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HALF-WAY TO THE SINGLE MARKET

The EC has already reached the half-way mark on the road to the single market. Of the 279 proposals in the Internal Market program, the number of final adoptions by the Council has risen to 130, to which must be added 5 partial adoptions and 8 common positions. This means that the Council has agreed to half of the program in four years, a feat that many would have considered impossible four years ago. In addition, important agreements are very close to adoption, including the second banking coordination directive, the solvency ratios of banks and rights of redress in the field of public procurement.

The Council's increased productivity is primarily due to the large number of decisions now requiring a qualified majority vote rather than unanimity, which has been the case since the Single European Act came into effect in July 1987. In total, the Commission has produced 238 proposals, leaving 41 proposals that are yet to be presented. In areas still requiring unanimity, e.g. the free movement of persons, VAT and the tax on savings, no wide-ranging decisions have been adopted.

Significant progress has been made in the areas of public procurement (including the adoption of directives on supply and works contracts), technical harmonization, capital movements, financial services, mutual recognition of diplomas, transport and industrial and intellectual property.

The main problems and delays in the program are in the vital areas of the creation of a frontier-free Europe, particularly in the removal of physical barriers with respect to goods and people. Insufficient progress has been made on the right of residence and the elimination of frontier formalities. Another area where there has been little progress but increasingly more attention is the social dimension of the internal market. However, all but one member state now have common views on the importance of developing this aspect of the single market.

Another sticking point for the Commission is the incorporation of Community law into national legislation. According to Internal Market Commissioner Martin Bangemann, the member states have been moving too slowly, which might compel the Commission to use regulations, which have direct effect, rather than the still favored directive approach.

Most of the proposals still to be presented by the Commission are concerned with animal and plant health (about 30 proposals) and, to a lesser extent, technical harmonization. The Commission has decided to present the 41 remaining proposals before the end of the year, but delays are possible in plant and animal health controls.

FOUNDATION FOR EMU SET

The EC Commission has agreed on proposals for closer policy coordination by finance ministers and central bank governors, forming the basis of the first stage toward full economic and monetary union (EMU). The implementation of the EMU's first stage will enter into force July 1, 1990.


In presenting the proposals, EC Commissioner for Economic and Financial Affairs Henning Christophersen stated that "we have now taken the necessary first steps towards a more effective coordination of the economic policies of the Community."

The proposals are based on the Delors Committee Report on the EMU, the conclusions of the Madrid Summit and the informal meeting of eco-

nomics and finance ministers in Antibes that took place on September 9-10.

A key element of the proposals is the notion of "mutual surveillance" in which EC finance ministers discuss each other's economic and budgetary policies in private and recommend improvements. The proposals amend a 1964 EC decision that established a committee of central bank governors, enlarging its scope for economic policy coordination through EC finance ministers.

According to Christophersen, the tasks and responsibilities of the committee will be set out more explicitly, and will include the setting of monetary targets in each Member State, improved cooperation within the European Monetary System and discussions of international



monetary questions. Further, the new proposals revise a 1974 decision on convergence and coordination of macro-economic policies.

Commissioner Christophersen explained that the 1974 decision did not work satisfactorily because it was "an empty exercise with lots of paperwork," based on a Keynesian emphasis on demand management. The new procedures will take the supply side of the economy into account, and will ensure a more direct and politically operational approach.

A NEW CORPORATE TOOL

A new instrument for cooperation between EC-based companies recently went into effect. The European Economic Interest Grouping (EEIG) is a corporate vehicle established under EC-law which will permit companies to undertake numerous forms of joint action while retaining their legal and economic independence. For example, an EEIG could be used to coordinate purchasing, sales or research among its member companies.

To form an EEIG, at least two firms (or subsidiaries of a single multinational corporation) from different member states must be involved, and the activities of the EEIG must be ancillary to those of its founding members.

An EEIG cannot, however, be set up as a financial holding company. It also cannot employ over 500 people. US firms and subsidiaries can participate as long as they are established in the EC. At present, five EC countries have modified their national legislation to permit registration of an EEIG in their territories.

A "SOCIETAS EUROPEAS" ?

The Commission has revamped the idea of a European Company Statute and has, once again, sent it down the EC legislative pipeline. (An earlier attempt to pass the Statute failed at the Council level in 1982). Ideally suited to the single market, the Company Statute presents a new legal frame-

work designed to promote joint ventures and cross-frontier collaboration.

It would permit firms to incorporate in one legal entity all the capital and personnel situated in several EC countries, free from the company law of the member states in which they do business. Several US firms, including Ford Europe, have expressed interest in the concept.

A "societas europeas" would have to be established by two companies from at least two member states, but subsidiaries of one multinational corporation would qualify. Minimum capital for starting a European Company is set at 100,000 ecu. The Statute provides for offsetting losses made in one EC country against profits made in others when filing tax returns, and for a system of worker participation (which is also the primary political difficulty for some member states).

To overcome the controversy over employee participation, the Commission has proposed that each member state be allowed to choose between three options: co-management on the German model; factory worker committees on the French model or a system of collective bargaining.

STRONGER DISCIPLINE FOR STATE AIDS

Competition Commissioner Sir Leon Brittan has announced a new focus in the battle to curtail state aids to industry. The Commission now intends to review existing large-scale aid programs rather than merely to examine new schemes notified under the Treaty of Rome.

According to Sir Leon, the abolition of many national protectionist instruments may lead member states to greater use of state aid to protect certain sectors. General investment incentives (fiscal provisions) and export aid (e.g. export credits) will receive the most scrutiny. EC officials explain that the need to review these programs stems from the premise

that aid schemes approved in the depth of a recession may no longer be economically justified. Sir Leon emphasized that the Commission would continue to study closely new aid programs of member states.

MUTUAL RECOGNITION IN PRODUCT TESTING

Free circulation of goods is what the single European market is all about, but if national authorities and companies in member states have little confidence in the products of other EC countries, then the goal remains purely academic. To combat this problem, the Commission has proposed mutual recognition of product testing and certification.

The Commission aims to get the 1,000-odd national bodies responsible for product certification to negotiate among themselves to create a European network for the mutual recognition of the tests carried out by the 10,000 laboratories found in the EC.

The Commission also supports a system which originated in the US and has been extensively developed in Japan: recognition of product testing by the producers themselves.

The company certification route would correspond to the quality strategies increasingly used by companies, where quality becomes the responsibility of all levels of production and management. Further, company certification would eliminate long delays in obtaining type approvals.

CAVEAT POLLUTER

The European Commission has proposed a directive on civil liability for damage or injury to the environment caused by waste. The proposal clearly puts the onus of responsibility for environmental risk on the producer of waste.

Said Environment Commissioner Ripa di Meana, "This is a proposal whose aim is to apply the principle that the polluter must pay."

The twin objectives of the initiative are to put the victim of an accident in a better position for compensation and to harmonize competition conditions that result from disparities in national law, i.e. investment (and waste) flows to those countries with the least stringent waste disposal laws.

By making the producer bear the risk, the Commission believes that industry will be motivated to use and to develop "cleaner" technologies and other methods for minimizing wastes.

The proposal applies to all wastes generated in the course of commercial activities except nuclear wastes or wastes and pollution from hydrocarbons covered by the Brussels Conventions of November 1964 and December 1971. This excludes domestic wastes arising from the use of consumer products such as solvents, paints and batteries. In these cases, the producer of the product is too far removed from the cause of the waste (the consumer), which is often untraceable.

Strict or no-fault liability for damage to the environment is a growing trend throughout the EC. Above all, strict liability improves the victim's position by preventing the producers concerned from sending the ball from one court to another, building an interminable, extremely costly case.

Victims would be able to seek immediate redress from the sole person liable, considerably boosting their chances of success.

If several parties are liable for the same incident - whether producers of different wastes or successive handlers of the same waste - they will be held jointly and severally liable: the victim can claim full compensation from any one of them without having to bring proceedings against the others.

AUSTRIA APPLIES FOR MEMBERSHIP

Austria has formally presented its application to join the EC to the Council of Ministers. The Council forwarded the application to the Commission, which must give its opinion. A successful

application requires unanimous approval of the Twelve and a majority vote in the European Parliament.

The Austrian government stressed that membership must not compromise its policy of neutrality. According to French Foreign Minister Roland Dumas, Austria's neutrality poses a special problem, and it remains to be seen if Vienna can meet the conditions required for EC membership. He also remarked, however, that a difficulty that seems big today could become much smaller in a few years, given the current developments in Europe.

EC NAMES NEW US AMBASSADOR

Andreas van Agt, a former Dutch Prime Minister, will succeed Sir Roy Denman, who has retired after seven years as EC Ambassador to the US. Sir Roy played a critical role in allaying US fears that the EC would create barriers to US businesses and exports in the drive to create a single market.

Mr. van Agt was prime minister of the Netherlands from 1977 to 1982. Most recently he was the head of the EC's delegation to Japan, where he led the EC's campaign to open Japan's market to foreign goods and services.

EC HELP FOR POORER REGIONS

The Commission has adopted a draft package of financial aid for the EC's poorest regions. The plan establishes the broad lines of EC regional development spending from now to 1993. The lion's share of the assistance, worth \$ 38.6 billion over five years, will go to the entire countries of Greece, Ireland and Portugal, southern Italy, large parts of Spain, Corsica and the French Overseas Departments and Northern Ireland.

Commissioner Bruce Millan, who is responsible for regional policies, stressed that this was the most important decision the present Commission would take to strengthen economic and social cohesion in the EC, without which, "... the single market will not be a success."

"QUOTES"

"European union does not signal the disappearance of national identity. Nor is it a synonym for uniformity. Unity cannot be achieved at the expense of diversity, for Europe's greatest assets are precisely its regional, linguistic and social diversity; and its political pluralism." EC Commission President Jacques Delors at Harvard University.

"Britain's active partnership in the European Community is a fixed point in our future, and our European partners know that it is impossible to imagine the Community without Britain as a leading partner." British Foreign Secretary John Major in New York.

"We need to put the poorer regions in a position to take advantage of increased economic integration rather than be harmed by it." EC Commissioner Bruce Millan.

"When companies merge in order to become more efficient and competitive in European and world markets, we can warmly welcome it. When they simply seek to swallow up the competition and give themselves an easier ride, then it is the job of the European Commission to act - and we have substantial powers to do so." EC Commissioner Sir Leon Brittan.

"There is no indication that they (the EC) are building a 'Fortress Europe'". Bernard Falk, president of the National Electrical Manufacturers Association (NEMA) in reference to product standards.

"Undertakings all over the world have rediscovered Europe as a good place to do business." EC Commissioner Martin Bangemann.

...IN BRIEF

... The Commission has formally rejected a complaint from Plessey, the British electronics manufacturer, that the proposed takeover by GEC-Siemens violates EC competition rules.

... A recent KPMG Peat Marwick survey of US executives in the four industries most closely associated with the EC (manufacturing, high technology, merchandising and transportation) found that two-thirds of the 872 surveyed are convinced that the EC will set up significant trade barriers in the runup to 1992. The survey also indicates, however, that US businessmen are busy formulating and implementing strategies to deal with the challenge of the single market.

... Nine state governors from the US recently visited Brussels in order to learn more about the single European market and its implications for the businesses located in their states. The governors, whose states are of very different economic characteristics, met President Delors, External Relations Commissioner Frans Andriessen and Culture and Information Commissioner Jean Dondelinger.

... "Hungary should join the European integration process without becoming a member of the EC," according to a statement presented by the Hungarian government at a conference in Brussels on Western aid to Hungary and Poland.

... Spain has liberalized its stock exchanges in Madrid, Barcelona, Valencia and Bilbao, eliminating the monopoly

enjoyed by authorized stockbrokers. The reforms aim to provide Spanish industry with more and less expensive capital.

... The American National Standards Institute and two European bodies - CEN and CENELEC - have announced a plan of closer cooperation in the development of EC standards.

... EC countries have stepped up their campaign against unitary taxation in the US in advance of a landmark case in the US Supreme Court involving ICI, Alcan Aluminium and the State of California. ICI of

Britain is suing the California Franchise Tax Board on the grounds that unitary tax - which imposes a tax on multinationals' worldwide earnings - is unconstitutional and an unfair economic and administrative burden on foreign companies.

... Fordham Corporate Law Institute is hosting a seminar entitled "1992 and EEC/US Competition and Trade Law", which will be held in New York on October 26-27. For further information, please contact Ms. Helen Herman, Executive Director, at (212) 841.5178.

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If you would like additional information on any article in this issue, please write or telephone Kerstin Erickson or Christopher Matthews at (212) 371-3804

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