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DENMARK REJECTS MAASTRICHT TREATY

By narrowly rejecting the Maastricht Treaty on European Union in a referendum (50.7% against, 49.3% for), Denmark, the EC's third smallest country, has thrown the treaty's ratification into jeopardy (see EURECOM, December 1991). In a first reaction to the result, EC Commission President Jacques Delors said the Danish vote was bound to have consequences, not only for the Community itself, but also for Denmark, the Danish people and the prospects for EC enlargement.

Two days after the Danish vote, EC foreign ministers discussed the result in Oslo, Norway. Sweeping aside potentially massive legal problems for the present, the ministers unanimously decided to continue the ratification process in the other 11 member states according to the agreed timetable (i.e. by the end of 1992), leaving the door open for Danish participation in the European Union at some later, unspecified stage.

Speaking at a journalists' conference in Estoril, Portugal, EC External Affairs Commissioner Frans Andriessen said that Maastricht "is an indispensable step enabling the EC to face the challenges it confronts," but the EC "should try to find ways and means to keep the Danes on board."

According to Andriessen, however, there are no easy solutions: It would be difficult to renegotiate the treaty or to add protocols allowing Denmark to "opt out" of specific areas. Although the UK secured an opt-out clause on monetary union and stayed out of a protocol on social policy in the current treaty, these were negotiated as part of the final compromise; altering certain aspects of the current text could call the entire package into question.

As it stands, the treaty cannot enter into effect unless all 12 member states ratify it. The next hurdle for the treaty is the Irish referendum on June 18, which EURECOM will cover in the next issue.

CAP REFORM HARVESTED

"The most important development in the 30-year history of the Common Agricultural Policy" was how EC Agriculture Commissioner Ray Mac Sharry described the Council's recent agreement on reform of the much maligned CAP. Culminating 18 months of negotiations, the accord establishes the future direction and shape of the EC's agricultural policy, possibly giving new life to the stalled Uruguay Round world trade talks.

The far-reaching reform's central element is a 29% cut in guaranteed prices for grains. Other key items include production and price reductions for various commodities, bringing them into line with the world market conditions; maintaining farmers' income through direct income support rather than through production-based subsidies (which have generated huge trade-distorting surpluses); land set-aside incentives; and the promotion of environmentally sound production methods.

Commented Mac Sharry: "Our international trading partners must recognize the magnitude of the step taken by the Community...and its contribution towards stabilizing international markets. The Council's decision can provide the necessary impetus to conclude the Uruguay Round in the near future provided the other parties to these negotiations are prepared to be realistic, pragmatic and reciprocate our contribution."

COMMISSION PROPOSES ENERGY/CARBON TAX

Just in time for the United Nations Conference on Environment and Development in Rio de Janeiro, the Commission has formally agreed on details for a carbon/energy tax to combat "greenhouse" (e.g. carbon dioxide) emissions. However, the directive, which still must pass through the EC's legislative process, makes the introduction of the tax contingent on the US and Japan adopting similar measures. Should the US and Japan refuse comparable action, the EC could go forward with a modified version of the tax on a unilateral basis.

If approved by the member states, the tax would start at $3 per barrel of oil or equivalent fuels in 1993, rising $1 a year until 2000 to reach $10 per barrel. It would be a national tax levied at the point of consumption, similar to excise duties. Half of the levy would fall on the fuel content of all non-renewable energy and half on the carbon content. Renewable energy and petroleum used as raw material for petrochemicals would be exempt.

Energy-intensive industries that are exposed to international competition, such as aluminum, glass and paper producers, could receive a tax reduction if the firms concerned voluntarily reduce their emissions. In addition, EC countries could also extend carbon tax breaks, subject to Commission approval, to companies investing in emission-reducing technology or facing competition from non-EC imports that are not subject to a similar energy tax system. Member states in economic difficulty could reduce the tax levels and/or receive EC funding to help with implementation.

Under the legislation, the individual member states would determine which national taxes to lower to offset the energy tax, ensuring that the Commission's aim of "fiscal neutrality" is met. According to the Commission, economic growth would only fall 0.04% - 0.2% a year under the full tax, with additional price increases of between 0.3% - 0.5% a year.

TOUGHER RULES ON COMPANY SHARE PURCHASES

In a bid to ease takeover barriers and to protect shareholders, EC Internal Market ministers have reached a "political agreement" to augment rules on the number of its own shares a company can buy.

The new measure would extend to subsidiaries the regulations on share purchases already applicable to parent companies under the Second Company Law Directive, i.e. a public limited company may not buy more than 10% of its own stock, with no voting rights attached. Although parent companies face limits on buying their own stock under the Second Directive, a practice commonly used to ward off hostile takeovers, subsidiaries, through a loophole in the law, can still buy unlimited shares in the parent firm.

The amendment, which is subject to parliamentary review, would come into effect on January 1, 1995 for all the member states except Belgium. Because existing legislation would have to be repealed and certain companies would have to divest shares, Belgium secured a derogation until January 1, 1998.

Despite this success on the takeover front, however, the Thirteenth Company Law Directive on takeover and other general bids remains deadlocked in the Council.

BREAKTHROUGH ON CAPITAL ADEQUACY

After months of deadlock, EC finance ministers have agreed in principle on the Capital Adequacy Directive (CAD), a proposal that would harmonize capital requirements for EC securities firms and trading operations of banks. The directive provides a basic regulatory framework, representing a key step toward a single market in securities trading.

Under the revised directive, there is no "hard" upper limit on the amount of large securities exposures. It would allow a 10-day underwriting "window" during which capital requirements would not apply; thereafter, capital requirements would gradually begin to apply according to a set formula. In earlier versions, some member states had advocated a blanket 25% limit on securities exposures, which would have restricted smaller, mainly UK firms' trading activities. For companies not holding clients' money or securities, there would be no minimum capital requirement.

Investment firms would also be able to increase core equity capital by raising subordinated loans (up to 250% of core equity capital). Non-trading bank operations would not, however, be allowed access to the extra funds.

All stock borrowing and repurchase agreements would fall under the CAD rather than under more restrictive banking laws.

Outstanding issues, such as the minimum capital necessary for an investment firm's start-up, should be resolved by the finance ministers at the end of June. Still, CAD's implementation is linked to the passage of the blocked Investment Services Directive, which would give securities firms a single passport to conduct business throughout the EC much like the Second Banking Directive. The Commission hopes that agreement on CAD, coupled with fresh efforts by the ensuing British EC presidency, will break the Investment Services logjam.

WEAKER EC GROWTH FORECAST FOR 1992-93

In its Spring Economic Forecasts, the Commission has revised its estimates of EC GDP growth for 1992 and 1993 downwards to 1.75% and 2.25%, respectively, compared with December projections of 2.25% and 2.5%. Given a weak and uneven recovery in the member states' economies, EC unemployment will rise from 9.5% this year to 9.75% in 1993.

Although the Commission admits surprise over the protracted EC economic weakness, it is "cautiously optimistic" that a recovery has started. Pent-up demand for consumer durables should stimulate private consumption growth later this year as the economic climate improves and confidence rises. Spurred by rising consumer demand and improved corporate profitability, business investment will rebound from 0.75% growth in 1992 to 2.5% in 1993.

Within the Community, the Commission forecasts a narrowing of growth rates as the German economy slows and the UK comes out of recession. By 1993, virtually all member states are expected to register GDP growth in the 2% – 3% range.

On the inflation front, the Commission predicts an EC rate of 4.5% for 1992 compared with 5.2% in 1991. This positive trend should continue into 1993, with inflation falling to 4.0%. Nevertheless, despite tight monetary policies and depressed economic activity in the Community, price pressures are still "disappointingly high at this stage of the business cycle."

In 1993, eight member states should be within 1.5% percentage points of the three best EC performers in terms of price stability — one of the Maastricht "convergence" tests for monetary union (EMU). In terms of another EMU convergence criterion, however — net government borrowing — there will be no substantial reductions in budget deficits over the forecast period. In fact, the Commission projects a rise in the EC's net government borrowing to 4.75% of GDP in 1992 and 1993 from 4.3% in 1991. At present, only Denmark, France, Ireland and Luxembourg are projected to have budget deficits of less than 3% of GDP — the Maastricht goal — in 1993, although the first attempt at monetary union is not scheduled until 1997.

QUOTES

"Now its a question of 'To be and not to be, that is the answer'." Danish Foreign Minister ***Uffe Ellemann-Jensen****, commenting on Denmark's rejection of the Maastricht Treaty.*

"I believe that the Danish referendum carries a message both for other national governments and for the European Commission itself...The Community can only be built up with the wholehearted consent of the people of Europe." British Chancellor of the Exchequer ***Norman Lamont****.*

"It is absolutely vital that the process of integration is not delayed by the outcome of the Danish referendum... European industry is the only creator of wealth and cannot fulfill that role in a fragmented Europe." A statement by the ***European Roundtable****, a group of 40 CEOs from top European companies.*

"If the Commission and the Council demonstrate a willingness...to restrict their activities to those matters that cannot be dealt with adequately at a national level, people will be much more ready to allow Community competence...to be extended into those areas where they are truly necessary." EC Commissioner ***Sir Leon Brittan****.*

"Renegotiation [of the Maastricht Treaty] would be the opportunity some people dream of to transform the Community into nothing more than] a vast free trade area." MEP ***Jean-Pierre Cot****, leader of the Socialist Group in the European Parliament.*

GREEN PAPER ON POSTAL REFORM

After many delays, the Commission has finally released its discussion document or "Green Paper" on EC postal services, calling for gradual liberalization of postal services while ensuring a universal postal service available everywhere in the Community.

"This is not a privatization proposal, it's a liberalization proposal," said EC Competition Commissioner Sir Leon Brittan.

To safeguard universal service, the paper would allow postal administrations a set of "reserved services" in which they would have exclusive rights, i.e. postcard delivery and personal and business correspondence. The scope of these reserved areas would be, however, clearly defined in terms of weight and price and strictly proportional to the need to maintain a universal service.

For other areas, like express services, publications and direct, electronic and cross-border mail, the paper suggests they be opened to full competition over time.

Private courier firms already provide express parcel services in the EC, but they have faced constant legal scraps with national postal administrations that continually assert monopoly rights for all postal services.

To avert the risk of a "two-speed" postal service in the Community, the Green Paper also encourages the establishment of common EC performance standards and rules of access which would improve the "end-to-end" quality of cross-border mail services — an essential ingredient for the single market.

Before the Commission proposes legislation based on the paper's recommendations, Sir Leon said that the Commission will first digest the reactions from the various interested parties. Nevertheless, he promises quick Commission action, including possible use of the Commission's powers to break open national monopolies without approval from the member states.

MORE SCRUTINY FOR "STRATEGIC ALLIANCES"

At a recent conference on international cartels in Berlin, EC Competition Commissioner Sir Leon Brittan said the EC needs "to fashion new ways" to address the problem of distinguishing between "good" strategic alliances and anti-competitive ones.

Although they are not a new phenomenon, strategic alliances have received new impetus in the EC due to the globalization of markets, the speed of technological change and increased competition, particularly from Japan.

The critical role strategic alliances play in keeping enterprises competitive, coupled with the myriad forms these ventures take, present a challenge to EC competition authorities: they must somehow distinguish between the "good" and "bad" alliances. In general, "good" alliances have objective advantages (e.g. technological gain, expanded output, increased efficiency) and do not eliminate effective competition. "Bad" ones are designed to share markets or eliminate competition.

Without announcing specific measures, but considering "all ideas carefully", Sir Leon pledged to strike "the correct balance between, on the one hand, giving a rapid response that firms require for their strategic alliances if they are to compete in a changing world market, and, on the other hand, identifying anti-competitive alliances that have no objective benefits and threaten competition."

...IN BRIEF

...Luxembourg's parliament recently ratified the Schengen Agreement on lifting controls on the movement of individuals between eight EC signatory countries. France, Portugal and Spain have already ratified the accord while the other signatories — Belgium, Germany, Italy and the Netherlands — have not. In order to take effect on January 1, 1993, the five founding Schengen members — Belgium, France, Germany, Luxembourg and the Netherlands — must ratify the accord by August 31.

...Breaking with its long tradition of isolation, Switzerland has applied for EC membership, joining fellow EFTA members Austria, Finland and Sweden in the EC's membership line. The Swiss application followed on the heels of an unrelated but highly significant referendum on Swiss participation in the World Bank and the International Monetary Fund, which Swiss voters approved. While Swiss business groups and politicians strongly favor EC membership, the independent Swiss electorate will have the final word. A good test case for closer Swiss ties to the EC will be a referendum on the European Economic Area scheduled for December 6.

...The US has named $2 billion worth of EC products as possible targets for retaliation in the EC-US dispute over EC subsidies to soybean ("oilseed") producers. In response, the Commission called the US unilateral action "inappropriate and counterproductive for a mutually acceptable solution", lacking any legal basis until the GATT gives its conclusions on an EC proposal to resolve the 5-year dispute on June 19. The US "hit list" includes cheese, wine, sausage, candy, fruit, vegetables, cut flowers, dairy products, tobacco and mineral water.

...The Fordham Center of European Community Law and International Antitrust is offering two evening seminars starting September 8, 1992 on the following topics: "EC Corporate and Trade Law" and "European Intellectual Property." For further information, please contact Helen Herman, Assistant Director, at (212) 636-6885.

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