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EC ENERGY DEREGULATION PLAN UNVEILED

Building on ideas outlined this past autumn, the Commission has issued formal plans to create a genuine single market in energy by exposing the EC's natural gas and electricity sectors to more competition.

Using a three-stage approach (see EURECOM, November 1991), the Commission believes its plan will save consumers "billions of ecus" annually and make EC industry more competitive in the world market. Said EC Energy Commissioner Antonio Cardoso e Cunha: "Our aim is to transform the energy market in Europe—which is fundamentally national and based on administrative focusing of prices—and replace it with a European unit in which cross-border trade could be significant and prices would react according to negotiations between buyer and seller."

Implementation of already agreed directives on electricity and gas transit and price transparency constitutes stage one. Stage two, the crux of the Commission's proposal, would start on January 1, 1993 and includes: the abolition of exclusive rights for electricity generation and the building of electricity lines and gas pipelines; more transparent accounting procedures in vertically integrated energy companies; and the introduction of a limited system of third-party access (TPA) whereby transmission and distribution companies would have to offer eligible entities (i.e. large industrial users and distribution companies) access to their networks at reasonable rates as long as capacity exists.

Slated for January 1, 1996, stage three would entail an extension of the TPA system to less energy-intensive users depending on how well stage two works.

As many as 400 to 500 large industrial consumers whose annual consumption exceeds 100 GWh of electricity or 25 million cubic meters of natural gas would be eligible for stage-two TPA. These heavy consumers would mainly come from the aluminum, steel, chemicals, construction materials and glass sectors. Distributors that supply at least 3% of the electricity or 1% of the natural gas consumed in a member state would also qualify for TPA. Smaller distributors could join forces to reach or exceed the TPA threshold, ensuring that cost savings reach smaller consumers.

Member states would retain their pricing powers over all end-users not qualifying for TPA, and they would still be able to impose requirements on the energy sector relating to energy policy, environmental protection and land-use planning.

According to Cardoso e Cunha, the Commission text reserves the right to force changes on the energy industry through Article 90 of the EC Treaty should the member states refuse the plan. (Article 90 gives the Commission the right to dismantle state monopolies without member state approval if such monopolies are not justified on genuine public service grounds.)

RENEWED HOPES FOR EEA COMPROMISE

In order to salvage the European Economic Area (EEA) accord between the EC and EFTA (European Free Trade Association) from some potentially fatal legal snags, EC foreign ministers have agreed to give the Commission more negotiating flexibility. They decided that the EC could drop its demand that EFTA apply EC laws uniformly under the EEA, improving the chances for an agreement on an arbitration panel which could resolve disputes arising from the accord.

The current row holding up the EEA is not over EEA laws—EFTA has agreed to some 10,000 pages of exist-

ing single market legislation—but over the EC Court of Justice's opinion that provisions for a special joint EC-EFTA court to rule on the application of EEA law could conflict with the EC's own legal system (see EURECOM, December 1991).

Although the EC now rules out the joint court envisaged in the October 1991 draft agreement, an emerging solution is an arbitration procedure to settle disputes in return for EFTA members' assurances to apply future EC single market legislation.

The EC's new negotiating flexibility stems from the growing number of EFTA countries' applications (or stated intentions to apply) for EC membership. Increasingly, both the EC and EFTA



view the EEA as a transitional phase to full EC membership (save perhaps Iceland), which dilutes the EC Court's legal objections. Despite the optimism, however, EC officials cautioned that even if the legal problem is solved, about 10 sections of the agreement must be finalized before it can be signed.

COMMISSION PROPOSES HARMONIZED COPYRIGHT PROTECTION...

Under a new Commission proposal, the EC would extend copyright protection for artistic and literary works to 70 years after an author's death, effective January 1, 1993. In addition, performers, film and record producers and broadcasters would have legal control over their works—i.e. "neighboring rights"—for 50 years after they are issued or broadcast.

The directive aims to ensure the free movement of "cultural goods" across borders in the post-1992 single market by harmonizing the widely varying terms of copyright protection in the Community. For example, protection for "neighboring rights" ranges from 20 to 50 years among the member states.

Although 10 member states have adopted the Berne Convention's minimum 50 years of copyright protection for books, musical compositions, films and other original works after an author's death, Spain offers 60 years and Germany 70 years. The Commission has decided on EC-wide protection of 70 years because copyright laws are designed to cover two generations of an author's heirs, and longer life spans have made the 50-year term obsolete.

Similarly, the Rome Convention provides for neighboring rights of at least 20 years, but after extensive consultations with interested parties and in line with current trends in the member states, the Commission chose a longer period of protection.

Computer software, which received copyright protection last year (see EURECOM, June 1991) would also be covered by the directive.

...AS WELL AS PROTECTION AGAINST DATABASE PIRACY

As a follow-up to the 1988 Green Paper on Copyrights, the Commission has proposed extending copyright protection to the EC's rapidly expanding electronic database sector.

According to the Commission, EC database creators and operators need a harmonized, secure and stable legal playing field to compete on equal terms throughout the EC and with their leading rivals in the world information market. At present, copyright protection for electronic databases exists in some member states (with varying scope), but it is uncertain in others.

Not only would the directive harmonize copyright laws across the Community to ensure that they cover databases, but it would also forbid the unfair copying of database contents for 10 years, even if such contents do not qualify for "standard" copyright protection. This new "sui generis" type of intellectual property protection would be unique to the EC, albeit similar to existing legislation in Scandinavian countries for works such as catalogues. Producers could take legal action against competitors who get access to databases, make slight changes and use the information for their own commercial purposes.

Under the proposal, private use of a database's contents remains possible, and competitors who wish to re-use the contents of another firm's database for commercial purposes will be able to obtain (in certain circumstances) compulsory licenses.

Third-country database producers would also receive the EC's "sui generis" rights as long as their governments provide similar—not "mirror image"—protection to EC databases.

COMMON RULES URGED FOR INSURANCE BROKERS

To ensure that consumers fully capitalize on the EC's single insurance market, the Commission has issued a

Recommendation on Insurance Intermediaries, calling for the member states to set minimum standards for insurance brokers. According to the Commission, unless consumers have the confidence in the independence of brokers, the benefits of wider choice and greater cross-border competition will be squandered.

At present, Denmark and Germany have no rules covering insurance "intermediaries", while the situation in the other member states varies widely.

The Recommendation encourages the EC countries to introduce or amend rules in three areas: minimum qualifications for all insurance intermediaries, which can vary according to the type of product involved; clearer distinctions between dependent and independent brokers, with disclosure requirements vis-a-vis commercial and legal links with insurance firms; and a compulsory national registration requirement for all brokers.

Under the non-binding legislation, the member states will report their actions to the Commission at the end of 1994. If the recommendation does not facilitate an EC-wide insurance market, the Commission reserves the right to propose binding rules.

Commented EC Financial Services Commissioner Sir Leon Brittan: "The internal market in insurance came an important step closer as a result of a political agreement, in December, on the proposal for a Third Non-Life Insurance Directive. The emerging market will give European consumers more choice than ever before between competing companies and products. This increases the need for qualified intermediaries."

ECOFIN COUNCIL ADOPTS EXCISE DUTY REGIME

EC finance ministers recently agreed on an excise duty system, paving the way for almost unlimited cross-border shopping for excisable goods—tobacco, alcohol and fuels—from January 1, 1993.

The agreement will allow these goods to be traded through a system of bonded



warehouses without attracting duties until they reach the country of final consumption. In accordance with the new transitional VAT rules (see EURECOM, December 1991), private consumers will pay excise tax in the member state where the goods are purchased.

To help prevent smuggling from low-tax to high-tax member states, the Council agreed to "presumption of fraud" limits on duty-paid imports. Above these limits—110 liters of beer, 90 liters of wine, 800 cigarettes and 10 liters of spirits—an individual must prove, if challenged by a customs official, that the imported goods are for private consumption rather than for resale. Ireland has a derogation to set the limits at half the agreed levels until mid-1997. Only the UK, Denmark and Ireland, countries which have high excise tax rates, have indicated they will definitely use these limits. A Commission spokesman stressed that these "limits" were not ceilings on personal duty-paid imports.

The agreement is yet another piece of the post-1992 VAT and excise tax puzzle that has come together following last year's progress related issues (see EURECOM, December, July/August and April 1991). In addition, EC finance ministers have pledged to wrap up the remaining loose ends on single market indirect tax items by the end of the current Portuguese EC presidency.

PHONE SERVICE MONOPOLY UNDER REVIEW

At a recent business conference in Spain, EC Competition Commissioner Sir Leon Brittan said that the Commission may decide this year to end the present monopoly national telephone companies (PTTs) enjoy over the transmission of telephone calls.

According to Sir Leon, the Commission will review its telecommunications policy this year to determine if the reasons used until now to prevent the liberalization of voice telephony are still justified. Voice telephony was omitted from the Commission's telecommunications deregulation in 1988, which broke

QUOTES

*"Maastricht keeps the ball rolling and strengthens the impetus behind integration...but (it) must be followed by further stages." Newly elected European Parliament President **Egon Klepsch**.*

*"A major theme of the British presidency in the second half of this year will be to turn the single market process outward to business...To go to business and say 'a lot of legislation has now been agreed...What do you think of it? What do you think we got right, what do you think we got wrong?'" British Corporate Affairs Minister **John Redwood**.*

*"The United States has been the driving force behind the application of free trade principles which have generated unprecedented growth in the post-war era. That is why I have been disappointed and concerned by the mounting evidence that the US is drifting toward managed trade." EC Commissioner **Sir Leon Brittan**.*

*"The most important challenge for 1992 is the building of a new political and economic architecture. What I have in mind is a kind of agreement between the EC, EFTA, Eastern Europe and the European Far East, being an equivalent of the [proposed] agreement between the US, Mexico and Canada." **Jacques Attali**, President of the European Bank for Reconstruction and Development (EBRD).*

*"Ultimately, the true measure of Europe's progress toward an ever closer union will be the consolidation of its representation, not the proliferation." US Ambassador to the EC **James Dobbins**.*

*"As the world's largest trading entity, the Community has a clear long-term interest in keeping an open multilateral system of trade, regulated by the GATT." EC Commissioner **Frans Andriessen**.*

up PTT monopolies over the sale and servicing of telecommunications equipment.

In his remarks, Brittan underscored the high cost of phone calls in Europe compared with the "deregulated" US. As an example, he pointed out that a three-minute call from Boston to Washington at peak rates costs 69 cents a minute, while an equivalent call from Paris to Milan costs three times as much. Further, with the national PTTs, there are 20% fewer phone lines in the EC and each phone line is used one third as much as in the US. Such inefficiencies increase data transmission costs for the information technology industry. In the US, phone service competition has produced lower prices while improving efficiency and usage.

Said Sir Leon: "We can achieve similar results in Europe with consequent benefits for business, as users of the telephone network, and as producers and suppliers of equipment and services."

...IN BRIEF

...The Treaty on European Union, agreed at the EC's landmark summit in Maastricht (the Netherlands) in December 1991, was formally signed in the same historic town on February 7 by EC foreign affairs and finance ministers. The most far-reaching event since the signing of the founding Treaties of Rome in 1957, the Treaty on European Union will enable the Community to play a more coherent political and economic role in the world, commensurate with its international responsibilities.

...The Commission believes that Japan's recent pledge to import more US-made cars and automotive parts discriminates against EC firms. "We are now inclined to think there is discrimination. To the extent that there is discrimination, we will oppose it," said one EC official. However, the Commission is still studying the pact and has not yet decided to lodge a formal complaint in the GATT. Like the US, the EC has a



major trade deficit with Japan which rose sharply last year.

...A recent Eurobarometer/Gallup poll canvassed 10,000 people in 10 Central and Eastern European countries (Albania, Bulgaria, Czechoslovakia, Estonia, Hungary, Latvia, Lithuania, Poland, Romania and the European parts of Russia) to gauge public support for the political and economic reforms underway and to assess the perception of the EC's role in the region. Despite economic hardships, most of those surveyed still back the free market; only in Romania were there more people against (48%) than for (38%) the creation of a market economy. However, absolute majorities in almost every country believe their country's economy and their own household finances worsened in 1991. Further, a majority of people in the region are dissatisfied with the development of democracy.

Around three-quarters of the Central and Eastern Europeans have heard of the EC; roughly half have a positive impression while virtually no one (a maximum of 4% anywhere) is negative. The poll indicated widespread support for closer ties with the EC, both through Association Agreements (66-80% "in favor") and eventually as full members (69-88% "in favor"). Most people holding an opinion believe the EC trades fairly with their

country (except the Poles: 29% "fair" versus 32% "unfair").

...Lithuania and the EC have initialled a trade and cooperation agreement, the EC's first agreement with Lithuania since the latter's independence was recognized by the EC in August 1991. The new agreement is similar to pacts already in place between the EC and several Central and Eastern European countries, but it

sports several new features, including the removal of specific quantitative restrictions on imports of Lithuanian goods into the Community. Like its predecessors, it contains reciprocal most-favored-nation treatment in trade matters, cooperation in a wide range of economic areas and the establishment of a joint committee to oversee the development of EC-Lithuanian relations.

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