/sgb/droit_com/index_en.htm

Resümee

Paket-Sitzungen: mittels Dialog die Umsetzung von EU Gesetzen beschleunigen

Um den Rückstand bei der Umsetzung der EU Gesetzgebung durch die Mitgliedstaaten abzubauen, bedient sich die Kommission mehr und mehr 'Paket-Sitzungen' anstatt auf Vertragsverletzungsverfahren zurückzugreifen. Der Dialog mit den Mitgliedstaaten erweist sich als die bessere Methode um praktische Probleme, denen sich die Bürger und Firmen bei der Ausübung ihrer Rechte gegenüber sehen, zu lösen. Die Paket-Sitzungen, die in den Hauptstädten der Mitgliedstaaten stattfinden, bringen die Kommission und nationale Beamte an einen Tisch und helfen so beiden Seiten die Fälle besser zu verstehen und praktische Lösungen zu finden. Diese Sitzungen waren in den Bereichen freier Warenverkehr und öffentliches Auftragswesen sehr nützlich. Sie wurden jetzt auf die Umsetzung der Binnenmarktrichtlinien ausgeweitet.

Copyright and public lending

Public lending right: 8 cases decided

The Commission has decided to refer Ireland, Portugal and Spain to the European Court of Justice as these Member States exempt all public lending institutions from payment of copyright royalties on works which are borrowed, thus depriving authors from the income due to them.

The Commission has also decided to send letters of formal notice to Denmark, Finland and Sweden asking for further information about possible indirect discrimination in relation to the public lending of books and sound recordings.

EU Directive 92/100/EEC on rental right and on certain rights related to copyright grants authors and other rightholders the exclusive right to authorise or prohibit the public lending of their works or other subject matter (books, CDs, DVDs etc.).

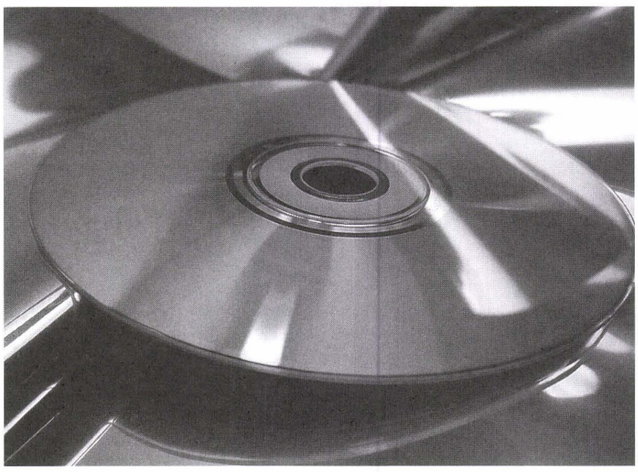
Member States may, instead of the exclusive lending right, establish a right for authors to be remunerated when their works are lent by public institutions.

They can also exempt certain categories of establishments from paying this remuneration. Harmonisation was needed because public lending activities can have a significant impact upon the internal market. For example, if a book can be borrowed from a public library, there may be less demand to buy it and this would reduce income for rightholders.

Since Belgium and France have recently adopted decrees completing the implementation of their laws on the public lending right, the Commission decided to close infringement proceedings against them.

Rental right: Portugal referred to the Court of Justice

The Commission has decided to refer Portugal to the European Court as it has found that, contrary to Directive 92/100/EEC, it has added a new category (producers of videos) to the exhaustive list of rightholders in the field of rental rights who can authorise, against payment, or prohibit the marketing of a work for rental. Portuguese law could impede the functioning of the single market.



Case closed involving UK commercial users

As a result of recent legal changes, UK commercial users (e.g. supermarkets, restaurants etc.) must now pay an equitable remuneration, provided for by Directive 92/100/EEC, whenever a phonogram is seen or heard by a non-paying audience. The remaining exemption concerns not-for-profit users only, but the Commission decided to close this case on procedural grounds.

Cases closed against Portugal and the Netherlands following implementation

The Commission has decided to close infringement proceedings against Portugal and the Netherlands as these Member States implemented, in August and September 2004 respectively, Directive 2001/29/EC on copyright in the Information Society.

Case closed following Ireland's accession to the 1971 Paris Act of the Berne Convention

The Commission has decided to close infringement proceedings against Ireland after this Member State ratified the 1971 Paris Act in December 2004. This is the revision of the most important international convention concerning authors. Ireland complied with EU law after the Commission referred it to the Court for the second time for non-compliance with a 2002 Court's ruling. All EU Member States are now parties to the 1971 Paris Act of the Berne Convention for the Protection of Literary and Artistic Works.

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Financial collateral arrangements

The Commission has decided to refer France and Luxembourg to the European Court of Justice for non-transposition into national law of Directive 2002/47 on financial collateral arrangement, after sending them reasoned opinions in July 2004. All Member States should have implemented and applied the Directive by 27 December 2003.

The Directive sets out to create a clear and uniform EU legal framework to limit credit risk in financial transactions through the provision of financial instruments and cash as collateral and is a priority measure under the Financial Services Action Plan.

Collateral is a huge market in the EU, with the total value of outstanding contracts on the market for repurchase agreements ('repos') alone estimated to be worth around € 2 trillion. Before the Directive, market operators in the European Union faced widely divergent national legal regimes for the provision of collateral, leading to uncertainty over the effectiveness of collateral in cross-border transactions.

Sweden and the Netherlands have also not yet implemented the Directive, but have provided a detailed timetable for when the relevant national laws will enter into force. The Commission is not therefore at present referring them to the Court, but will closely monitor implementation to ensure that they meet their commitments. Italy, Belgium and Greece, which also received a reasoned opinion in July 2004, have now notified the Commission that they have transposed the Directive into national law.

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INFRINGEMENT PROCEDURES

If the Commission obtains or receives convincing evidence from a complainant 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.

Accounting 'fair value' rules

The Commission has referred Greece, France and Luxembourg to the European Court of Justice for failure to implement the 2001 "fair value" Directive (2001/65/EC) on accounting rules. These Member States failed to give a satisfactory reply to the reasoned opinions sent in July 2004. In addition, the European Commission has sent reasoned opinions asking Germany to write this Directive into national law and the United Kingdom to implement it in Gibraltar.

The Directive amends three existing Accounting Directives, on annual accounts (78/660/EEC), consolidated accounts (83/349/EEC) and annual and consolidated accounts of banks and other financial institutions (86/635/EEC). These Directives define which types of companies have to produce accounts, establish which format should be used for the profit and loss account and the balance sheet and lay down which valuation principles should be applied. The Directives also impose requirements to disclose the accounts. Directive 2001/65/EC requires Member States to permit or require in respect of all companies or any classes of companies the application of "fair values" for certain financial instruments, including derivatives. It aligns the provisions of the Accounting Directives with existing international standards on the valuation of financial instruments.

Belgium, Ireland, the Netherlands and Finland – the other Member States who received reasoned opinions in July 2004 - have now implemented the Directive in national law or will do so in the near future.

For the latest information on proceedings concerning all Member States, consult the following site:
http://europa.eu.int/comm/secretariat_general/sgb/droit_com/index_en.htm

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