

# EURECOM

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## EC ADOPTS "ECO-AUDIT" PLAN

EC environment ministers have agreed on a voluntary EC-wide ecological audit plan for the industrial sector, allowing companies to publicize their good environmental practices and policies — subject to independent verification — on the basis of Community-wide criteria.

Based on the concept of "shared responsibility", the plan aims to complement the traditional "command and control" approach to environmental protection with a market-based strategy to promote a more environmentally responsible management culture.

Commented EC Environment Commissioner Ioannis Paleokrassas: "The trend towards a 'greener' culture in the business community must be actively encouraged. With the Eco-Management and Audit Scheme, the EC is in the forefront."

The principal aims of the Eco-audit are: the introduction of environmental policies, programs and management systems in companies; systematic self-assessment of environmental performance; full disclosure of results to the public; independent verification by external auditors; and a certificate of participation for companies' promotional use.

Audits will cover a site's pollution emissions, waste output, noise levels and consumption of energy, water and raw materials; presentation of company environmental policy and goals; and the name of the accredited external auditor. Failure to address an auditor's questions or to meet deadlines could disqualify a firm from the scheme.

For now, the plan will apply only to the manufacturing, power and waste-handling sectors, but the EC countries will be allowed to create pilot programs for sectors not covered under the legislation.

Participating companies will have to conduct audits at least every three years and make interim performance statements. By the end of 1994, when the regulation enters into force, member state governments will have designated independent panels to examine companies' audit reports.

## "GREEN PAPER" ON ENVIRONMENTAL LIABILITY

Kicking off a new drive to establish an EC code of civil liability for environmental damage, the Commission has released a "Green Paper" on repairing damage to the environment.

Designed to stimulate debate in all interested circles, the paper highlights approaches which would ensure that environmental injury is repaired, even in cases where precise legal blame for pollution is difficult to pinpoint.

Because pollution knows no borders, and because the member states have been establishing differing rules in this field, possibly distorting competition and hampering smooth operation of the single market, the Commission believes an EC civil liability code is necessary.

According to the Commission, an EC code would reinforce the "polluter pays" principle, but, unlike US Superfund legislation, would also ensure that costs to industry would be manageable.

The report stresses that the prevailing system of "fault-based liability" — requiring proven negligence of a liable party — is insufficient. Establishing proof of fault is often difficult, and compensation may be sought against the richest target under the most favorable national legal system. Consequently, the Commission would also like to incorporate strict ("no-fault") liability into the EC approach.

Strict liability would encourage firms — through the prospect of paying for environmental damage — to augment preventative measures, while providing a more certain legal environment. For a no-fault regime to succeed, however, fundamental questions such as the definition of damage, liable parties and activities covered must be agreed beforehand. In addition, there are some cases where a strict liability system would not work, e.g. when it is impossible to link damage to a responsible party. For these instances, a joint compensation system could be established, where cost would be shared among several economic sectors.

Before it frames legislation, the Commission has





asked interested parties to submit written comments on the Green Paper by October, when it will hold public hearings in close collaboration with the European Parliament on the subject.

### **US POSTPONES SANCTIONS AGAINST EC SUPPLIERS**

Stepping back from the brink of a trade war, US Trade Representative (US-TR) Mickey Kantor announced on March 29 that the US had postponed sanctions against EC firms in a dispute over public contracts (see EURECOM, February 1993). This decision followed a meeting between Kantor and EC External Trade Commissioner Sir Leon Brittan in Brussels.

US sanctions are postponed at least until April 19, when Sir Leon will travel to Washington for a third meeting with US-TR Kantor. In the meantime, officials from both sides will continue discussing a package of unspecified proposals put forth by the EC, which, according to Sir Leon, meets EC concerns about the US market and vice versa. Failing agreement in Washington, both sides will be "free to act as they wish".

At issue is a clause in the EC's Utilities Directive (article 29) which calls for a Community preference if an EC bid for a contract in the "excluded sectors" (i.e. energy, water, transport and telecommunications) is not over 3% more expensive than an equivalent non-EC bid.

According to Sir Leon, the purpose of article 29 is to secure effective and comparable access for European firms in the US market, where barriers exist at the federal, state and local levels. If that is achieved by satisfactory agreement, article 29 need no longer be applied.

Moreover, the Utilities Directive makes the EC more open to US companies than ever before. If the rate of new public offers tendered since January continues through December, 100 billion (1ecu=\$1.22) in contracts will have been opened up in 1993.

Nevertheless, Sir Leon said that a

successful outcome to the procurement dispute would build confidence between the world's two major trading partners as well as improve the prospects of a worldwide deal in the GATT Uruguay Round.

### **CAPITAL ADEQUACY RULES FOR INVESTMENT FIRMS**

At a recent Eco/Fin Council, EC finance ministers formally adopted the Capital Adequacy Directive (CAD) for investment firms, establishing minimum capital requirements for companies that trade securities in the EC.

The legislation complements the Investment Services Directive (ISD), which just passed through its Second Reading in the European Parliament, and should be formally adopted by the Council within a few months.

Taken together, the two directives will form the basis of a single market in securities, enabling all investment firms and credit institutions to offer their services freely — including third country brokerage firms — throughout the EC on the basis of a "single passport" (see EURECOM, July/August 1992).

The CAD establishes common standards for investment firms' "own funds" (i.e. funds equivalent to three months of their fixed overhead) and sets out the amount of initial capital firms require depending on the range of activities they are authorized to undertake. For "advisors" (i.e. firms not authorized to hold client's money or to trade on their own account), minimum capital is set at 50,000 ecu. Firms operating on investors' orders face a 125,000 ecu minimum, while all others start at 750,000 ecu.

It also establishes procedures for monitoring and controlling large exposures and provides rules for supervision on a consolidated basis.

Both the CAD and the ISD are slated for effect on January 1, 1996, allowing sufficient time for the member states and the industry to implement (and adjust to) the new rules.

### **MOVEMENT ON RULES FOR "CE" MARK**

The Internal Market Council recently reached a "political agreement" on a pair of proposals to harmonize labelling rules for the "CE" mark, the sign which indicates a product's conformity to EC technical regulations.

First, the ministers backed a draft directive to incorporate new rules for using the "CE" mark (see EURECOM, January 1992) in 12 existing technical directives, among them the toy safety, simple pressure vehicles, construction products, electromagnetic compatibility, personal protective equipment and active medical implants directives.

Second, the Council reached a consensus on a draft measure that sets additional "CE" guidelines for future technical directives, updating existing EC rules in Council Decision 90/683/EEC.

The following are some of the new rules established by the directive: the mark must indicate conformity with all obligations imposed by the relevant directive(s), not just "essential" safety requirements; it must, whenever possible, be affixed visibly, legibly and indelibly to the product or its data plate; it must be affixed at the end of the production phase, followed by the identification number of a "notified body" if one is required to evaluate the product; marks indicating conformity with national standards are allowed as long as they do not cause confusion or reduce the "CE"'s legibility; the symbol must be affixed by the manufacturer or its EC agent; and when the marking is misused, member states must require the manufacturer's compliance and, if necessary, take the product off the market.

### **EC OFFERS RUSSIA FREE TRADE PROSPECT**

Sending a strong signal of support for Russia's shaky reform process, the Commission has received a revised mandate for negotiations toward a partnership and cooperation agreement



with the largest republic of the former Soviet Union.

Under the new mandate, the EC envisages, where appropriate and when economic and political circumstances permit, an eventual free trade agreement with the Russian Federation.

"Any solution to the (Russian) crisis will not, obviously, depend on our negotiation, but the political signal from the EC is very clear," said EC External Affairs Commissioner Hans van den Broek.

Last October, the Council approved a mandate for the Commission to negotiate partnership and cooperation agreements with the 12 republics of the former Soviet Union. Three rounds of talks have already been held with the Russian Federation. On April 5, EC foreign ministers agreed that the Commission could improve trade terms and include a conditional pledge to future free trade with Russia in the negotiation, with a view toward wrapping up an agreement by the European Council in Copenhagen on June 22.

One of the principal requests from Russia in past negotiations has been the inclusion of an evolutionary clause opening the possibility at a future stage for free trade in goods and for national treatment for the establishment of companies and cross border trade in services. This would depend on political and economic conditions in Russia and on the Russian Federation's compliance with (future) GATT obligations.

Unlike the more advanced "Europe Agreements" signed between the EC and a number of Central and Eastern European countries, however, the prospect of eventual EC membership is not on offer to Russia in the negotiations.

#### **EC, US DISCUSS CIVIL AIRCRAFT AID**

Following two days of talks between EC and US officials in Brussels on April 1 and 2, a fresh dispute raised by the US administration over subsidies to Airbus, the European aircraft consortium (see

#### **QUOTES**

*"The development of free trade is hard work. There will be incidents where vested interests have no interest in it. But I think we will witness a clear trend of trade liberalization in the years ahead. It is not easy, it is a bumpy road, but it is a road."* Danish Foreign Minister and current EC presidency representative **Niels Helveg Petersen** at the opening of the Conference on Economic Development in Central and Eastern Europe.

*"I don't want a trade war with the EC and I don't think we'll have one."* US President **Bill Clinton**.

*"(Governments) must think very hard about the consequences of a collapse of the ERM for the single market. If European exchange rates started floating in a major way again, one would let loose the specter of protectionism and endanger*

*the free flow of trade."* **Alexandre Lamfalussy**, General Manager of the Bank of International Settlements.

*"We think this agreement will give an important signal to EC and EFTA economic operators at a time when they need a signal for growth."* Swedish Undersecretary of State **Frank Belfrage** at the formal signing of the protocol to the European Economic Area (EEA) accord, which enables the EEA to move ahead without Switzerland.

*"Our society is in crisis. It is a 'fast food' society, where goods and ideas are produced quickly, quickly consumed and quickly forgotten. We are in danger of losing our collective memory, of acting solely on impulse."* EC Commission President **Jacques Delors**.

EURECOM, March 1993), has taken a decidedly more "civil" tone.

A senior US official described the discussions as extensive and thorough, and hoped that there would now be less temptation for both sides to accuse each other of apparent breaches of the 1992 EC-US Airbus agreement limiting civil aircraft subsidies (see EURECOM, September 1992). Further, he said that both sides would trade more information on how they were implementing the agreement ahead of a new round of consultations sometime this summer.

While satisfied with the "frank but friendly mood" of the discussions, the EC was still unhappy that recent US allegations against Airbus had created a climate of uncertainty, letting "the genie out of the bottle". To wit: the US Congress has submitted two bills which would increase federal funding for the US civil aircraft industry (which would breach the EC-US agreement), as well as a direct anti-subsidy case against Airbus.

The EC also took issue with US concerns over Airbus' use of "walk-away leases", something which US aircraft companies invented and also still use.

Given the state of the worldwide airline industry, the EC believes these clauses are becoming inevitable fixtures in contracts, and should be left alone by governments.

Regarding indirect support, while the EC believes the US is fulfilling its commitments at present, if current trends persist, US aid to its aircraft industry may considerably exceed the limits set in the bilateral accord.

On a broader front, the EC welcomed the long-awaited US call for stronger multilateral discipline on aircraft subsidies in the GATT trade talks.

#### **...IN BRIEF**

...Less than two weeks after the Commission issued its favorable opinion on Norway's application to join the EC, accession negotiations were officially launched on April 5, bringing Norway into the parallel enlargement negotiations already begun with fellow EFTA members Austria, Finland and Sweden (see EURECOM, February, 1993).

In its opinion, the Commission said



Norway's membership would strengthen the EC through its successful macroeconomic policy (i.e. its inflation is well in line with future EMU requirements); its comprehensive environmental policy, which would enhance the EC's own; and its status as a NATO (and associate WEU) member, which would benefit a common EC foreign and security policy. Both sides anticipate energy policy (Norway is the largest Western European oil producer), fisheries, agriculture and the state alcohol monopoly as the most difficult negotiating areas.

EC Commissioner Hans van den Broek stressed the importance of regular updates for Norwegian citizens on the status and substance of the negotiations in light of their lukewarm support. Norway rejected EC membership in a divisive referendum in 1972.

...The single market is starting to pay some dividends. According to United Parcel Service, the US-based package distribution company, the removal of border controls in the EC has significantly shortened intra-European transit times, leading to reduced shipping costs. In fact, UPS' European road-based transit times on key routes have been reduced by as much as 24 hours, and its published rates have been lowered by as much as 30%.

...EC industry ministers have given the Commission a mandate to negotiate customs cooperation agreements with its major trading partners, chiefly the US and Canada. The aim is to clarify and to harmonize customs rules and procedures, and to establish information exchange between customs administrations to fight fraud.

...The Irish government is appealing a High Court decision that has voided some 500 EC directives implemented in Ireland since it joined the Community 20

years ago. The High Court ruled that directives implemented by ministerial order or statutory instrument — practices used by successive governments since 1973 — were unconstitutional. Only the parliament has the power to amend or repeal laws, said the court. Because the Maastricht Treaty went through parliament, it is not affected. The government will take its appeal to the Irish Supreme Court, but no date has yet been set for the case.

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