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COMMISSION RELEASES BLUEPRINT FOR ECONOMIC AND MONETARY UNION

In preparation for the December intergovernmental conference (IGC) on economic and monetary union (EMU), the Commission has issued conclusions on its design for EMU. The paper will serve as a reference text for the IGC, which will decide the final shape and details of EMU, including changes to the EC's treaty.

The plan calls for a three-stage process similar to the Delors Committee Report (see EURECOM, May 1989). Stage one, which began on July 1, aims to effect a higher degree of economic convergence in the EC, to reinforce monetary coordination among the member states and to promote the commercial role of the ecu (European Currency Unit). For stage two, the Commission proposes a January 1, 1993 starting date, the deadline for completion of the single market. According to the text, the chief goal of a "brief" stage two should be the establishment of a single, politically independent system of central banks (dubbed "Eurofed"), which would mark the beginning of "intensive preparations" for a common monetary policy and a single currency. Stage three would then introduce the ecu as the Community's single currency, but its timing would depend on political agreement by the EC leaders. The Commission feels that the introduction of a single currency is an essential feature of EMU, and that it should be clearly written into the EC treaty.

The Eurofed would have price stability as a primary objective and its main tasks would be to implement monetary policy, including the issuance of ecu, and to conduct day-to-day interventions in the foreign exchange markets based on instructions from the Eurofed board (see EURECOM, May 1990). Still, "the choice of exchange rate regime and the negotiation of international monetary agreements should remain a matter for political authorities." The Eurofed would also have some kind of democratic accountability.

In related matters, the Commission believes the future EC treaty should prohibit member states from financing deficits by printing money or through lax credit. However, while it agrees that excessive budget deficits must be avoided, it does not advocate binding rules on the maximum size of national deficits that some EC central bankers support. Commission President Jacques Delors holds that political pressure from member states, coupled with market pressures, would be enough to prevent member states from endangering EC financial stability through reckless fiscal policies.

According to Economic Affairs Commissioner Henning Christophersen, a single currency would eliminate exchange rate instability and end transaction costs, which currently total around 20 billion ecu annually (ecu1=$1.32). Further, price stability, coupled with close coordination of economic policies, would bring down interest rates, thus helping to cut national budget deficits. On the negative side, a potential cost to the member states would be the loss of the nominal exchange rates as an economic adjustment instrument. However, the Commission cites that the use of nominal exchange rates has already been largely abandoned within the Community, and the EC would still be able to adjust exchange rates vis-a-vis the rest of the world.

A SINGLE MARKET FOR NON-LIFE INSURANCE

Following up on the successful liberalization of the banking sector, the EC Commission has proposed legislation which aims to realize a single market in non-life insurance. Known as the Third Framework Directive, the proposal would enable any insurance firm established in the EC to provide all types of insurance (except life insurance) and to set up branches in any member state based on a single license, subject to the regulatory control of its home country.

This will give consumers a much wider choice over a whole range of insurance products, but not at the cost of consumer confidence. To ensure adequate consumer protection, insurance policies will be governed by the legal system of the policy holder's country. In addition, national authorities could intervene if a company engages in "doubtful practices".

Member states could also set out special conditions for certain types of insurance where insurance is compulsory (e.g. medical malpractice insurance in some member states) or where considerations of the general good come into play (bans on kidnap insurance, for example).

To allow for mutual recognition of supervision between member states, the proposal establishes rules for the representation of assets covering technical reserves. Taken with the Insurance Accounts Directive currently in front of the Council and the solvency margin set out in the first Non-Life Directive, this will ensure a sound financial base for Community insurance companies.

Commented EC Financial Services Commissioner Sir Leon Brittan: "Until now, the companies selling such non-life insurance have had to obtain authorization from each member state before they could operate there, and they have had to follow national rules on the types of contracts they could offer. In effect, there have been 12 separate markets for non-life insurance. This has cramped competition, pushed up prices and reduced consumer choice. Once this proposal has been adopted, there will be a far wider range of products on the market. The consumer will still have a high level of protection, but will be able to enjoy the benefits of a single market in action."

DETAILS ON MERGER RULES SPELLED OUT

The Commission has completed the implementing legislation for the EC merger control regulation, simplifying the notification forms for large merging companies and clarifying some ambiguous areas. As of September 21, the Commission will have sole power to examine mergers within the EC — a priori — where world-wide turnover exceeds 5 billion ecu (ecu1=$1.32) and/or where aggregate EC turnover is more than $250 million ecu.

Heeding the complaints of business, the Commission has greatly shortened the notification form that merging companies must complete and send to Brussels, striking a balance between its need for full information at the beginning of a case and the requirement that industry's burden should be as light as possible. The form requires only the data essential to make a complete market analysis vis-a-vis the merger. If a firm can prove that certain information requests are irrelevant to the merger (or if it does not know the answer), then it can omit those parts of the form.

A task force consisting of some 30 senior officials has been created within the Directorate-General for Competition to examine the notifications and to prepare cases for a Commission decision.

Clearing up a gray area, the Commission has decided that joint ventures will be subject to the regulation if they result in new, lasting economic entities (i.e. "concentrations"). However, if they are designed chiefly to foster "cooperation" in areas such as research and development or licensing deals, then they will be subject to existing competition rules as at present.

Regarding "ancillary restrictions" (e.g. non-competition clauses), which accompany most mergers, the Commission accepts that these types of restrictions are sometimes necessary for a merger to succeed, but it will not accept conditions that violate existing competition rules.

A RECORD YEAR FOR M&A

Speaking of mergers, a record number of 1,122 M&As (mergers and acquisitions) and joint ventures occurred within the Community in the 1988-1989 period according to the Commission's recently released 19th Report on Competition Policy. This represents a 9% increase over the previous period and, in the Commission's view, was mainly the result of restructuring in preparation for the single market. Industrial M&As continued apace by rising 28%, but activity in services— particularly in the banking sector— fell slightly.

While the majority (52%) of M&A activity remained between firms of the same nationality, there was a significant increase in mergers between companies from different member states. Mergers between EC and third-country firms actually dropped in absolute terms. US companies were far and away the most active non-EC participants, followed by Swiss, Swedish and Japanese enterprises. The report notes that Japanese firms use M&A in the Community far less than is generally believed, opting primarily for greenfield investments and joint ventures with EC companies to gain a direct presence. US firms have a clear preference for direct acquisitions.

The annual report also highlighted the notable headway made in opening up the service sectors to greater competition in 1989, especially in telecommunications. Further, it reported that state aids to industry were monitored more stringently in 1989, and that the Commission will more systematically review existing aid schemes in the future, as they could threaten the proper functioning of the single market. The Commission's view is that the market, not subsidies, ensures that the EC has a rational and competitive industrial structure.

ATTACK ON UNFAIR SALES CONTRACTS

On the initiative of EC Consumer Affairs Commissioner Karel Van Miert, the Commission has proposed a blacklist of contract clauses which gives sellers an unfair advantage over consumers.

The blacklist includes clauses which limit (or even exclude) the seller's responsibility should a product seriously injure or even kill the purchaser; allow suppliers to change the terms of a contract without the buyer's consent; encourage uncertainty over price to the buyer's detriment; enable suppliers to escape responsibility for not performing contractual obligations; and limit (or even eliminate) the guarantee period, shifting the burden of proof from the seller to the purchaser.

Because contract protection varies widely among the member states (and because of the significant number of contract abuses), the Commission wants to provide consumers an adequate minimum level of protection.

Member states would be able to adopt stricter provisions.

NEW ERA FOR EUROPEAN TELECOMMUNICATIONS

The Twelve recently received formal notification of two related directives— the Open Network Provision (ONP) Directive and theTelecoms Services Directive— which together will open up new opportunities for the telecom industry, for business users and for individual consumers as the range of services expands.

Although the Services Directive (see EURECOM, January 1990) achieved Council consent in late 1989, the Commission agreed to delay its application until the ONP Directive was adopted by the Council.

The recently adopted ONP directive (see EURECOM, March 1990) facilitates access for private companies to public networks and to certain public telecom services, while the Telecom Services Directive establishes the right for private companies to offer new, value-added services on existing telecommunications networks in competition with the national PTTs (excluding voice telephony and telex services).

PAPANDREOU PROPOSES RULES ON WORKING HOURS

On a proposal made by Social Affairs Commissioner Vasso Papandreou, the Commission has adopted a directive establishing basic provisions for the organization of working time as it relates to workers' health. The rules are part of a 45-point program designed to apply the principles of the Community Charter on Fundamental Social Rights and to give the 1992 single market a social dimension. The directive, which still needs Council approval, would give workers a minimum rest of 11 hours in every 24-hour period, and one day's rest in seven, averaged over a two-week time frame. It would also limit night work to 8 hours in a 24-hour period and would ban night workers from overtime. Further, firms would have to make special arrangements for assessing the health of their night work force, and would have to transfer those night workers with night work-related health problems to day shifts. Greater flexibility would be granted to sectors such as tourism, agriculture, the off-shore oil industry and some aspects of road transport.

Contrary to the fears of some member states, the Commission has taken a flexible approach with the Working Time Directive. While it believes that EC-wide minimum requirements are necessary to ensure that workers' health and well-being are not violated, it is prepared to allow EC governments to leave the directive's implementation to employers and unions (i.e through collective agreements) in order to bypass statutory legislation. Commissioner Papandreou warned, however, that EC governments would still be challenged in the European Court of Justice if collective agreements do not implement the directive.

QUOTES

*"...Somewhat contrary to what might have been expected, all the turmoil in Eastern Europe is neither interrupting nor slowing down the drive for 1992...They'll [the Community] be speeding it up, and from my perspective that's a welcome development." Former US Federal Reserve Chairman **Paul Volcker.***

*"The design of the new European architecture... consists of three concentric circles. The first is the EC itself, moving toward political union... The second circle consists of the Community, EFTA countries and the Central and Eastern European countries. All of these countries will be developing economic associations according to the models designed by the EC Commission. The last concentric circle embraces Europe in a political sense, the Europe that stretches from San Francisco to Vladivostok. This includes the US and Canada on the one hand, and the Soviet Union, including its Asian dimension on the other." Italian Minister of Foreign Affairs **Gianni de Michelis.***

*"Fascinating because we expect much from the building of Europe, and because countries such as those from Eastern Europe expect much from us. And perilous because we have a lot of work to do." EC Commission President **Jacques Delors,** commenting on the agenda for the current six- month Italian EC Council presidency.*

*"Britain's destiny lies in Europe as a full member of the Community. We shall not be standing on the sidelines...On the contrary, we shall bring to it our own distinctive point of view — practical and down to earth." UK Prime Minister **Margaret Thatcher.***

*"If the EC was a state and applied to join the Community, it would be turned down on the grounds that it was not a democracy." European Parliamentarian **David Martin** commenting on the EC's "democratic deficit" and the need for institutional reform.*

...IN BRIEF

...The Fordham Center on European Community Law and International Antitrust is offering five evening seminars during the 1990-91 academic year on a non-credit basis: EC Competition Law (spring); EC Corporate & Trade Law (fall); European Community Law (fall); Intellectual Property Licensing in the EC (spring); US International Antitrust & Trade Law (spring). The seminars are unique because they will be led by EC officials (except the US Antitrust class).

In addition, the Fordham Corporate Law Institute is hosting a seminar entitled "International Mergers and Joint Ventures", which will be held in New York on October 18-19. It will have a significant EC component, including top EC officials responsible for competition matters.

For further information both on the course offerings and on the conference, please contact Ms. Helen Hermann, Executive Director, at (212) 841-5178.

...A recent report from The Conference Board maintains that US economic growth through the rest of this year and 1991 is strongly linked to continued growth in Europe, and particularly events in Germany. Some 27% of all US exports now go to Europe, and nearly half of the $50 billion reduction in the US trade deficit over the last two years is a result of the dramatic improvement in the US trade balance with Europe. Said the report: "Continued growth in Europe will be a major shot in the arm for the US industrial sector, but a slowdown in Europe, particularly in Germany, the UK and the Netherlands, would spell trouble for US exports."

...Results from the latest (Spring 1990) Eurobarometer poll indicate that seven out of ten Europeans think that the European Community should speed up its economic, political and monetary integration in order to build an even more united Europe. 72% of the respondents favor the formation of a European union with one government responsible to the European Parliament. Further, the achievement of the single market is considered more important (53%) than bringing Western and Eastern Europe closer together.

...The EC's population grew by 1.8 million in 1990, bringing the total to approximately 327 million despite declining (and, in some cases, negative) birth rates. Two-thirds of the increase was attributable to immigration, especially from Central and Eastern Europe.

...Leaders of eleven bi-lateral European Community chambers of commerce in New York have announced the formation of a new organization, the European-American Chamber of Commerce (EACC), to promote trade and investment flows between the US and the European Community. For more information please contact Ms. Swantje Weber at (212) 974-8843.

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