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EDITORIAL

At the end of June, Alexander Schaub stepped down as Director General of DG Internal Market and Service. In conversation with SMN he reflects on the changing international context in which Internal Market policy now has to be developed. Whilst pointing to the many success stories in building the Internal Market, we should not lose sight of fact, he stresses, that there is still a long way to go. "I think that the truth is that the Single Market will always be a work in progress. It will never quite be ready but we continue to make progress." (see page 4).

The first two years of the Commission's Action Plan on Company Law and Corporate Governance have seen the first wave of measures implemented or in the process of adoption. To confirm priorities for the next stage, the Commission organised a consultation and followed this with a public hearing in Brussels. The public hearing which attracted some 300 stakeholders, broadly confirmed the written responses to the consultation and sought selective action in key areas of concern regarding the most efficient way to modernise company law and corporate governance (see page 8).

The EU's postal sector is a major economic vehicle. It is one of the biggest employers in Europe with 1.7 million people directly employed and 3.8 million people working in related industries. The revenue of the sector amounts to 90 billion euro, which corresponds to 0.9% of the Union's gross domestic product. Since the launch of a Commission Green Paper in 1991, which highlighted some apparent shortcomings in the sector, the postal sector has been undergoing far-reaching reform. This has resulted at the end of the day in significant improvements - notably in terms of quality of postal services and efficiency of national postal operators. See Special Feature on page 11.

A relatively low cost and efficient patent system in the EU is seen as essential by many technology-based industries trying to grow and prosper in a fast-moving global economy. The new industrial policy launched by the Commission in October 2005 also identified the development of IPR as major policy initiative. Commission efforts so far at launching the Community Patent (COMPAT) have been deadlocked over thorny and expensive issues such as translation requirements. In January the Commission launched a consultation on stakeholders' views on the future of the patent system in Europe and in July invited stakeholders to a public hearing in Brussels. Whilst the consultation has demonstrated that there is a widespread preference for the Community Patent (COMPAT) as a way forward, stakeholders, it is clear, do not wish to have this system at any price (see page 20).

Thierry Stoll



Thierry Stoll

The changing focus of Internal Market policy-making

At the end of June, Alexander Schaub stepped down as Director General of DG Internal Market and Service. Single Market News talked to Dr Schaub about the evolving focus of the work of the Directorate General and the challenges it faces for the future.

"Compared to where we were some 20 years ago, the progress that has been made in developing the Single Market has been quite remarkable," says Alexander Schaub, Director General of DG Internal Market and Services. "Today, EU citizens can live, study, work or retire in whichever country they like in Europe. And consumers have a wider choice of high quality products while companies have large and diverse markets at the disposal to develop their business with greatly reduced technical impediments."

Schaub also highlights the great changes that have taken place in the structure of Europe's industry: "We should not forget how easy it is to fly around Europe,

often at prices that are only a fraction of what they used to be. Major industry sectors have been shaken up to the benefit of consumers. Just look at telecommunications or energy where in the past the only choice was often between national monopoly or nothing at all. Now there are many new operators and brands which is a real change for the better."

But, he cautions, the many success stories we can point to should not cause us to lose sight of fact that the EU still has a long way to go. "I think that the truth is that the Single Market will always be a work in progress. It will never quite be ready but we continue to make progress."

Benefits for citizens and business

Dr Schaub stresses that enormous economic benefits that have been achieved over the past two decades and these should not be overlooked.

"Studies have demonstrated that the Internal Market has delivered growth of about 6,000 euro per household and generated 2.5 million extra jobs in the decade after its establishment in 1993."

"Our inward-looking perspective is changing. The globalisation of markets and business represents a new world which we have to operate in."

There is still much work to do, Schaub stresses, but much of it is of a different nature as major changes have been taking place in the focus of the work to be done: "For many years our job has been building or redesigning the mechanics of the Internal Market which has meant taking the divergent traditions of EU countries and bringing them together in a mutually acceptable, harmonised system. This inward-looking perspective is changing since the globalisation of markets and business has transformed the world which we have to operate in."

"The policies we develop at EU level are both affected by, and have an influence on, policies and legislation elsewhere in the world. In today's global markets, financial



services, in particular, are assuming an increasingly important role. And in tackling this sector we need to be outward-looking and have a 360 degree focus."

He highlights as an example the current work in the area of financial derivatives with the MiFID proposals (Markets in Financial Instruments Directive). "The products are part of a transatlantic market system and the proposed Directive is Europe's attempt to set rules for *de facto* non-European financial services. It is a huge project and a major test case for developing a full set of rules covering 25 Member States which take on board the interests of external global markets. The challenge here is whether we can get these rules accepted and functioning in both the EU and US context since what we are dealing with now are integrated transatlantic markets."

Dynamic consolidation

The development and on-time adoption of the Financial Services Action Plan (FSAP) is an achievement which Schaub is particularly proud of. "Our approach in tackling the highly complex area of financial services represents a qualitative leap in the work of the Directorate General. The FSAP is a new generation of legislation which has involved a very high degree of consultation, interchange and cooperation with stakeholders and EU institutions to map the way forward."

Schaub also points to the almost 'breath-taking speed' in the development and adoption of the FSAP compared to earlier Single Market legislation. The next phase, however, up to 2010 will be a phase of consolidation of existing legislation, with few new initiatives, he stresses. "The *leitmotiv* of our new strategy is 'dynamic consolidation' through which we will steadily build on the major political and legislative advances which have been made and build on the market integration which is under way in many sectors."

Better Regulation

"The way we have approached the FSAP," he explains, "is representative of the very structured way the Commission now approaches the policy-making process. Before

coming forward with plans, we have a period of comprehensive consultation and undertake impact assessments which tell everybody what the implications are going to be of introducing a Directive or Regulation.

"As a result of this process, the Commission often now decides that regulation as such may not be necessary or appropriate, and that voluntary measures could achieve the same goals without the added costs that regulation usually implies."

The role of the EU institutions and particularly the European Parliament has also been steadily changing. "We recognise that the European Parliament has devel-

Alexander Schaub has had an illustrious career in the European Commission spanning more than thirty years. He has worked at the highest level of Commission policy development in the private offices (cabinets) of Commissioners Ralf Dahrendorf, Guido Brunner, Viscount Etienne Davignon and President Gaston Thorn. He was also Head of Cabinet for Belgian Commissioner Willy De Clercq.

After working as Director in the Directorate General for External Relations and Trade Policy he became Deputy Director General of Internal Market and Industrial affairs in 1990. In 1995 he became Director General of the highly sensitive Competition DG serving Commissioners Karel van Miert and Mario Monti. In 2002 he moved to DG Internal Market and Services as Director General.

oped more self-confidence in playing its role as co-legislator. The European Parliament is a serious and reliable partner of the Commission in achieving the objectives of the Internal Market. This has - by the way - been a decisive element in the process of strengthening the Parliament's role also in the often very sensitive area of comitology decisions."

Schaub, himself the author of a book on the work of the European Parliament, points to the high levels of political as well as technical competence now present in the Parliamentary committees which permits them to intervene effectively in the process and enable the Parliament to seriously exercise its democratic role.



Alexander Schaub with his team of Directors at DG Internal Market and Services. From the left: Bertrand Carsin, Anne Houtman, Michael Hager (assistant), Thierry Stoll (Acting Director General), Elemér Terták, Alexander Schaub, Jean-Yves Muylle (assistant), Jaqueline Minor, David Wright, Pierre Delsaux, Guido Berardis, Henk Post.

Over the past 30 years, the EU's economic and industrial strengths have changed and while the EU may have lost dominance in some business sectors, it is a leading force in financial services and its global position is strengthening, he emphasises. The evidence for this lies in growing markets, innovation, transatlantic mergers, and, recently, moves towards stock exchange consolidation.

"Indeed, in this day and age, competition is global. Investors in search of higher returns channel their money towards the safest, most efficient, most well regulated markets. Issuers looking for easier and cheaper access to finance raise money where they can find liquidity and transparency," he explains. "In this context any new rules for financial markets in the EU or in the US have immediate and inevitable practical repercussions on players in other parts of the developing global system. The markets are increasingly interdependent and the regulatory approach has to be aligned to this trend."

Proactive role in regulatory changes

"The developments taking place at the global level render it imperative that the Commission takes a fully proactive role

stresses. "Indeed we have already taken the initiative in this respect by establishing regular dialogue with our regulatory colleagues from around the world. Of course, as our main trading partners, the US and Japan feature high on the list of interlocutors, but discussions are also advancing with emerging countries such as China, India and Russia."

The aim of these regulatory dialogues, he explains, is to identify well in advance potential spill-over effects of legislation in each other's jurisdictions, and to work in an informal and non-confrontational manner to find mutually acceptable solutions which take into account the differences in the legal and regulatory structures and backgrounds.

Dr Schaub points out that since 2004, the European Commission has been engaged in the highly productive and co-operative Financial Markets Regulatory Dialogue with legislators and supervisors in the US. "The open and informal nature of our dialogue means that concrete issues can be brought to the table without a danger of being overwhelmed by political sensitivities, even in times of crisis. And this is delivering tangible results."

Emerging powers

The Director General recently visited China together with Commissioner Charlie McCreevy as part of a bridge-building delegation. "The EU sees China as a valued and important partner, one from which it wants to learn, one with which it is ready to share. As leading global players, China and Europe need to work in concert to try to secure a friendly and open business environment and a global economic framework that promotes competitiveness, facilitates cross-border business and gives our people freedom and space to innovate and take risks."

Averting crises

Creating that understanding is an increasingly important part of the work of political leaders and policy-makers. And the bottom line of this approach, he explains, is to utilise the resources available to us on various fronts, and the relationships we have built up with colleagues around the globe, to mitigate risk and to prepare for eventual crises.

"We cannot simply put our heads in the sand and pretend that globalisation is not having any impact on financial services and financial trade. We have to embrace the challenges and opportunities that globalisation brings, while ensuring that our citizens and businesses enjoy the highest possible level of protection."

New challenge

"In summary our new challenge is to make new rules and systems function effectively in the global business context. This is the new test of our work. The demands of the new global environment also mean that the Commission needs the best qualified people on its staff," he adds. "Our work increasingly requires interdisciplinary skills and political sensitivity. We need motivated people who don't just focus on the rule-making phase but can see the initiatives all the way through."

"I have immensely enjoyed being involved for some 35 years in developing the EU's role in so many different and crucial areas and pass the baton onto those who have in many respects a new and different global context to work in."

IM Scoreboard shows need to speed up national efforts

Member States need to speed up their efforts to implement Internal Market rules into national law, according to the Commission's latest Internal Market Scoreboard. On average 1.9% of Internal Market Directives for which the implementation deadline has passed are not currently implemented into national law, which is an increase of 0.3% on the best-ever result of 1.6% achieved in November 2005. This means that the positive trend of recent years has stalled and the interim target deficit of 1.5% agreed by Member States has not been reached.

In July 2006 the transposition deficit - the percentage of Internal Market Directives that have not been implemented into national law - stood at 1.9%, which is 0.3% up from a deficit of 1.6% in November 2005.

The 'new' Member States still perform better with an average transposition deficit of 1.5% compared to 2.2% for the 'old' Member States. However, their efforts seem to be slowing down and they risk losing the exemplary role they have

played over the past two years in timely transposition.

Only 14 out of 25 Member States remain below the 1.5% ceiling, compared to 17 in November 2005. Denmark has the lowest deficit, followed by Cyprus, Hungary, Lithuania, Slovenia and the UK.

Denmark's success in bringing its deficit further down to 0.5% shows it is perfect-

ly feasible to be below the interim ceiling - provided the necessary political will exists and good organisation is in place.

Infringements

Progress is also slow in the correct application of Internal Market rules: not a single 'old' Member State has been able to deliver on its promise to reduce infringement proceedings by 50% during the period of 2003 - 2006.

Package meetings between the Commission experts and Member States' authorities continue to be an efficient means of resolving infringement cases at an early stage. 25 package meetings took place between July 2004 and July 2005. In almost 60% of cases, either a solution has been found within 6 months or a decisive step forward has been taken.

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http://ec.europa.eu/internal_market/score/index_en.htm

Expert group formed to provide balanced advice on accounting standards

The Commission has established a Standards Advice Review Group in the area of accounting to ensure objectivity and proper balance of the European Financial Reporting Advisory Group's (EFRAG) opinions. The Group will be composed of independent experts and high-level representatives from National Standard Setters whose experience and competence in accounting are widely recognised.

The task of the new Group will be to assess whether the endorsement opinion given by the EFRAG is well balanced and objective. The group will normally deliver its advice within three weeks. The final advice will be published on the Commission's website.

The International Accounting Standards (IAS) Regulation adopted in July 2002, requires all EU companies listed on a regulated market - such as a stock exchange - to prepare their consolidated accounts in accordance with a single set of global standards, commonly referred to as International Financial Reporting Standards (IFRS).

The IFRS are prepared by the International Accounting Standards Board (IASB), an independent accounting standard setter. In accordance with the IAS regulation, these standards are adopted for use in the EU.

The IAS Regulation foresees the creation of an accounting technical committee to provide support and expertise to the Commission in the assessment of suitability of the IFRS for adoption in the EU.

The European Financial Reporting Advisory Group (EFRAG) is a private body founded by the organisations representing preparers, users and accountancy professionals to provide opinions to the Commission on whether the proposed standard complies with EU requirements and is suitable for adoption.

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http://ec.europa.eu/internal_market/accounting/index_en.htm

Stakeholder consultations show the way forward

A broad consensus on the principles that should underpin future action in the field of company law and corporate governance has emerged following an online consultation launched in December 2005 and a public hearing organised by the Commission in May.

The public hearing in Brussels attracted some 300 stakeholders and interested parties to present their views and engage in debate on the most efficient way to modernise company law and corporate governance. The views expressed at the public hearing broadly confirmed the written responses to the consultation organised earlier in the year and sought selective action in key areas of concern.

Key conclusions

The speakers at the hearing who represented a range of stakeholders were in general agreement that any Commission action in the field of company law and corporate governance should focus on:

- lifting obstacles to the free flow of capital between Member States and to right of establishment;

- on granting additional flexibility to companies.

Some took the view that regulatory competition in the field of company law can be an effective tool in achieving efficiency. However, 'regulatory fatigue' was highlighted as a factor to be taken into account.

Consultation

The consultation itself on future priorities for the Action Plan on Company Law and Corporate Governance which was concluded in March elicited more than 260 responses from a wide variety of stakeholders from all around the EU and from Third Countries.

The idea of undertaking a consultation exercise was itself praised. Many respondents called for further systematic consultations, suggesting a minimum 12 week deadline.

The application of the better regulation principles, as proposed in the consultation document, received overwhelming support, in particular for systematic regulatory impact assessments, legislation only when needed and light touch regulation.

Future of the Action Plan?

Views were divided on the continued relevance of the Action Plan. Respondents generally supported the work which has been done since 2003 but opinions were split on the detail of the measures proposed for the medium and long term.

A number of respondents called for a stabilisation period. However, any sort of moratorium, it was made clear, should not cover the 'enabling legislation', such as the Directive on the transfer of registered office or the Statute for a European Private Company.

Views divided on Corporate Governance

There was clear support for addressing the 'one share, one vote' issue at EU-level, at least as far as undertaking a fact-finding study.

Regarding shareholders' rights, a slender majority of respondents saw some added value in an EU initiative. Of particular concern were the issues of establishing a mandatory special investigation right, the nomination and dismissal of directors, and shareholder communication rules. Those who opposed these ideas took the view that there is already sufficient protection of shareholders' interest in EU and national legislation.

Institutional investors

Half of the respondents took a position on the disclosure of institutional investors' voting policies. Opinions on the opportunity for action at EU level were split, however. Some considered that the matter should be left to contractual arrangements. Some believe that an EU





More than 300 stakeholders and interested parties attended the public hearing in Brussels to present their views and engage in debate on the most efficient way to modernise company law and corporate governance



of legislation, whenever possible, brings clearer choices for investors and business leaders”.

Commissioner for Internal Market & Services Charlie McCreevy stressed that the overall objective of Commission action was to "make sure that the regulatory framework in the area of company law and corporate governance will help boost the competitiveness of the EU's economy."

He stated his belief in the principle of better regulation and in regulatory dialogue. "I am determined to ensure that full account is taken of dialogue with interested parties in our actions. This will help ensure that a full picture is developed of the potential impact of our actions and that what we do is clearly focused on the needs of our constituents."

New study

Regarding shareholder democracy, McCreevy announced that an external study is being commissioned with the aim of identifying all existing deviations from the proportionality principle across EU listed companies. The study will provide an analysis of the regulatory frameworks at Member State level. It will evaluate their economic significance and potential impact on EU investors. "It is my intention that the study should be completed at the latest by the beginning of 2007."

"This is a controversial area. But controversy should not prevent the EU from having a thorough and informed debate," he said.

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rule would create excessive burdens for investors. Others took the view that EU intervention is needed to create a level-playing field.

A significant number of comments insisted on the need to impose transparency and disclosure obligations on institutional investors. Among the supporters of EU action, opinions were split on the appropriate instrument.

Respondents opposed the adoption of an EU wrongful trading rule, considering that such issue does not in practice raise substantial cross-border problems.

Respondents also opposed the adoption of EU legislation on directors' disqualification, on the basis of the substantial differences that exist between the national systems. However, some voices considered such action necessary in order to avoid forum shopping.

Company Law: limited EU intervention

A large majority of respondents called for the adoption of a 14th Company Law Directive. A minority, however, raised doubts about the practical value of the Directive due to other obstacles, such as taxation and employee participation issues.

Board structure

The issue of board structure did not raise strong feelings, however, and respondents generally did not consider EU action to be a high priority. Enthusiasm was also

limited about tackling the area of groups and pyramids. The majority of respondents considered that no action was advisable or necessary.

European Company Statute

As regards the company legal structures, respondents considered it premature to launch an assessment of the European Company Statute. This statute was considered as partly or very useful by 40% of the respondents. Almost half of the respondents called for the adoption of a European Private Company Statute. A high number of foundations urged the Commission to carry out a feasibility study on a European Foundation Statute.

Consolidation of company law

A majority of respondents supported the basic principle of simplifying company law. Most stakeholders, however, considered a recasting exercise as inappropriate. They proposed, instead, to launch a codification or consolidation of existing company law legislation.

In his keynote address, Antonio Borges vice chairman of Goldman Sachs International and chairman of the European Corporate Governance Institute (ECGI) said that the Action Plan should focus on everything that leads to powerful externalities. He also stressed that "to enhance competition, increased transparency is a must; higher corporate mobility is a strong catalyst; and the simplification

Financial Services Consumer Group launched

The newly created Financial Services Consumer Group met for the first time in June. This Group brings together representatives from consumer organisations from EU Member States as well as consumer organisations active at EU level.

The aim of this group, which is co-chaired by DG Internal Market and Services and DG Health and Consumer Protection of the European Commission, is to stimulate the exchange of information between national and European consumer representatives and the Commission, to provide information to consumers in all Member States, to build financial services expertise in the consumer movement and to obtain additional consumer-focused input on financial services policy issues.

The Financial Services Consumer Group has been established as a sub-group of the already existing European Consumer Consultative Group (ECCG), the Commission's main forum for engaging with consumer organisations and its creation was included in the Commission's White Paper on Financial Services Policy 2005-2010.

In this first meeting, the Commission

discussed with the Group a number of important current topics:

- the Commission's policy priorities in financial services up to 2010;
- the latest policy and legislative developments in the area of consumer and mortgage credit;
- the creation of the Single Euro Payments area;
- the Green Paper on asset management;
- issues of corporate governance.

"Financial products and services are of crucial importance for consumers in their daily lives. We are delighted that representatives of consumer associations from across the EU are showing their commitment to greater dialogue with the Commission on these issues by participating in the Financial Services Consumer Group," commented Internal Market and Services Commissioner McCreevy. "Consumer involvement is essential to the creation of an integrated retail financial services market that serves all of our citizens – industry, SMEs and consumers alike."

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http://ec.europa.eu/internal_market/finances/fscg/index_en.htm

Expert Group on mortgage funding created

An expert group has been set up by the Commission to comprehensively identify the barriers to cross-border activity in mortgage funding markets and propose solutions which would facilitate integration.

Stakeholders have consistently highlighted the importance of integrating the European mortgage funding markets for the integration of the mortgage markets as a whole. Further integration of the EU mortgage markets could be considerably enhanced by the emergence of a pan-European funding market.

This view was supported by the results of the consultation on the Green Paper on Mortgage Credit in the EU, which indicated that the integration of mortgage funding markets could contribute to improving the efficiency and product completeness of mortgage markets thereby

bringing benefits to lenders and borrowers alike.

Because of the complexity and technical nature of the issues to be examined, the Commission decided that mortgage funding issues merited further in-depth analysis before assessing whether EU intervention could be envisaged.

The Mortgage Funding Expert Group has been carefully selected to ensure a balance between the different stakeholders involved in the funding process. Experts represent all funding techniques (covered bonds, mortgage-backed securities, deposits, etc.) and most EU mortgage markets.

The Expert Group will consider barriers to all mortgage funding techniques and

prioritise them in terms of their significance to the market. The Expert Group has also been asked to consider the most appropriate solution for each barrier.

The Group will meet several times in 2006 and will publish a report on its findings which will be available on the Commission's website.

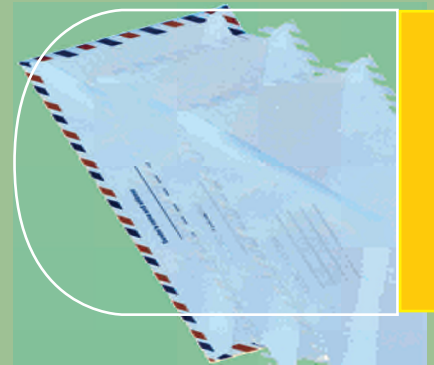
The Commission will use the results of this Expert Group in considering which, if any, measures, may be announced in its White Paper on the integration of EU mortgage credit markets to be published in 2007.

Impact assessments will be undertaken on all potential measures to ensure that forthcoming work in this area is carefully focused.

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http://ec.europa.eu/internal_market/finservices-retail/home-loans/integration_en.htm

Postal reform in the EU moves forward



The EU postal reform is well underway and has produced significant improvements - notably in terms of quality of postal services and efficiency of national postal operators. Postal services have, as such, developed noteworthy strengths, particularly in terms of high levels of service, affordability and reliability. Indeed it is fair to ask how e-commerce would have developed and grown without postal services; and how would companies be able to reach their clients when sending invoices and promotional mail; and what would consumers have done without nearby post boxes and post offices; and without home deliveries 5 to 6 days a week?

Long reform process

While postal services are sometimes taken for granted, it should not be forgotten that the high quality of universal postal services is the result of a long reform process that has been ongoing since 1991. The postal sector is also a major economic vehicle. It is one of the biggest employers in Europe with 1.7 million people directly employed and 3.8 million people employed in related industries. The revenue of the sector amounts to 90 billion euro, which corresponds to 0.9% of the Union's gross domestic product.

The reform of the Postal sector started with a Commission Green Paper launched in 1991, which highlighted some apparent shortcomings in the sector: quality of services, high costs and indebtedness among the - at the time all public - postal operators. A remedy proposed at that time, was to open the sector to competition by progressively reducing the postal monopolies,

the services reserved for national public postal operators, and by strengthening the universal services operated in the interest of mail users - both commercial customers and consumers.

This approach was endorsed first by the Council of Ministers in a Resolution in 1994 and, more significantly, by the Parliament and the Council of Ministers in 1997 when the Postal Directive (97/67/EC) was adopted.

The Postal Directive paved the way *inter alia* for gradual market opening over an extended period (1997-2009), set quality standards and greater accountability for service providers, provided postal users with redress systems and established a core set of universal services. It also established firm principles on prices. In addition, it promoted the role of independent national regulatory authorities to oversee the sector in each Member State.

The amendment of the Postal Directive (2002/39/EC) continued this approach to reform by further reducing the maximum reservable area and by setting the target date of 2009 for the accomplishment of the Internal Market for postal services, subject to review and confirmation by the Commission.

Drive towards modernisation

Compared to the situation of the postal sector in 1991, the sector has evolved tremendously to the benefit of all

"The postal sector ... is one of the biggest employers in Europe with 1.7 million people directly employed and 3.8 million people employed in related industries. The revenue of the sector amounts to 90 billion euro."





has contributed to the overall economic growth of the EU. With a view to sustaining and further building on this positive evolution, the Commission is currently putting the finishing touches to a proposal aimed at confirming, if appropriate, the completion of the Internal Market for postal services in 2009 or proposing any relevant alternative step in the same direction. The proposal, which is due later this year, will be accompanied by a 3rd Application Report (on the functioning of the Postal Directive) and a Prospective Study (on the impact of market opening on universal service in each Member State).

Preparatory steps

"Almost without exception across the EU... public postal operators now provide a substantially greater range of services for an expanding customer base."

Due to its wide social and economical importance, the postal sector has many stakeholders. In view of this fact and in order to balance views in the forthcoming proposal, the Commission has commissioned a number of sector studies*.

In 2005, WIK-Consult looked at 'The Evolution of the Regulatory Model for European Postal Services' and gave

an in-depth analysis of the current regulatory model. It also proposed a model of regulation based on sound regulatory principles, while addressing a number of transitional issues on the way to full postal market opening. Ecorys studied 'The Development of Competition in the European Postal Sector', which described the status to date and likely future strategies of postal operators. The study also looked at the likely effects of increased competition in the postal sector and the possible implications for future postal regulation.

Two other important studies were published in July 2006. One was carried out by WIK-Consult on 'Main Developments in the Postal Sector (2004-2006)' and the other by PriceWaterhouseCoopers is on 'The Impact on Universal Service of the Full Market Accomplishment of the Postal Internal Market in 2009'. The conclusions of the studies appear to be balanced, complementary and encouraging for the postal sector. They affirm that high quality universal services can be sustained in an open postal market, where necessary by the adoption of certain 'flanking' measures, and they recommend to maintain 2009 as the date of market opening.

Public consultation

Additionally, the Commission has carried out a Public Consultation, where all citizens were invited to express their views on most important elements of postal services as well as on possible issues in the sector. The Public Consultation also gave industry stakeholders the opportunity to comment on technical, legal and regulatory issues. Overall, approximately 2,400 replies were received, which gave a valuable input to the preparation of the forthcoming postal proposal.

Last but not least, the Commission launched a postal statistical data collection in 2005 to underpin the future monitoring of the market. The response rate was uncommonly high for a first time data collection exercise and gave a good view of the current situation of the EU postal sector in terms of market opening, volumes, service, employment etc. It also showed that there are significant differences that persist between EU countries. The postal data collection, which will continue on a yearly basis, will mainly serve as an important monitoring mechanism of the postal market evolution towards opening and beyond.

Achievements to date

The EU postal legislation has been transposed by all EU Member States and the achievements to date are very positive. Consumers and large mail users have seen improvements in terms of quality of service. National and cross border letter mail standards (delivery times) have



become firmly entrenched, are carefully monitored and widely complied with. National regulatory authorities, where appropriate have levied dissuasive sanctions for non-compliance with quality targets. Low cost and accessible complaint procedures to address customer dissatisfaction are in place and are used by consumers.

"Consumers and large mail users have seen improvements in terms of quality of service. National and cross border letter mail standards (delivery times) have become firmly entrenched, are carefully monitored and widely complied with."

Public postal operators now operate with greater levels of efficiency and many have seized the opportunity to restructure and streamline their operations without curtailing services or quality.

They also enjoy greater financial and operational autonomy than in the past. These freedoms have

allowed them to invest and diversify into new product ranges and services and to capitalise on new technologies to enhance their delivery and sorting capacity and better serve specific customer needs.

Almost without exception across the EU and regardless of the size and potential of their markets, public postal operators now provide a substantially greater range of services for an expanding customer base.

New services have been created to facilitate the growth in e-commerce. These include 'track and trace' (for parcel delivery), parcel kiosks (for ease of collection) and "hybrid" (electronic/physical) mail which is widely used in advertising.



Increased productivity

The productivity of the Universal Postal Provider is measured as the number of letters per USP. It seems to have increased over the period 1990-1995, more markedly in the Member States that have undergone a rapid or extensive opening. Ownership is also being transferred. While the majority are state-owned, the number of enterprises continues to increase: only seven USPs are still state-owned or in one case a gov-



is also being extended through increased participation by private investors. In 2005, minority stakes in the Danish and Belgian USPs were sold.

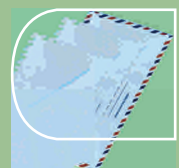
Progress towards creating greater competition in the letter post segment of the postal market has been slower than expected. On the other hand, competition in the segment providing delivery of newspapers, periodicals, magazines and unaddressed mail is now stronger. The parcel and express markets at both the national and EU level are considered very competitive.

Where are we going from here?

The Postal reform has produced very positive results for consumers, for the postal sector itself and for the EU economy as a whole. Completing the Internal Market for postal services is vital to further improving and sustaining these results and in allowing all EU countries to benefit equally. The continuing work on postal reform will focus on the remaining obstacles to market entry and on establishing a true level playing field in the internal postal market.

More specifically, the focus will be on the following areas:

- The largest barrier to accomplishing the Internal Market for postal services is undoubtedly the fact that substantial reserved areas* remain in Member States. The reserved areas should be further reduced or abolished to allow competition to take place in all areas of postal services;
- Providing for a sustainable high quality universal postal service taking into account the absolute priority of maintaining territorial and social cohesion, the developments in the neighbouring markets of communications, advertising





and the transport/logistics sector and the fact that Member States may already adapt some specific service features to the evolution of local demand by applying the elements of flexibility that already exist in the Directive 97/67/EC;

- The reserved area has so far financed the universal service obligation. Other alternative financing mechanisms, such as a compensation fund, have therefore not been necessary in practice. Although the real cost of the universal service obligation is disputed and may vary between States, there may still be a need for other safeguard mechanisms in the absence of a reserved area. It is important that such mechanisms do not distort competition unnecessarily by causing entry barriers for competitors or by upsetting the level playing field;
- The issue of access: Postal infrastructure can be accessed at various stages of the value chain ranging from collection, consolidation and mail preparation/franking (usually called upstream access) to the delivery network (usually called downstream access). In addition, there are important means (e.g. post office boxes, delivery boxes, address change databases) required for the provision of postal services. It is important that such means are also safeguarded in postal markets with several operators with a view to avoiding entrance barriers and to protect consumer interests;
- With a view to maintaining a level playing field for all postal operators and ensuring the provision of the universal service, the National Regulatory Authority plays an essential role. The conditions necessary to undertake this role may need to be reviewed to increase their effectiveness.

The future

One might wonder what the future of postal services will be in an open postal market. The example of Sweden is worth mentioning in this context as Sweden decided to open its postal market to competition already in 1993.

Some of the positive effects from postal market opening in Sweden were apparently that:

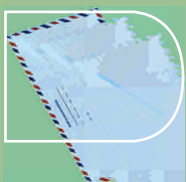
- the incumbent operator has reformed its operations to the advantage of the customers;
- products and services have improved and are better adapted to consumer demand;
- average prices decreased and better reflected costs;
- quality requirements of the universal postal service have been fulfilled and quality of services have improved.



While not all EU countries may be at the same advanced level as Sweden in the opening up of the postal market, the Swedish example, as well as studies undertaken by the Commission, have shown that all countries can get there – possibly by the help of facilitating measures – thus completing the Internal Market for postal services.

* For more information see: http://ec.europa.eu/internal_market/post/studies_en.htm.

** Reserved Area: This is the segment of postal services which is reserved to those postal operators (which may be either public or private) providing universal services within national boundaries.



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http://ec.europa.eu/internal_market/post/index_en.htm

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Industry reports recommend improvements to EU investment fund framework

The Commission has published industry reports focusing on retail investment funds (UCITS), hedge funds and private equity that analyse the main challenges facing different segments of the EU investment fund industry. They constitute an important input to the forthcoming White Paper on strengthening the single market framework for investment funds, scheduled for publication in November 2006.

The three reports have been drawn up by the expert groups on investment fund market efficiency and alternative investments and are a follow-up action to the Green Paper on the enhancement of the EU framework for investment funds. As industry reports, they do not necessarily represent the view of the Commission.

Over the last decade, investment funds have grown from a small base to become one of the core pillars of the EU's financial system. The UCITS market now comprises more than 30,000 funds managing over 5 trillion euro— circa 50% of EU GDP.

The regulation of UCITS therefore ranks highly on the agenda since asset management is in a state of massive flux - the commercial horizons are broadening, business models are being reinvented and risk parameters are changing.

UCITS market

The report on investment fund market efficiency provides fresh ideas and operational suggestions on how efficiency improvements can be delivered. Several of these would require carefully targeted amendments to the UCITS Directive. The report calls on the EU to deliver these improvements within three years.

The expert group identifies alleged regulatory failures or gaps which are hampering the efficiency of the European industry: lengthy delays in fund authorisation

and notification; absence of investment company passport; no merge funds on a cross-border basis to pool assets; national rules include cross-border delegation functions.

Hedge funds

The report on hedge funds identifies a number of alternative approaches - which do not call for new EU legislation - to make hedge funds available to different categories of investors under appropriate conditions. It stresses the need to remove barriers to investment in hedge funds by institutional investors and to cross-border provision of essential support services to hedge fund managers.

The group describes how the regulatory patchwork in Europe is hampering the development of a scalable onshore business. European hedge fund managers are not always able to choose service or liquidity providers from across Europe. The group argues that, if the EU wishes to be home to a successful hedge fund business, it must tackle these frictions. But any remedial action should stop short of introducing hedge-fund specific EU-level initiatives.

Private equity

The report by the private equity industry group describes the unique role that



The report highlights a number of cross-cutting EU initiatives that have had unintended consequences for the private equity industry and identifies useful EU-level improvements that could facilitate cross-border investment and capital-raising by private equity funds.

A preliminary exchange of views on the reports with interested parties was organised at an Open Hearing, held in Brussels on July 19. The meeting which brought together various stakeholders, including the European Parliament, representatives from Member State authorities, investors, industry, etc., served as a first opportunity to gather reactions. Reactions in writing are invited until September 20th (markt-consult-july-2006expertgroups@ec.europa.eu)

Commissioner for Internal Market and Services Charlie McCreevy commented that: "The three sets of experts have brought clear and fresh insights to many challenging issues and they will be an important input to our thinking as we prepare the November White Paper on improving the single market for investment funds."

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Public hearing debates key issues concerning Solvency II

The Solvency II project is a fundamental and wide-ranging review of the current supervisory regime for insurance companies within Europe. The review introduces a risk-based supervisory system which not only updates the current solvency requirements but is also an overhaul of the supervisory provisions of the EU Insurance Directives. The main aim is to ensure that there is adequate policy-holder protection in all EU Member States whilst ensuring that the cost to the industry is equitable. Another fundamental objective is to foster supervisory convergence at European level. At a public hearing in Brussels, stakeholders met to debate the key issues at stake.

The solvency margin is the amount of regulatory capital which an insurance undertaking is obliged to hold against unforeseen events. At EU-level, harmonised solvency margin requirements have been in place since the 1970s and have been amended by the Solvency I Directives in 2002.

For the insurance industry, solvency requirements are a cost factor. The industry would therefore like these requirements to be fair but also, if possible, low.

Consumers and supervisors, on the other hand, tend to prefer high solvency requirements. But the public also has an interest in promoting a healthy insurance sector, particularly since it has a key role to play in dealing with challenges such as increasing longevity, rising health costs, natural catastrophes and terrorism, to

In Solvency II, the Commission is developing a modern, risk-based system, which takes into account current international developments.

Broader scope

Whereas the Solvency I Directives aimed at revising and updating the current EU solvency regime, the Solvency II project has a much broader scope. The four goals of the Commission's approach are:

- Better regulation - codification of currently 14 insurance Directives into one Directive;
- A Directive that is as principle-based as possible, but still aims at a high level of harmonisation through its implementing measures; taking into account the combination of new and old texts;
- A proposal developed in

- A proposal compatible with international developments.

One key objective is that the requirements better reflect the true risks of an insurance undertaking. There is widespread recognition that this is not the case in the current system. Another important feature of the new system will be the increased focus on the supervisory review process. The aim is to increase the level of harmonisation in general, including that of supervisory methods, tools and powers.

With this in mind, the Commission organised a public hearing in Brussels to bring stakeholders together to debate some of the key issues.

Close cooperation with industry

The first keynote speech of the hearing was given by Henrik Bjerre-Nielsen, the Chair of CEIOPS (the Committee of European Insurance and Occupational Pensions Supervisors) which provides technical advice to the Commission on specific issues as well as quantitative impact studies. Mr Bjerre-Nielsen stressed how CEIOPS is working closely with the industry and other interested parties on developing its contribution to the creation of the new system, particularly, in view of the radical change needed in culture and management practices to implement the system.

"We are aware of market differences. Some undertakings are up to speed. Others have a long way to go. CEIOPS is deeply involved, together with the Commission, on fostering these reforms to business. They will go to the heart of Solvency II's success," he explained.

He highlighted the world-wide dimension of Solvency II and the great interest and, possibly, concerns outside the EU. "Together with the Commission we are working on the most pressing, from the US, starting a longer-perspective dialogue with China, and have exchanged approaches with the Swiss. We recognise





Henrik Bjerre-Nielsen: "CEIOPS is working closely with the industry and other interested parties on developing its contribution to the creation of the new system"

that the global position is high in economic and commercial importance, as well as politically," he said.

During the day, a series of Panels focused on particular aspects of the discussion. The first panel of speakers updated the audience on the work of CEIOPS. The sec-

ond panel, involving different stakeholders including a consumer representative, discussed the potential impact of Solvency II on their sectors.

Panel 3 discussed how Solvency II will impact insurance products and services, whilst the fourth panel focused on how Solvency II stands in the light of other international developments.

Commissioner Charlie McCree said that the Commission will ensure a high level of genuine harmonisation of Solvency II. Supervisors also have to converge in the way they supervise companies and in the methodologies they use, as the possibilities for further integration of the insurance industry largely depend on this, he said.

policy-holder protection are the primary objectives, the Commission will make its own assessment when looking at CEIOPS' advice," he concluded.



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Public procurement

Commission issues guidance on how to award low-value contracts fairly

The Commission has published guidance on how public authorities should award contracts of low monetary value fairly. These contracts account for the vast majority of public contracts in the EU – over 90% in some Member States. Although they are not covered by the EU Directives on public procurement, it is well established that their award should nevertheless comply with the internal market principles of transparency and non-discrimination.

The Commission's guidance, which is in the form of an 'Interpretative Communication', contains suggestions on how public authorities should comply with these principles, together with examples of innovative ways to award contracts in a modern, transparent and cost-efficient manner.

Low-value contracts present significant opportunities for European businesses,

in particular for small and medium sized enterprises and start-up companies. Competition for these contracts would allow public authorities to choose from a broader range of potential suppliers and to gain from better-value offers.

The detailed rules of the public procurement Directives do not apply to these contracts, as they have a value of less than 211,000 euro in the case of services or supplies contracts, or 5,278,000 euro in the case of works contracts. Nevertheless, the European Court of Justice (ECJ) has developed minimum standards of transparency and non-discrimination for the award of these contracts. However, in many instances public authorities continue to award these contracts directly to local providers without any competition.

The Commission's Interpretative Communication provides guidance to con-

tracting authorities to help them comply with the standards developed by the ECJ.

The Communication explains how to ensure that low-value contracts are advertised adequately and transparently. It also provides guidance on how public authorities can ensure a fair and impartial procedure for awarding a contract. The principles of such a procedure include a transparent and objective approach, appropriate time-limits, mutual recognition of written evidence between different Member States, equal access for economic operators from all Member States, and non-discriminatory description of the subject-matter of the contract.

Finally the Communication explains how bidders can request a review of the impartiality of decisions taken in the course of an award procedure.

info http://ec.europa.eu/internal_market/publicprocurement/key-docs_en.htm

CSS four years on - user survey gives a vote of confidence

CSS – A success story: A recent independent evaluation of the Commission's Citizens Signpost Service (CSS) concludes that it is unique and fills a distinct gap in information and advice services offered by the EU's institutions to answer citizens' needs.

The new Citizens Signpost Service (CSS) has been in operation for four years and has seen a steady increase in the volume of cases it handles.

Via CSS, citizens have access to a network of legal experts who provide personalised advice on problems they may encounter when exercising single market rights in another EU country.

To assess the performance and appreciation of the CSS service, the Commission requested an independent evaluation of CSS. The findings have been very positive and CSS is, according to independent experts, filling a distinct gap in providing information and advice to EU citizens.

More than 77% of respondents to the user satisfaction survey indicated that they believe CSS is very important to EU citizens. Close to 70% of users of the service stated they were 'satisfied' or 'very satisfied' with CSS. Users are particularly happy with the fact that they



curacy of CSS.

Unique service

A unique feature of CSS is that it is the only Commission service providing advice and 'signposting' on specific Internal Market legislation by legal experts. It operates in 20 languages and covers all 25 Member States. No other national public or voluntary service, the report points out, provides similar free, independent service.

line with the Commission's stated communication strategy and "offers a rare opportunity to raise citizens' awareness of the benefits of the EU and the Internal Market and is an important mechanism for dialogue with citizens."

How it works

The objective of CSS is to provide EU citizens with tailor-made answers to questions they ask about the exercise of their rights in the Internal Market. It sets out to provide practical information in response to enquiries regarding the exercise of such rights and on the next step to be taken by them in overcoming any

Testimonial

CSS helps with consumer protection

Thanks to CSS, an English citizen residing in another EU country, succeeded in recovering 429 euro from a national Telecom operator. The latter had overcharged the English citizen's telephone calls without informing him that they had changed the supplier.

problems they face.

By providing next-step 'sign-posting' the CSS explains where people should go - whether at local, regional, national or EU level - to help them resolve their problem. Most of the enquiries come from people who have already tried to obtain the guidance they need elsewhere.

The CSS operates in close relationship with the EUROPE DIRECT Contact Centre. EU citizens can access CSS by using

the EUROPE DIRECT free phone number. Another way to contact CSS is to use the CSS web form on the website.

Whether the question is one about residence rights, social security cover, getting a qualification recognised, air passenger rights, opening a bank account or buying goods or services in another EU country, a citizen can submit a question via CSS and receive within eight working days a professional response including, if necessary, guidance or 'signposting' to where

further help is available at the local, national or European level. SOLVIT, the problem solving tool of DG Internal Market and Services, is one of the services to which citizens can be signposted.

The CSS service is provided by the legal experts of ECAS (European Citizens Action Service) which is under contract to the Commission.

Testimonial

CSS helps with immigration

"Through the CSS, I always get a very quick and adequate help. I hope you will continue. It's a ray of light in the darkness of the immigration world of today..."

This citizen has already contacted the service in the past and came to CSS again with a question on her rights when migrating to another EU country. The CSS response was highly useful to her and she expressed her gratitude regarding CSS and what it represents to people when relocating in Europe who do not know where to turn to get accurate advice on their rights.

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- Regulated professions in the field of activities involving trade in and distribution of toxic products

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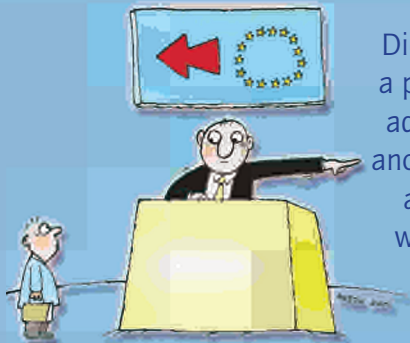
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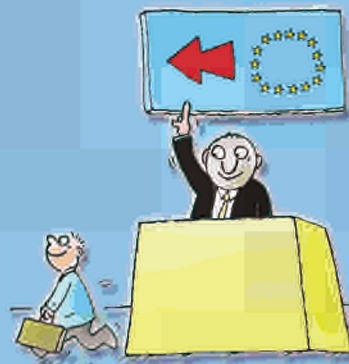
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Stakeholders debate future policy on patents

There is widespread support for a Community Patent but not at any cost. A recent consultation on the way forward to providing simpler patent protection in Europe has elicited a very lively debate. A packed public hearing in Brussels in July brought together stakeholders from across the board to discuss the preliminary conclusions from the consultation.

In January the Commission launched a consultation on stakeholders' views on the patent system in Europe and what changes if any are needed to enable it to improve innovation and competitiveness, growth and employment in the EU's knowledge-based economy.

The consultation was timely considering the difficulty the EU faces in making progress in the patents area and in view of the new industrial policy launched by the Commission in October 2005, where IPR is identified as one of the major policy initiatives.

The Commission felt a consultation of all interested parties would be crucial in ensuring that future patent policy properly reflects stakeholders' needs. The consultation was important against the backdrop of the deadlocked discussion on the Community Patent (see box) but

was much broader in content. The Commission's consultation focused on four areas:

- basic principles of the patent system;
- the Community Patent;
- the European patent system, in particular EPLA - the European Patent Litigation Agreement;
- approximation and mutual recognition of national patents.

Lively response

There was very lively response to the consultation with more than 2,500 replies emanating from all sectors of industry, patent lawyers and other stakeholders.

Participation was particularly high from sectors such as ICT, pharmaceuticals, chemicals, automotive, consumer electronics, biotechnology and mechanical industries. Furthermore there was a big response from Europe's SMEs - 664 SME's in total from 14 Member States and the two acceding countries.

The Commission drew up preliminary conclusions from the consultation submissions and invited stakeholders to discuss the key issues raised at a public hearing in Brussels July 12.

More than 350 participants attended the hearing where some 60 speakers from

industry, legal specialists, trade associations and other interested parties took the stand to give their perspective.

COMPAT yes - but not at any cost

Although the consultation showed that there is widespread preference for the



forward, stakeholders, it is clear, do not wish to have this system at any price, and in particular not on the basis of the Common Political Approach reached by EU Ministers in 2003.

Many stakeholders reject the deal currently on the table on account of an unsatisfactory language regime and inadequate jurisdictional arrangements.

What most parties appear to be looking for is an improvement over the current situation in terms of a truly unitary high quality patent. If this cannot be achieved quickly and without major political compromises affecting the usefulness of the



final solutions, then some stakeholders go as far as urging the Commission to withdraw its proposal and concentrate its resources on other issues. Other stakeholders point to the EPLA as a possible solution to the current difficulties.

Some stakeholders (many SME-related organisations) put forward the idea of setting up a regulatory framework for mediation as a means of alternative dispute resolution in patent cases, with the exclusion of issues concerning the validity of a granted patent.

Regarding the translation issue there are two extremes: those who unequivocally support a single language patent and those who want full translation into all official EU languages immediately upon grant.

EPLA

Both industry and patent attorneys seem to favour the Community's involvement in the European Patent Litigation Agreement (EPLA). This preference flows from the general opinion that the existing patent system based on the EPO and the EPC works well and outstanding problems relate to the lack of unitary jurisdiction. Some also believe that it could act as a precursor for the Community Patent and its jurisdictional system.

Support for EPLA is not viewed as being

necessarily incompatible with support for the Community Patent.

Basic principles for patent system

Based on the feedback from the consultation, the basic principles which need to guide the patent system in Europe are:

- the patent system must provide an incentive for innovation provided that patentability criteria are rigorously respected;
- it must ensure the diffusion of scientific knowledge and technologies by an efficient, transparent and complete publication of patent documentation;
- it must facilitate the transfer of technology;
- it must be available to all players on the market;
- it must offer legal certainty to the patentee and the users.

It is clear that stakeholders are first and foremost concerned about maintaining and improving patent quality in Europe in order to avoid the shortcomings of some patent offices such as the USPTO.

Industry is unanimous that innovation



creation that the EPLA is considered crucial in this respect.

Harmonisation and mutual recognition

There is very little support for approximation of national laws. Mutual recognition of national patents is rejected almost unanimously by stakeholders.

On the basis of the considerable number of written contributions received and the input from the public hearing, the Commission will consider the best way forward to ensure that the patent system in Europe properly stimulates innovation and growth.

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The Community Patent

In 2000, the Commission proposed the creation of a Community Patent to give inventors the option of obtaining a single patent which is legally valid throughout the EU.

At the moment, patents can be awarded either on a national basis or through the European Patent Office (EPO) in Munich, which grants so-called 'European Patents' with a single application and granting procedure. However, once granted the European patent becomes a national patent for the designated Member State. Each Member State may still require that (in order for it to be legally valid in their territory) the European Patent is translated into its official language.

Translation costs make patenting an invention in Europe significantly more expensive than in the US or Japan. This difficulty is increased by the need to work in different national legal systems in case of dispute. The current system is therefore considered to be a significant barrier to research, development and innovation.

On 3 March 2003, the Competitiveness Council reached agreement on a Common Political Approach for the key elements of the proposed Community Patent. This included a centralised Community Court which would rule on disputes, language regimes, costs, the role of national patent offices and the distribution of fees. However, the Council has failed

to come to an agreement on the details of the Community Patent despite regular efforts.

The main sticking point has been the question of the translation of patent claims. Ministers have so far been unable to agree on time delays for translations (into the remaining languages) and the effects of possible errors in translations.

The original Commission proposal foresaw that the patent be valid as granted by the European Patent Office in one of the three EPO languages: English, French, German, while translations need to be published in the other two EPO languages for information purposes.

Restrictions on sports betting services



The Commission has decided to send official requests for information on national legislation restricting the supply of sport betting services to seven Member States (Denmark, Finland, Germany, Hungary, Italy, the Netherlands and Sweden).

The Commission wishes to verify whether the measures

in question are compatible with Article 49 of the EC Treaty which guarantees the free movement of services. This decision relates only to the compatibility of the national measures in question with existing EU law, and only to the field of sports betting. It does not touch upon the existence of monopolies as such, or on national lotteries. Nor does it have any implications for the liberalisation of the market for gambling services generally, or for the entitlement of Member States to seek to protect the general interest, so long as it is done in a manner consistent with EU law, i.e. that any measures are necessary, proportionate and non-discriminatory.

Banking Germany

Restriction on use of the 'Sparkasse' name

Germany has been formally asked by the Commission to modify its legislation (Article 40 of the "Kreditwesengesetz") which provides that the name "Sparkasse" (savings bank) may be used only by publicly-owned banks. The effect of this law is that a savings bank automatically loses the right to use the name "Sparkasse" after privatisation. The Commission considers that this is in violation of EC Treaty rules on the freedom of establishment (Article 43) and free movement of capital (Article 56), because it pre-

vents private investors from benefiting from the goodwill value of the name. In this case the goodwill value corresponds to, *inter alia*, the extent to which the name is considered favourably by the general public. The Commission's request applies only to this aspect of the privatisation which, in the Commission's view, should be in accordance with EC Treaty freedoms, and in no way attempts to prescribe whether or not existing savings banks should in fact be privatised.

Banking France

Offering interest on current accounts

The Commission has decided to ask France formally to amend its legislation ('Code Monétaire') that prohibits banks from offering interest on current accounts to their customers. The upshot of the legislation is that banks from another Member State which have a branch or subsidiary in France cannot offer banking services under the same

conditions as in their home Member State. The Commission considers that the legislation is in breach of the EC Treaty rules on the freedom of establishment (Article 43) and does not correctly implement the Banking Directive's provisions on single licences.

Motor insurance Ireland

Compensation for drivers of uninsured cars

The Commission has decided to refer Ireland to the European Court of Justice over its rules excluding – regardless of the circumstances – payment of any compensation from the Irish Insurance Bureau to drivers of vehicles in cases where all vehicles involved in a collision are uninsured. This means that if a driver of an uninsured vehicle is involved in an accident with another uninsured vehicle but is blameless, that driver will not receive any compensation.

The Commission considers that this is contrary to EU law, which requires that national compensation bodies cover victims of accidents caused by unidentified or uninsured vehicles.



'Golden shares' Spain, Italy

Restrictions on investment in energy firms

The Commission has decided to refer Spain to the European Court of Justice with respect to certain provisions of Spanish legislation that limit the voting rights of investments by state companies in the energy sector. The Commission considers that these provisions constitute unjustified restrictions on the free movement of capital in violation of EC Treaty rules (Articles 56).

The Commission has also decided to ask Italy formally to modify its legislation in order to comply with the European Court of Justice ruling of 2 June 2005 on the law on investment in energy companies. The Court found that

the automatic suspension of voting rights for shareholdings in excess of 2% in Italian electricity and gas companies, where such holdings are acquired by public companies not quoted on the stock exchange and holding a dominant position in their own domestic markets, breaches the EC Treaty rules on the free movement of capital (Article 56).



Special rights held in privatised companies

The Commission has sent Portugal a formal request to abandon the special rights held by the State/public entities in Portugal Telecom and established in the privatisation decree-laws and Articles of Association of the Company. The infringement procedure was initiated by a letter of formal notice in December 2005. Having analysed the reply from the Portuguese authorities, the Commission still considers that the special powers act as

a disincentive to investment from other Member States in violation of EC Treaty rules.

The Commission has also decided to refer Italy to the European Court of Justice because it considers that certain provisions of Italian law concerning investment in privatised companies constitute unjustified restrictions on the free movement of capital and the right of establishment in violation of EC Treaty rules (Articles 56 and 43).

Privatisation framework law: Hungary

The Commission has decided to ask Hungary formally to modify its privatisation framework law (Act XXXIX of 1995 on the Sale of State-Owned Entrepreneurial Assets), which it considers to be incompatible with EU law. The Commission considers that the law contains unjustified

restrictions on the free movement of capital and right of establishment by conferring special rights for the state in 31 privatised companies in the form of voting priority ("golden") shares.

More information on infringement proceedings relating to the Single Market laws is available at:

http://ec.europa.eu/internal_market/infringements/index_en.htm

The latest information on infringement proceedings concerning all Member States is available at:

http://ec.europa.eu/community_law/eulaw/index_en.htm

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.