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Future Single Market policy under the spotlight

Special Feature

Cross-border investment:

More barriers to come down



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EDITORIAL

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In November 2007, a major piece of financial services legislation will come into force further developing the framework of a single market in the EU for trading in shares, bonds, derivatives and other investment products and services. Member States are obliged to adopt the necessary legislation transposing this new framework by January 2007. Known as the 'MiFID' - the Markets in Financial Instruments Directive - it contains measures which will increase investor protection, change and improve the organisation and functioning of investment firms, facilitate cross-border trading in securities, and stimulate the further integration of EU capital markets. The MiFID legislation is a key element of the Financial Services Action Plan. Its objective is to enable investors to invest more easily and with full confidence across EU borders and to remove obstacles to the use of the EU investment services 'single passport'. See the Special Feature on page 11.

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Following a wide-ranging consultation on future Single Market policy launched in April 2006, a one-day Public Hearing will take place in Brussels 29 November. The consultation exercise enjoyed a good response and has gathered valuable views and insights from stakeholders across a broad spectrum of Single Market policy issues as well as stimulating wider public debate. The findings of the consultation and Public Hearing will feed into a major Review of the Single Market in the 21st century to be presented by the Commission in 2007. See page 4.

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The Commission has put forward a proposal to fully open EU postal markets to competition by 2009, in line with the agreed target date set out in the current Postal Directive. On the basis of extensive research, the Commission believes that this is the best way to maintain universal service while further improving quality and choice for EU consumers and businesses. Full market opening means that national operators will no longer have a monopoly on mail below a certain weight (currently a maximum of 50 grams), known as the 'reserved area'. See page 8.

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With the arrival of Bulgaria and Romania at the beginning 2007, the number of countries in the European Union will rise to twenty seven. As the EU attains its 50th birthday in 2007, its population will have risen to more than 483 million citizens since the Treaty of Rome was signed in 1957. The number of official languages will have expanded to 22 and, due to the accession of Bulgaria, the Cyrillic alphabet will be used for the first time. The two new States have made considerable effort to complete preparations for EU membership and though there remains work to do in a few areas before the end of the year, most of the legislation relating to the Single Market is well in hand. A Commission report on the previous 2004 Enlargement indicates that the economic benefits to both new and old Member States has been positive. See page 18.



Acting Director General
Thierry Stoll

Thierry Stoll

Future Single Market policy under the spotlight

An extensive public consultation on future Single Market policy took place between April and June 2006. It is being followed by a Public Hearing in Brussels, 29 November. The findings will feed into a major Review of the Single Market in the 21st century to be presented by the Commission in 2007. Single Market News talks to Jacqueline Minor, Director of Horizontal Policy Development in DG Internal Market and Services about the findings so far.

The aim of the consultation launched in April was to gather the views and insights of the various stakeholders on future policy priorities and prepare the ground for a new Single Market policy, which is fully in tune with today's perceived challenges.

The consultation was open to anyone affected by the Single Market, e.g. citizens, businesses, administrations, NGOs and think tanks. Its primary focus was the current state of the Single Market and the possible future policy.

A summary of the views presented by the respondents to the public consultation was published in September.*

They cover a broad spectrum of Single Market policy issues and come from a wide range of stakeholders.

The whole process will feed into a Public Hearing in Brussels, 29 November, and the subsequent report on a Review of the Single Market in the 21st century to be presented by the Commission in 2007.

Good response

"We were generally pleased with the response to the consultation which was launched in April," says Jacqueline Minor, Director of Horizontal Policy Development in DG Internal Market and Services. "The Commission received about

1,150 replies and the response was geographically well spread. We received input from all Member States, as well as Romania and Norway and the EFTA secretariat. However, we got almost no replies from regional or local authorities – a real pity since it is important to know also what's important at the local level. On the other hand some national regulatory authorities did reply. The majority of the replies came from representative organisations."

Regarding national organisations, there was a remarkable lack of participants from the new Member States. The same was true for individual businesses. "Two Polish firms replied, but we got very little feedback about what other firms, citizens or organisations in new Member States think."

Work to be done

On the positive side the consultation generally showed a great deal of support for the Single Market, she points out. However, industry says that a lot still has to be done, since the Single Market is not yet complete.

"There was a clear message that in the area of services, retail financial services, in the banking and payment areas and intellectual property, we have to improve regulation.

"In particular, the current IPR regime as



Jacqueline Minor, Director of Horizontal Policy Development:
 "...the main issues, that should guide our approach, can be summarised in the five C's: completion, consolidation, co-operation, change and communication."

regards patents and copyright is considered unsatisfactory. But the retail market in general is not seen as functioning well at all. In this context, EU retailers referred to a recent study that compares the performance of Europe's retail sector to that of the US and that came to the conclusion that at least half of the gap in performance is the result of inappropriate regulation."

The consultation also reveals that the Single Market is also viewed as lagging behind in the field of services. The respondents think, that the forthcoming Services Directive will be an improvement, but

the Single Market. Though an overwhelming majority considers the Single Market to be a good thing.

"The benefits in terms of delivering more growth and jobs are clearly recognised, but trade unions warned us that Single Market policies may underline the welfare state, and thus lead to lower public and private consumption. This would, in turn, lead to lower growth.



"There was a clear message that in the area of services, retail financial services, in the banking and payment areas and intellectual property, we have to improve regulation."

still insufficient to create well-functioning services markets.

Other areas cited as in urgent need of improvement were insurance, transport and energy. Stakeholders also called for more fiscal harmonisation and for a more effective ways of securing the free movement of workers, including researchers, which could encourage more innovation.

"At present, business complains that it is difficult to hire and transfer employees within the EU because of the lack of portability of pension rights and differences in social security systems. In addition, many new Member States and businesses criticise the delays in the free movement of workers from the new Member States," Ms Minor adds.

Tangible benefits?

"One message emerging from the consultation is that consumers and SMEs do not always feel tangible benefits from

consumers is taken into account.

"The consultation also showed that various stakeholders perceive the Single Market as lacking a sufficient 'social balance'."

Future policy directions

Although there is still much work to do on the details of the future policy, it is becoming clear, Ms Minor says, that the main issues, that should guide our approach, can be summarised in the five C's: completion, consolidation, co-operation, change and communication.

"Completion is about the several gaps that still have to be filled to improve the functioning of the Single Market. But we should not underestimate what we have already got, which leads me to the second C, consolidation, which basically means that we will have to focus on proper transposition, implementation and enforcement of EU-law.

"And whilst economic benefits are clearly acknowledged, many stakeholders say that the Single Market is essentially a 'big business affair' and call upon the Commission and Member States to ensure that the situation of small companies and

"Co-operation means that the Single Market simply cannot function well, unless Member States and the Commission are acting in concert and work together. This signifies that on the one hand the Commission has to stand firm in its role as Guardian of the Treaties, but it is vital to engage Member States in a deeper partnership which underlines our shared responsibility for making the Single Market work better.

The fourth C is change. The world in 2006 is a very different place from 1984 when the Single Market project was first launched. We need to address the challenges of globalisation, enlargement and an ageing population.

"Last but not least the fifth C is communication. All the above will be in vain if we cannot succeed in re-connecting citizens to the project. We have to communicate and demonstrate that the Single Market is delivering benefits to everyone."

The consultation undertaken earlier this year is itself one of the steps towards achieving better communication, she points out. "Since communication has to be a mutual thing, it is fundamental that we learn about the views of the stakeholders."

Five priority areas

The consultation document discussed five possible priority areas of attention for future Single Market policy.

These were namely:

- Fostering market dynamism and innovation,
- better regulation,
- better implementation and enforcement,
- taking better account of the global context and
- investing more in information and communication about citizens' and businesses' rights and benefits in the Single Market.

The respondents overwhelmingly agreed with this choice of priorities, she affirms.

"There were strong calls for better communication. Meaning that the Commission has to develop a 'culture of communication' and to effectively reach out to citizens, it should communicate on benefits and potential and come up with ways to reach individual citizens and small businesses better.

"But a fair number of those stakeholders who replied do not consider these priorities sufficient and call upon the Commission to assume a lead role and provide a clear, coherent overall vision. Action and guidance from the Commission was especially deemed necessary as regards implementation and enforcement. It was also argued that the cooperation between national authorities has to be improved and industry complained that national judges are not always well-equipped to handle Single Market disputes. Infringement proceedings should be speeded up, more effective, and focus on transposition problems."

Implications for future policy?

One message to emerge from the consultation is that stakeholders believe that

economic analysis should be improved as a base for policy-making.

"Policy-making, they are telling us, should not only mean 'more legislation', but in order to be able to conduct sound economic analysis we should to increase our evidence-base. To this end, impact assessments should be better coordinated and more objective. The effect of the policies has to be assessed by means of evaluation on a regular basis.

"Many respondents also think that Member States ought to be encouraged to engage in screening of national rules and regulations. But we may also have to rethink the choice of instruments depending on the needs of the market. In some cases traditional Single Market legislation may not be the best tool to open markets and to ensure that all benefit. We have to look for better synergies with competition policy and consider more flexible forms of legislation.

"Another point we need to consider is that within the consultation consumers and trade unions asked to be more involved, so this is also an issue to be pursued when thinking about the future."

Noticeable absences

The results of the consultation, she cautions, are not statistically representative due to the open nature of the procedure. The report is therefore basically just a summary account of the responses which the Commission has received. To this extent, any underlying misunderstandings have not been corrected and the views of the Commission services are not expressed within the document.

"But if I had to pick out one concern, it is the lack of participation of 'civil society' from the new Member States. It would have been a wonderful opportunity to learn about their views on the Single Market. In this context I can only repeat that various new Member States indicate in their replies that Single Market policy should take better account of the specific situation of new Member States. Probably this is an issue that requires a closer look into."

*The report on the consultation and individual replies are available at:

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Public Hearing on Future Single Market Policy

Auditorium National Bank of Belgium
29 November 2006

Part 1: Can you hear me Brussels?

Consultation: How can we reach out to all stakeholders in the Single Market?

Part 2: Do we have the right toolkit?

Beyond legislation: Shaping a successful, modern Single Market Policy that tackles market barriers and inefficiencies

Part 3: Making what we have - work better

Enforcement and problem-solving: How to grant citizens and firms effective Single Market rights?

Part 4: Who knows the Single Market – who likes the Single Market?

Communication: What is needed to communicate effectively on the Single Market?

Registration details at:

http://ec.europa.eu/internal_market/strategy/index_en.htm/hearing



Financial integration in world markets intensifies

The latest monitoring report for the financial services sector shows the increasingly pivotal role that institutional investors play not only on EU financial markets but also in building the savings and retirement provisions of EU citizens. The report also demonstrates the importance of the global dimension for EU financial markets.

The European Union is an important global financial player: it represents 20% to 40% of worldwide financial activity, depending on the market segment.

The 2006 Financial Integration Monitor published by the Commission has put the spotlight on the EU financial sector in the global context and on two significant market segments: the EU insurance and pension funds sector and EU investment funds sector.

The external dimension

The FIM report indicates that the EU's financial integration in world markets has been intensifying over the period 1999-2005.

This may promote a better risk distribution but also creates potential channels for financial 'contagion'. One example in this context is the EU reinsurance sector, where Europe is a net receiver of US risks.

Insurance and pension fund sector

The EU insurance and pension fund sector has been and is still growing in importance. Investments of primary insurers reached 6 trillion euro at the end of 2005 and the assets under management of EU private pension funds stood at 2.5 trillion at the end of 2004.

Differences between Member States remain noticeable. The sector is increasingly organised on a cross-border as well as a cross-sector basis but, from a customer point of view, insurance largely remains a 'domestic' service as retail insurance markets are mainly, although not exclusively, accessed through establishment.

The potential for further development of the sector exists but much depends on economic growth and changes in legislation. Considering the ageing of the EU population and the pension challenge, a further expansion can reasonably be expected.

Investment fund sector

Investment funds in the European Union play an important role in households' savings and in capital markets. They have been developing fast for the last ten years – on average faster than the banking sector and the capital market.

Overall, funds have more than quadrupled their assets under management to come close to 6.4 trillion euro at the end of 2005.

Harmonised funds dominate the market. Data on cross-border activity are mixed: while figures for cross-border consolida-



tion are low, most of the new funds are of a cross-border nature.

Data on fund sales in the EU suggest a high scale of cross-border distribution. However, this area is where the lack of competition is most felt. New trends in distribution in EU markets might contribute to introducing more competition to the distribution segment.

Financial Integration Monitor 2006

The FIM 2006 report is the third annual report compiled as a follow-up to the July 2000 request from the EU's Council of Ministers to develop indicators to assess the state of financial integration.

In line with its commitment to better regulation and evidence-based policy making, the monitoring report sets out to bring economic data and evidence into the policy debate.

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Commission proposes full market opening of postal markets by 2009

The Commission has put forward a proposal to open EU postal markets fully to competition by 2009, in line with the agreed target date set out in the current Postal Directive. On the basis of extensive research and consultation, the Commission believes that this is the best way to maintain universal service while further improving quality and choice for EU consumers and businesses.

The Commission proposal to introduce full market opening in 2009 will mean that national operators will no longer have a monopoly on mail below a certain weight (currently a maximum of 50 grams), known as the 'reserved area'.

Member States will be allowed a flexible choice of means other than through a monopoly to finance universal service provision or the possibility to share out the universal service obligation between operators.

The proposal provides further clarification on how this can be achieved. The proposed new Directive is the final step in a long reform process that has already seen large areas of EU postal markets opened to competition, with very positive results.

Maintaining universal service

The proposal maintains the current obligations on Member States to ensure a high-quality universal service comprising at least one delivery and collection five days a week for every EU citizen.

It will also further reinforce consumer protection and increase the role of national regulatory authorities. The obligation to ensure affordability of postal services is maintained in the proposal, as is the possibility for Member States to impose a uniform tariff for single piece tariff items such as consumer mail.

In the event that remaining net costs of providing universal service need to be covered, Member States will be able to choose from a range of options, including, for example, state aids, public procurement, compensation funds and cost sharing. It will be for Member States to decide which model best suits their needs.

Benefits

With the removal of reserved areas, users of postal services can expect the services available to them to

develop and further improve.

Universal service providers will be motivated to become more reliable and efficient and to further increase their

"Full market opening in 2009 will mean that national operators will no longer have a monopoly on mail below a certain weight... known as the reserved area."

customer focus in the light of potential competition from new market entrants.

Full market opening will also directly foster the creation of new jobs in new postal companies, and, indirectly, in the industries dependent on the postal sector.

Regulatory framework

Postal Services in the EU are covered by the 1997 Postal Directive (97/67/EC) as amended by the 2002 Directive (2002/39/EC). This created a regulatory framework which guarantees citizens a universal service, while gradually limiting





the scope of the reserved area (initially mail under 350 grams, amended in 2002 to 100 grams and reduced on 1/1/2006 to 50 grams).

The 1997 Directive aimed at ensuring the best possible service through a gradual opening of the market, with a final target set in 2002 for full opening in 2009.

It includes a requirement that the Commission should provide periodic reports on its implementation, and, before the end of 2006, confirm whether the 2009 date remained appropriate. The Commission is now proposing, by means of a further amending Directive, that the date should be confirmed.

Encouraging progress

A number of Member States have already opened up their market to full competition or have firm plans to do so before the 2009 target date.

The Commission's latest application report points to a positive record of achievement (as was also confirmed recently by the European Parliament).

It finds that there has been a substantial and measurable improvement in the quality of postal services, including in speed and reliability.

It finds that all Member States' Universal Service Providers provide a service that is consistent with or that exceeds the

minimum standards required.

Key issues

The proposed new Directive:

- removes the concept of 'reservable areas' and confirms that the market should be fully open to competition by 2009;
- maintains the main provisions of the existing Postal Directive, including the universal service obligation regarding services that must be provided (letters and parcels) and standards which must be met;

"The proposal maintains the current obligations on Member States to ensure a high-quality universal service comprising at least one delivery and collection five days a week for every EU citizen."

- offers Member States a menu of alternative means other than through a monopoly to finance universal service provision in this new context, and offers greater flexibility/clarity on how it can be achieved. It is for Member States to decide which model best suits their needs (the options provided for include, for example, state aids, public procurement, compensation funds, cost sharing etc.);
- provides for retention of uniform tariffs (i.e. tariffs which are equal irrespective of the location of the addressee) for consumer/single-piece mail or for public policy reasons, but restricts their use in other circumstances;



- removes unjustified barriers to the entrance of new operators;
- strengthens consumer protection, including by extending mandatory complaints procedures to all operators and the role of national postal regulators.

Internal Market and Services Commissioner Charlie McCreevy said: "I firmly believe that completing the Internal Market for postal services is vital for securing further improvements and for sustaining the progress and results achieved to date.

"In preparing the proposal, we have put consumer and user needs first. With full market opening in 2009, we can look forward to more innovation, better services and improved cost-efficiency. Without it, EU postal markets will be increasingly unable to meet the challenges of the communications revolution."

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Commission acts to improve M&A supervisory approval process

The Commission has put forward a proposal that will tighten the procedures that Member States' supervisory authorities have to follow when assessing proposed mergers and acquisitions (M&A) in the banking, insurance and securities sectors.

Current EU rules allow supervisory authorities to block proposed M&A if they consider that the 'sound and prudent management' of the target company could be put at risk. The proposed new Directive, which amends various existing Directives in these sectors, will in particular clarify the criteria against which supervisors should assess possible M&A operations. This will improve clarity and transparency in supervisory assessment and help to ensure a consistent handling of M&A requests across the EU.

Clear and transparent process

The proposed Directive provides supervisory authorities with a clear and transparent process for decision-making and notification.

In particular, there is now a closed list of criteria on which the acquiring company should be assessed, such as reputation of the proposed acquirer, reputation and experience of any person that may run the resulting institution or firm, financial soundness of the proposed acquirer, compliance with relevant EU Directives, and risk of money laundering and terrorism financing.

The Directive also reduces the assessment period from three months to 30 days and allows the supervisory authority to 'stop the clock' only once, under clear conditions.

It amends the following existing Directives: the Banking Directive (2006/48/EC), the Third Non-life Insurance Directive (92/49/EEC), the Recast Life Assurance Directive (2002/83/EC), the Reinsurance Directive (2005/68/EC), and Directive 2006/48/EC on markets in financial instruments.

Problems with approval process

The issue of low cross-border consolidation in the financial sector was discussed at the informal meeting of Economic and Finance Ministers (ECOFIN) in September 2004. Ministers asked the Commission to study possible obstacles to cross-border mergers and acquisitions in the financial sector, arising both from differing supervisory practices and from other, broader factors.

Consequently, the Commission began a review of the existing rules in the banking sector on the supervisory assessments of shareholdings that allow Member States to block on prudential grounds the acquisition of shareholdings above certain thresholds.

As this legislation is very similar to corresponding legislation in the securities and insurance sectors, it was considered appropriate to extend the review to in-

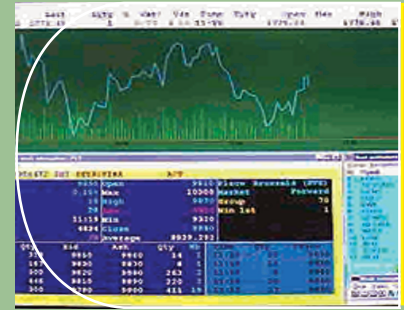
clude these sectors as well, to maintain and enhance further cross-sectoral consistency.

To gather stakeholders' view on the subject, the Commission carried out an online consultation in spring 2006. The results indicated that EU companies were aware of the problems with the supervisory approval process, and were supportive of the need to introduce clearer procedures and criteria and to improve consistency.

Internal Market and Services Commissioner Charlie McCreevy said: "These new rules mean that supervisory authorities will have to be clear, transparent and consistent when assessing cross-border mergers and acquisitions. They leave no room for political interference or protectionism.

"This has to be the way forward if we're serious about having a fully functioning Internal Market and enabling Europe's financial companies to compete globally."

Cross-border investment: More barriers to come down



In November 2007, a major piece of financial services legislation will come into force further developing the framework of a single market in the EU for trading in shares, bonds, derivatives and other investment products. Member States are obliged to adopt the necessary legislation transposing this new framework already by January 2007. Known as the 'MiFID' - the Markets in Financial Instruments Directive - it contains measures which will increase

investor protection, change and improve the organisation and functioning of investment firms, facilitate cross-border trading in securities, and stimulate the further integration of EU capital markets.

Creating a single EU-wide market for financial services is the overriding objective of the Commission's Financial Services Action Plan (FSAP) and the MiFID legislation is a key element. Its objective is to enable investors to operate more

easily and with full confidence across EU borders and to remove obstacles to the use of the EU investment services 'passport'.

The new measures set out to stimulate greater competition and establish a level playing field between Europe's securities trading venues and create a robust, common regulatory framework for trading in the financial products offered by Europe's securities markets. At the same time, the MiFID provisions will ensure strong investor protection with, *inter alia*, a comprehensive set of rules governing the relationship which investment firms have with their clients.

"The MiFID ... will change and improve the organisation and functioning of investment firms, facilitate cross-border trading in securities, and stimulate the further integration of EU capital markets"

Building on the ISD

MiFID is the most significant EU legislation for a decade dealing with investment intermediaries and financial markets and will replace the existing Investment Services Directive (ISD) adopted in 1993. Building on the ISD's basic high-level provisions governing the organisation and conduct of business, MiFID makes significant changes to the regulatory framework to reflect developments in financial services and markets since the ISD was implemented.

It widens the range of 'core' investment services and activities that can be traded provided using the EU investment services 'passport'. It introduces the operation of a multilateral trading facility (MTF) as a new core investment service covered by the passport, upgrades investment advice to a core service (this was only an ancillary service under the ISD) and extends the scope of the passport to cover commodity derivatives, credit derivatives and financial Contracts for Differences (CFDs) for the first time.

Firms covered by MiFID will be authorised and regulated in their home state (broadly, the country in which are registered). Once a firm has been authorised, it will be able to use the MiFID passport to provide services to customers in other EU Member States. It improves the operation of the passport for investment firms. The scope for shared supervision between home and host Member State has been drastically reduced though the host Member State maintains some limited competences, mainly with respect to the supervision of passported branches. It also clarifies some of the jurisdictional uncertainties that arose under the ISD.



MiFID will end the monopoly which certain stock exchanges have had on the trading of securities.

MiFID sets more comprehensive requirements governing the organisation and conduct of business of investment firms, and how regulated markets and MTFs operate.

Most firms that fall within the scope of MiFID will also have to comply with the new Capital Requirements Directive (CRD) which will set requirements for the regulatory capital which a firm must hold. Those firms newly covered by MiFID will be subject to Directive-based capital requirements for the first time.

Who is affected

In general MiFID will cover all the firms currently subject to the ISD, plus some that currently are not. This will include: investment banks; portfolio managers; stockbrokers and broker dealers; corporate finance firms; many futures and options firms; and some commodities firms.

In some areas, the position for firms will be less clear-cut. For instance, retail banks and building societies will be subject to MiFID for some parts of their business (e.g. selling to customers securities, or investment products which contain securities) but not others not linked to the provision of investment services covered by the MiFID. Nevertheless, these asymmetries in the treatment of different activities exercised by the same firm will be subject, among other issues, to a broad review by the Commission which will end in late 2008 – beginning 2009.

Benefits for consumers

Under the MiFID regime consumers will have a bigger choice of investment service providers – who will be required, all of them, to conform to high standards of behaviour to their clients. This will increase competition among firms.

Consumers will enjoy the same level of protection whether they choose a domestic service provider or a foreign one. And the level of protection they will have will be high.

"...a ground-breaking piece of legislation which will transform the landscape for the trading of securities"

Firms are also required, when providing investment services, to collect sufficient information to ensure that the products and services which they provide are "suitable" or "appropriate" for their clients.

As a result, small-scale and retail investors will have a bigger choice of products and services to choose from and equities, bonds etc. to invest in, thus allowing them to maximise the returns on their savings.



Anticipated impact

Charlie McCreevy, Commissioner for Internal Market and Services, has called MiFID a "ground-breaking piece of legislation" which will transform the landscape for the trading of securities and introduce much needed competition and efficiency.

"In practical terms, the MiFID will allow investment firms to operate across the EU on the basis of just one authorisation from their home state, and should offer new competition and dynamism and not stifle it. For compliance questions, investment firms will just have one regulator to answer to, making it much easier to work on a pan EU basis.



European Parliament rapporteur,
Piia-Noora Kauppi:
"...the MiFID legislation is an achievement in itself in terms of cooperation and consultation."

"Our approach works with the grain of the market and not against it," he emphasises. "These measures will protect investors without putting an excessive burdens on business."

Greater competition for stock exchanges

The new measures are expected to significantly reduce the barriers to cross-border trading of shares and cross-border provision of investment services, the Commissioner says, and they will end the monopoly which certain stock exchanges have had on the trading of securities. As a result, many new opportunities for firms, markets and indeed consumers will be created. The net effect will be to put pressure on trading platforms to reduce costs and raise their game.

The Directive abolishes the so called 'concentration rule' and Member States can no longer require investment firms to route orders only to stock exchanges. As a result, ex-

changes in many Member States will be exposed to competition from multilateral trading facilities (MTFs), i.e. broadly non-exchange trading platforms and 'systematic internalisers', i.e. banks or investment firms who systematically execute client orders internally on own account.

MTFs and 'systematic internalisers' will be subject to similar pre- and post-trade transparency requirements as the exchanges. This will ensure a level playing field between the exchanges and their new competitors – and full information on trading activity to the market.

Catalyst for change

MiFID is already acting as a catalyst for significant market changes. Many exchanges, multilateral trading facilities and

investment firms are positioning themselves in anticipation of the much more competitive conditions which the MiFID will create.

New services are already in development. The trading platform originally built for the EASDAQ and NASDAQ Europe pan-European exchanges, for example, is currently being developed into a fully MiFID compliant trading platform.

"Many exchanges, multi-lateral trading facilities (MTFs) and investment firms are positioning themselves in anticipation of the much more competitive conditions which the MiFID will create."

"Through the platform, we have developed, organisations will be able to use a single pan-European exchange - rather than having to trade in all 29 national exchanges - effectively delivering on MiFID's key goal of making Europe's trading venues more liquid and transparent," explains the president of Equiduct, Dr Jos Peeters.

"Equiduct's goal is to offer low-cost and very low-latency capabilities for firms to access all of Europe's pools of liquidity. For example, a Frankfurt-based broker might have a direct connection to the Deutsche Bourse and then use our Equiduct platform to access the other 28 European exchanges – avoiding the cost of complex infrastructures to connect to all 29 national exchanges," adds Bob Fuller CEO of Equiduct.

"MiFID is intended to promote cost effective pan-European trading, not trading in isolated national exchanges. It is one of our goals to facilitate this and provide a solution that delivers best execution while reducing the overall risk and costs associated with MiFID implementation."

Wide and extensive consultation

The MiFID legislation has been developed and adopted in a series of stages known as the Lamfalussy process. The "level 1" Directive establishes the guiding principles of the legislation. This was adopted by the European Parliament and the European Council under the co-decision process in 2004



"..the outcome is balanced, proportionate and sensible"
- Commissioner Charlie McCreevy.

This has been followed by the "level 2" implementing measures which are the technical operational measures adopted by the European Commission separately through the "comitology procedure" i.e. after positive opinion issued by a committee of representatives of the Member States and "ultra vires" control by the European Parliament.

The Commission's "Level 2" measures were adopted in August 2006 and published in September 2006.

The "level 2" measures are the result of an unprecedented and intense round of consultations with all stakeholders – including Member States, regulators, firms and consumers. They are based largely on the advice provided by the Committee of European Securities Regulators (CESR) which itself has conducted extensive in-depth technical discussions with the securities regulators, as well as extensive consultation with the public.

Success for 'Lamfalussy process'

The Finnish MEP, Piiia-Noora Kauppi, who is the European Parliament's *rapporteur* for the MiFID Directive, highlights the fact that this legislation has been the first major test for the Lamfalussy process and the use of this approach to developing highly complex legislation.

"We feel that the process has worked well. There has been a high level of consultation with all parties whether through the formal channels or through representations from specific interest groups. All voices have been heard including the CESR, Member States and the industry. All have contributed their points of view, allowing us policy-makers to make our decisions based on the most complete and up to date information.

"In many respects this consultation process is an expression of the democratic process and the





MEP Kauppi:
"All have contributed their points of view, allowing us policy-makers to make our decisions based on the most complete and up to date information."

Ms Kauppi points out that the high level of consultation involved in developing the MiFID has led to a certain slippage in the time schedule. "One thing we have learned is that proper consultation takes time. And the last thing anybody wishes to see in this complex and important area is bad legislation done in haste."

"Indeed, to find the most effective route to harmonise legislation, the best route has not always been to take the simplest solution and sell it to the others. We have tried to find solutions which best suit the market traditions and specificities of the parties concerned."

"And at every stage we have asked the question whether the benefit will be greater than the cost of implementation. These are especially important issues for the smaller Member States and smaller investment companies."

Commissioner McCreavy stresses the outcome is balanced, proportionate and sensible. "It has been crafted after the

European Parliament has made a major contribution to the development and fine-tuning of this Directive."

Particularly pleasing for the Finnish MEP has been the working relationship developed with the Commission's specialists.

"There has been a transparent process between the Parliament and the Commission and a constant dialogue throughout the various stages. It has been very flexible and very productive. At one stage I was working with top Commission officials via a teleconferencing link from Finland to discuss and resolve many finer points of detail. It resulted in valuable improvements being made at an early stage to the Commission's working papers."

full involvement and consultation of all the relevant interest groups."

Piia-Noora Kauppi says that "At the end of the day, the MiFID legislation is an achievement in itself in terms of cooperation and consultation."

It has demonstrated a willingness on the part of all players - Member States, the European Parliament, regulators, markets and consumers - to work together constructively to achieve the right result for Europe's financial markets, European investors and the economy as a whole."

Implementation and follow-up

The target date for implementation is 1 November 2007. National authorities in Member States must transpose MiFID's requirements into domestic law by the end of January 2007.

The Commission will continually evaluate the MiFID to ensure it is working in practice and is delivering the intended results.

A Practitioners Experts Group was set up in September which over the next three years will help with the work of evaluation. A Q&A database is being developed to aid the transposition.

In addition, the MiFID specifically requires the Commission to draw up reports on the implementation of particular provisions (e.g. professional indemnity insurance, pre-trade transparency of systematic internalisers, pre- and post-trade transparency of financial instruments other than shares).

The majority of these reports are due to appear during 2007 and 2008. If any changes to the MiFID implementing rules are necessary then the mechanisms in place can allow for relatively speedy adjustment.



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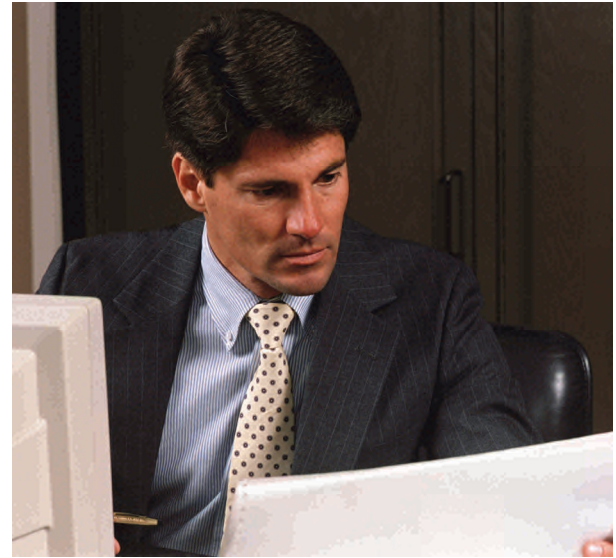
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Auditors' liability - study shows threat of current rules to financial stability

The risk of ruinous law suits directed towards auditing firms was clearly demonstrated with the collapse of Arthur Andersen in 2002 in the aftermath of the Enron scandal. A study by London Economics argues, that a similar blow to one of the four dominant accounting firms (KPMG, Ernst & Young, PwC and Deloitte) could pose a threat to financial stability of the wider economy, creating "serious problems for companies whose financial statements need to be audited".



The Commission has published an independent study on the economic impact of current EU rules on auditors' liability regimes and on insurance conditions in Member States.

The new study states that "one of the major Big Four networks could possibly fail" and that "a limitation on auditor liability would reduce risk caused by potential catastrophic claims."

The study analyses the structure of the auditing market and its possible development in the future, describes the existing limitations in the insurance market for international audits, examines the economic needs for limiting auditors' liability and compares several possible methods for limiting liability.

It represents the first EU-wide scale economic study on this subject. The preparation of the study has been accompanied by the creation of an Auditors Liability Forum composed of market experts.

Key conclusions

The four key issues identified in the study are:

- The international market for statutory audits of large and very large companies is highly concentrated and dominated by the Big-4 networks. The likelihood of new entrants into this market is very limited in the coming years.

Additionally, under the current circumstances, middle-tier firms are unlikely to become a major alternative if a Big-4 network fails. The study emphasises the need to address not only the liability of individual auditors, but also the potential liability of audit networks as such, which represents a new risk for auditors;

- The level of auditor liability insurance available for higher limits has fallen sharply in recent years. The remaining source of funds to face claims may essentially be the income of partners belonging to the same international network. Constantly large claims might therefore put at risk an entire network;
- The failure of a network could lead to difficult consequences for the wider economy like a significant reduction in large company statutory audit capacity possibly creating serious problems for companies whose financial statements need to be audited;
- A limitation on auditor liability would reduce this risk. While there exist a number of variants of statutory audit liability limitation, the diversity of circumstances in terms of both audits and company size is such that it is unlikely that a one-size-fits-all EU-wide approach is the most useful.

The study does not necessarily express the Commission's official view. The external consultant, London Economics, remains responsible for the facts and the views set out in the report.

Next steps

The Commission will issue a report based on this study before the end of 2006. Stakeholders will be invited to give their views.

Internal Market and Services Commissioner Charlie McCreevy said: "This study provides valuable input into our examination of auditors' liability. It highlights that large claims may put at risk an entire auditing network. There are important issues at stake. I recognise opinions are divided about how we should address these. I hope the discussion that this report will engender will allow us to reach a clearer understanding of how best to address the real problems that are there and will not go away. Given the important role auditing companies play in our capital markets, we will soon present our views on possible ways forward for further discussion."

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European Business Test Panel in new push to hear the voice of EU business

Since the launch of the online European Business Test Panel in 2003, more than 3,000 companies have joined as members to give their feedback on Commission proposals likely to impact their business. During this development phase, business feedback has already had an impact on legislative proposals. The Commission is now pushing to develop a large membership base of EBTP across the EU to make it as representative as possible.

Improving consultation is an important part of the Commission's "Better Regulation" Action Plan of June 2002, and a key element of the European Union's drive to make Europe the best place to do business in the world.

An online consultation tool the European Business Test Panel (EBTP) was launched in 2003 as a joint initiative between EU Member States and DG Internal Market and Services. Its aim is to help improve and expand consultation links with businesses community throughout the EU.

EBTP is a unique tool which sets out to obtain direct feedback from businesses of all type and size on Commission legislative proposals or initiatives likely to have an impact on the business community.

Working through national coordinators, the members of EBTP who are independent companies, are invited to give their viewpoint on the potential impact.

The consultation takes the form of an online questionnaire which should take no more than 20 minutes to fill in. The number of consultations per year is not expected to exceed eight.

Expanding the membership base

The programme is open to all businesses. So far more than 3,000 companies of

different sizes and sectors located in all EU countries have become members and have already provided valuable input.

The Commission is seeking to further expand the membership base. To ensure effective representation, the Commission is working with the EU's statistics office, Eurostat, to ensure that the business panel is representative in terms of size of companies and sectors in which they work.

Early achievements

The EBTP has already made its voice felt through the first consultations. On the topic of VAT procedures, 54% of the EBTP members responding to the questionnaire said that they had never requested a VAT refund in another EU country because the procedure was too difficult. As a result of this, the Commission developed a new proposal in October 2004 for a simplified electronic procedure for claiming refunds of VAT paid in other Member States.

Through other consultations, EBTP members informed the Commission that the costs of complying with legislation are too high and rising. Indeed, they cite employment, taxation and accounting rules



European Commission President José Manuel Barroso (right) with UNICE Secretary General Philippe de Buck. EBTP is building closer contacts with industry groups to involve a wider cross-section of business in the consultation process.

as the most costly to comply with. This information has been fed through to policy makers to help them set the appropriate priorities as they work to reduce burdens related to EU legislation.

Totally Internet-based

The EBTP consultations are entirely Internet based, using the on-line consultation tools developed under the Interactive Policy Making (IPM) initiative. This survey mechanism allows the consultation process to be fast and efficient, and the results of consultations can be made available to both participants and policy-makers directly after their closure.

The EBTP is jointly managed by the Commission and Member States. In each Member State there is a national coordinator, in some cases working closely with business organisations, responsible for the setting up and maintenance of the Panel at national level.

Panelists are given a suitable time period (at least two weeks) within which to submit their replies.

Members are supplied with a short explanatory note setting out the objectives of the new policy initiative and are asked to complete a short questionnaire (10-15 questions), designed for easy use and members can work in their own language (most documents, notices, questionnaires and results will be available in the 20 Community languages).

Feedback

After the consultation period, panelists can see how their counterparts have responded. For the sake of confidentiality,

replies are aggregated and no reference to individual businesses is given.

A few weeks later panel members receive a report on the views expressed during each consultation. Explanations as to what follow-up action will ensue, is given later. The views gathered through the consultation are fed into the policy-making process

and policy-makers are committed to taking them into account when finalising their proposals. As these procedures can be lengthy, there is sometimes a considerable time gap before a proposal is finally adopted.

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Helene Minor (right) and Werner Stengg of the Internal Market and Services' EBTP delegation recently participated in the conference of UNICE, an umbrella group for the European industry.

Take part in shaping your business environment

European Business Test Panel



Sign up and make Europe the best place to do business

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European Commission
Internal Market and Services DG

The European Business Test Panel is a joint initiative of the Internal Market and Services Directorate General of the European Commission and the EU Member States.

The EU prepares for the accession of Bulgaria and Romania

At the beginning 2007, the number of states in the European Union will rise to twenty seven with the arrival of Bulgaria and Romania. 2007 will also mark the 50th birthday of the EU. Since 1957 its population will have risen to more than 483 million citizens and the number of official languages will have expanded to 23. With the accession of Bulgaria, the Cyrillic alphabet will be used by the EU institutions for the first time. The accession of Bulgaria and Romania will provide Greece with a direct land connection to the rest of the EU.



Joining the EU is no small task for any country. Since Bulgaria and Romania applied for EU membership in 1995 they have completed accession negotiations, acted upon the constructive criticism expressed in successive Commission monitoring reports and accommodated teams of Member States and Commission experts who have visited them to get a more complete view of the administrative capacity in certain specific areas.

Since the signature of the Accession Treaty in April 2005, the two countries have also been invited to send observers to Council Working Groups, Commission Committees as well as to the European Parliament which has increased their involvement in EU affairs. The populations of Bulgaria and Romania have had to deal with the changes resulting from the adjustment of their countries' legislation

and administration to the requirements of the EU.

Considerable efforts

The last Commission monitoring report, published on 29 September 2006, concluded that Bulgaria and Romania were "sufficiently prepared to meet the political, economic and acquis criteria by 1 January 2007".

The report acknowledged that the two countries have made considerable efforts to complete their preparations for EU membership. Nonetheless, preparations in a few areas have yet to be completed. The Commission has foreseen the possible introduction of targeted measures following the date of accession in the areas of judicial reform, the fight against corruption and organised crime, the management of EU agricultural funds and food safety, as well as aviation safety for Bulgarian aircraft.

Good progress with Single Market policies

no sectoral safeguards have been envisaged for the areas within the remit of DG Internal Market and Services, which include public procurement, mutual recognition of professional qualifications, right of establishment, financial services, postal services, certain information society services, the free movement of capital,

money laundering, company law and the protection of intellectual and industrial property rights.

In general terms, good progress has been made in most of these areas although in some cases legislation has been adopted only very recently which means that it has been impossible to assess their implementation.

Should any of the two countries cause or risk causing a serious breach of the functioning of the internal market, under the Accession Treaty the Commission can take appropriate safeguard measures up to three years after their accession.

It seems rather likely that Bulgaria and Romania will not be ready to participate fully in the motor insurance system of the EU on the date of accession. This is due to the fact that following the provisions of the Motor Insurance Directives, certain agreements which underpin the smooth functioning of the motor insurance system in the European Union, such as the Multilateral Guarantee Agreement under the aegis of the Council of Bureaux, have yet to be signed with the two countries.

Once these agreements are concluded, the proper procedures will have to be followed for the relevant acquis provisions to take effect. If, for instance, the Multilateral Guarantee Agreement is not



The Bulgarian Parliament in Sofia.





concluded by the date of accession or if it is concluded too late to fulfil all formalities in time, the current Member States will be allowed to maintain border checks on motor third party liability insurance policies in respect of Bulgarian and Romanian vehicles as well as in respect of third country vehicles entering their territory from Bulgaria and Romania.

Both countries have been warned that further progress would be necessary concerning the implementation and enforcement of the legal framework concerning money laundering and that supervisory capacity would need to be increased.

Progress in IPR field

Bulgaria and Romania have come a long way in the field of intellectual and industrial property rights protection. Improving the situation in this field has been a priority for the Commission and, as a result, the issue has been highlighted in successive

The Commission had been unable to assess whether Romania would correctly transpose the new rules on capital requirements for credit institutions and investment firms by the time of the most recent monitoring report, due to insufficient information received.

The Romanian authorities have provided further information in the meantime which is currently being analysed by DG Internal Market and Services.

The two countries, together with the EU-25, have until the end of 2006 to transpose the new Directives.



The ancient and modern skyline of the capital of Romania, Bucharest.

The Council confirmed the proposed accession date on 17th October 2006. In its conclusions, the Council underlined "the importance of continued political commitment of both countries to address "outstanding issues".

Denmark and Germany must complete the ratification process of the Accession Treaty (which was still in progress at the end of October 2006) before Bulgaria and Romania can become Member States at the start of 2007.

The specialised units in DG Internal Market and Services continue to be in regular contact with the authorities of Bulgaria and Romania to enable them to complete their final preparations by the end of the year.

monitoring reports and has also been the subject of so-called peer reviews (assessments done by experts from the Member States) in both countries. Nonetheless the requirements set by the *acquis* have not been fully met to date.

The most recent monitoring report called on Bulgaria to ensure that users of protected subject matter, including cable operators, comply with their obligations to pay royalties. It pointed out that, as a result of recent amendments to the Bulgarian patent law, acquired rights have been curtailed in some cases. Romania was cautioned that its Copyright Act was not fully in line yet with EU requirements.

Previous enlargement - all get richer

A recent study assessing the first two years after the incorporation of ten new Member States has been published which indicates that the enlargement has been an economic success.

The Communication "Enlargement, Two Years After – An Economic Success" has shown that the newly admitted economies are growing at a rapid pace enabling them to progressively bridge the gap with their richer neighbours.

The report indicates that the EU-15 has also benefited as the increase of the EU's single market by 75 million to 450 million inhabitants has brought a wealth of trade and investment opportunities.

The adoption of the EU body of legislation and rules – the so-called *acquis* - helped reform those countries which previously had centrally planned economies, brought about macroeconomic stability and stable financial markets and provided huge opportunities for businesses.

The EU-10 also attracted a lot of foreign direct investment (FDI), reaching an overall stock of 191 billion in 2004, or 40% of their total GDP, while it was virtually non-existent some ten years earlier.



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The Full Communication, the study on enlargement and the monitoring report are available on:

info http://europa.eu.int/comm/economy_finance/publications/occasionalpapers_en.htm
http://ec.europa.eu/enlargement/key_documents/reports_sept_2006_en.htm

Industry Code of Conduct for clearing and settlement gets Commission backing

A Code of Conduct introduced by the clearing and settlement industry has been welcomed by the Commission as an important first step towards an integrated and efficient post-trading market in the EU.

In July 2006, Commissioner for Internal Market and Services Charlie McCreevy announced that he favours an industry-led approach to a more efficient and integrated post-trading market in the EU, as opposed to proposing a Directive and called upon the industry to provide a suitable solution.

In response to the Commissioner's call, the three main industry associations – the Federation of European Securities Exchanges (FESE), European Association of Central Counterparty Clearing Houses (EACH) and European Central Securities Depositories Association (ECSDA) have drawn up a Code of Conduct which has been signed by all their members.

Enhanced transparency and competition

The measures detailed in the Code aim at enhancing transparency and increasing competition in the post-trading sector.

The signatories of the Code will have to gradually implement these measures, all of which will need to be in place by 1 January 2008. A strict monitoring process will ensure that the measures are implemented properly and on time.

The measures detailed in the Code address three main issues:

- transparency of prices and services;
- access and interoperability;

- unbundling of services and accounting separation.

For each group of measures the Code sets a specific deadline for implementation: some of the measures will have to be implemented shortly after the signing of the Code, while for the more complex measures, more time will be granted.

Thus price transparency will need to be implemented by the end of 2006, interoperability and access by the end of June 2007, and unbundling and accounting separation by 1 January 2008.

Strict monitoring

A strict monitoring mechanism will be set up to ensure that all the measures are implemented properly and on time. The mechanism will rely on external auditors who will report on the implementation of the signatories' commitments to an ad-hoc monitoring committee chaired by the Commission.

Initially, the Code will apply exclusively to cash equities. While the implementation of the Code is under way, the Commission expects the scope of the Code to

be gradually extended to include other financial instruments, such as bonds and derivatives.

The signatories may however – and the Commission encourages them to do so – apply all or some of the provisions of the Code to most or all financial instruments from early on, if they so wish.

"This new Code of Conduct shows the clearing and settlement industry's firm commitment to transparency, interoperability and competition," Mr McCreevy commented.

"This is an important step towards the creation of an efficient EU financial market.

"The industry is to be congratulated for its efforts towards achieving this goal."
- Charlie McCreevy

"Lower post trade costs should deliver meaningful macro-economic improvements through more trading volume, with positive consequences for market liquidity and hence the cost of capital.

"The code will initially cover cash equities. This is an important first step, but in the longer term we must be more ambitious. I want the industry to consider extending the code in due course to other asset classes, specifically bonds and then derivatives."

"The industry is to be congratulated for its efforts towards achieving this goal. They have set aside their different approaches and they have drawn up a basis for a coherent way to bring about the necessary changes. From my part, I have invited and encouraged them to follow this path as an efficient way to achieve quick, lasting and substantive results."

Presidency pushes for sign-up to Hague Securities Convention

The Finnish Presidency is pushing for the EU to sign up to a major convention affecting the billions of euros of securities that are transferred or pledged daily in cross-border transactions. The Hague Security Convention is a multilateral treaty which sets out to remove, at a global scale, any legal uncertainties about which law governs the cross-border transactions.

The Hague Securities Convention dates back to 2002 but only saw its first signatories in July of this year with the adhesion of the United States and Switzerland. The Commission first advocated adhesion in 2003 and in July of this year published a legal assessment - at the request of the Council - which has highlighted the importance of the Convention and concluded that there are no legal obstacles for signing it. The issue is now back on the Agenda of the Civil Law Committee and the European Securities Committee and receiving the full support of the Finnish Presidency.

Need for legal certainty

In financial markets, where securities worth billions of euros are transferred or pledged daily in cross-border transactions, it is vital to establish legal certainty about who has what rights over securities and to avoid all possible ambiguity about which law determines those rights.

Indeed, the great majority of securities in the financial markets are now held in electronic book entry form in securities accounts with custodians or depositaries or settlement systems resulting in proprietary rights in or for the delivery or transfer of the securities concerned.

The Convention intends to eliminate any ambiguity by providing for uniform conflict of laws rules for the securities that

are held with an intermediary, such as a CSD (Central Securities Depository) or a bank.

Agreement on governing law

The heart of the Convention's regime is that the law which is applicable to the issues covered by the Convention is the law that the relevant intermediary and the account holder have expressly agreed as governing their account agreement. This is quite revolutionary because it means that parties - although subject to the restriction of a "qualifying office test" - may choose a (foreign) law governing certain proprietary aspects.

The negotiators opted for this approach because they considered that this was the best way to determine with certainty the applicable or governing law, as - even in a chain of multiple intermediaries and, thus, multiple account holders - there will always be one relevant intermediary for each account holder.

In the initial stages of the negotiations leading to the Convention, the thought had been that the connecting factor of the Convention's primary conflict of laws rule should focus on the 'location of the account' to which the interest of the securities is credited. This 'location of the account' test is the prevailing formula in the Community, found in three

Directives: Article 9 Settlement Finality Directive (1998), Article 24 Winding-up of Credit Institutions Directive (2001) and Article 9 Financial Collateral Directive (2002).

The negotiators, however, rejected this formula because they considered that there is no globally acceptable criterion to precisely determine the location of a securities account or the office of an intermediary that maintains a specific securities account.

Opponents of the Convention fear that it would jeopardise the stability of securities settlement systems and are concerned that the Convention might give non-EU major custodians economic and operational advantages over their EU counterparts. Proponents of the Convention stress that it does not deal with substantive law and call for an urgent accession to the Convention to alleviate the legal uncertainty about the governing law that exists in global cross-border transactions.

Internal Market and Services Commissioner McCreevy said: "In today's global financial markets we can no longer afford uncertainty about which law is applicable to indirectly held securities. The 'location of the account formula' has worked fine in Europe's transition to a fully integrated single securities market; we need legal rules that are sustainable world-wide. The EU should not lag behind."

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Restrictions on the provision of certain gambling services: Austria, France and Italy



The Commission has decided to send official requests, in the form of letters of formal notice, for information on national legislation restricting the supply of certain gambling services to Austria, France and Italy. In April 2006 the Commission sent similar requests for information to Denmark, Finland, Germany, Hungary, Italy, the Netherlands and Sweden.

In these latest cases the Commission again wishes to verify whether the measures in question are compatible with Article 49 of the EC Treaty, which guarantees the free movement of services. The Commis-

sion's decision relates only to the compatibility of the national measures in question with existing EU law. 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 this is done in a manner consistent with EU law i.e. that any measures are necessary, proportionate and non-discriminatory. The Member States in question have two months in which to respond. The Commission hopes that the answers it receives will lead to an early and satisfactory resolution of the matter.

Nationality requirements for notaries: action against 16 Member States

The Commission has formally requested Austria, Belgium, France, Germany, Greece, Luxembourg and the Netherlands to modify their legislation allowing only nationals of their own country to become notaries, which is contrary to EC Treaty rules on freedom of establishment. These requests take the form of reasoned opinions.

The Commission has also asked the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia to submit their observations on similar legislation in their countries. These requests take the form of letters of formal notice.

Authorisation procedure for foreign investments: France

The Commission has decided to send France a reasoned opinion asking it formally to modify Decree 2005-1739 of 30 December 2005, which creates an authorisation procedure for foreign investments in certain sectors of activities that could affect public policy, public security or national

defence. The Commission is concerned that some of the provisions of this decree could discourage investment from other Member States, in contradiction of EU Treaty rules on the free movement of capital (Article 56) and the right of establishment (Article 43).

Closure of case on investment in energy companies: Italy

The Commission has decided to close infringement procedures against Italy in view of the measures taken by Italy on 1 August 2006 to comply with a European Court of Justice ruling of 2 June 2005 regarding the law on investment in energy companies. The ruling had 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 EC Treaty rules on the free movement of capital (Article 56).



Public procurement infringements

Valencia town planning law: Spain

The Commission has sent Spain a further formal request to modify the law on land-and-town planning that applies to the Valencia Community – the Ley Urbanística Valenciana ('LUV'). The Commission considers that, although

the LUV streamlines the procedure to select property developers, it still contravenes the EU procurement Directives in several respects. This request takes the form of an additional reasoned opinion.

Cologne trade fair halls and security control services at Frankfurt/Main airport: Germany

The Commission will send formal requests to Germany concerning a contract for the construction of four trade fair halls and additional premises concluded between the city of Cologne and a private investment company, and

concerning the award of security control services at the Frankfurt/Main airport. These requests take the form of reasoned opinions.

Slovakia: construction of Motorway D 3

The Commission will send a formal request to Slovakia concerning the use of the selection criterion of 'previous experience' as one the award criteria in a tender for con-

struction of Motorway D 3. This request takes the form of a reasoned opinion.

Closure of cases: Austria, Czech Republic, Denmark and United Kingdom

The Commission has decided to close a range of infringement cases on public procurement, having come to a satisfactory agreement with the Member States concerned. The cases that have now been resolved were, respectively, against the United Kingdom concerning the design and construction of the new Scottish Parliament building at

Holyrood; against the Czech Republic concerning the tender procedure for an electronic toll system for motorways; against Austria concerning waste disposal services in the city of Mödling; and against Denmark concerning its implementation of the Remedies Directive in accordance with the "Alcatel" judgement of the Court of Justice.

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.

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