

# EURECOM

Monthly bulletin of European Community Economic and Financial News

VOLUME 5, NUMBER 8

SEPTEMBER 1993

## CURRENCY CRISIS SPURS EC TO WIDEN EMS BANDS OF FLUCTUATION

After yet another bout of massive speculation against ERM (Exchange Rate Mechanism) currencies, triggered by the German Bundesbank's decision not to cut its discount rate in late July, EC finance ministers and central bank chiefs agreed to widen the bands of fluctuation between the ERM currencies to 15% above or below their central rates on August 2. The only exception to the new arrangement is a voluntary agreement between Germany and the Netherlands to retain the old 2.25% fluctuation range between the mark and guilder.

Once again, the French franc was at the center of the storm. Recession and growing unemployment, combined with high real interest rates to maintain the franc-mark ERM parity, convinced speculators to bet against France's ability to match the Bundesbank's tight monetary policy. For similar reasons, other ERM currencies (e.g. the Danish krone, Belgian franc, Spanish peseta and Portuguese escudo) also came under attack. When huge currency market interventions by ERM central banks failed to buoy the French franc and other currencies against the mark on July 30, the EC Monetary Committee called an emergency meeting, which produced the new, more flexible ERM.

According to EC Economic Affairs Commissioner Henning Christophersen, there was no macro-economic justification for the attacks: inflation rates, balance of payments and public deficits were acceptable in the countries concerned. The chief cause was the inability of the participating countries to lower their interest rates with sufficient speed. Due to the exceptional economic circumstances in Germany (i.e. historically high post-war inflation) stemming from unification, this was not possible.

While regrettable, the Commission does not want to assign blame; however, one lesson is clear: without closer coordination of economic policies, it will not be possible to progress toward EMU (economic and monetary union).

Christophersen said that the duration of the temporary ERM regime depends on how it functions and how markets react. As to continued speculation, he stressed that the chances of speculative success against ERM currencies are now far lower with the wider margins.

Regarding EMU, preparatory work for stage two (slated to begin January 1, 1994), including the establishment of the European Monetary Institute, will continue on schedule. As prescribed in the Maastricht treaty, the Commission will present a report on economic and monetary convergence to the Council in December. Further, the Commission will review the new ERM and suggest ways to reestablish a "more normally functioning monetary system". Commented Christophersen: "It will (now) take more time to achieve the objectives of stage two, but stage two can start on time."

The Commission in no way underestimates the gravity of events which have weakened not only EMU, but also the credibility of the European construction. Still, it believes there is no alternative solution that assures the prosperity and influence of the European nations.

## ITC STEEL DUTY RULINGS (MOSTLY) IN EC'S FAVOR

Significantly defusing what had become a very serious EC-US trade dispute (see EURECOM, July/August 1993), the US International Trade Commission (ITC) overturned a majority of the US Department of Commerce (DOC) countervailing and anti-dumping determinations against companies from seven EC member states.

Finding no evidence of injury in 10 of 18 cases,

the ITC rulings reduce by half the volume of EC steel exports subject to the definitive countervailing and anti-dumping duties set by the DOC in June. According to the Commission, the DOC duties will now affect 878,000 tons of EC flat-rolled steel worth \$433 million, compared with an earlier estimate of 1.9 million tons with a value of \$814 million.

These figures do not reflect the exact impact the duties will have on EC steel exports. Some duties are prohibitively high (e.g. 142.47%), and will clearly exclude EC products from the US market; others are





lower, and will allow some trade to occur.

Commented EC External Trade Commissioner Sir Leon Brittan:

"I greatly welcome the fact that many of the arguments that the EC put forward against the original determinations have been upheld. We were convinced that the approach originally adopted was wholly unjustified...The response of the ITC to our representations...will do much to improve the atmosphere, not only in the discussions on steel but with regard to the Uruguay Round itself."

While generally positive, Sir Leon cautioned that there are still some outstanding issues and that the Commission will analyze carefully the reasoning behind the cases the ITC upheld. Pending further study of the rulings, the EC reserves the right to continue its GATT dispute procedure which challenges US methodology in imposing anti-dumping and countervailing duties.

### **RENEWED ASSAULT ON DOUBLE TAXATION**

The fight against double taxation on cross-border business activities in the Community continues.

Spearheaded by EC Tax Commissioner Christiane Scrivener, the Commission has proposed two amendments to the 1990 tax directives (see EURECOM, July 1990) which, in certain instances, abolished double taxation of companies.

(The "parent company/subsidiaries" eliminates the double taxation of profits distributed in the form of dividends by a subsidiary in one member state to its parent company in another; the "mergers" directive allows for deferred taxation of capital gains arising from cross-border mergers, splits, asset contributions and share swaps.)

The first amendment broadens the scope of the two directives. At present, certain types of companies, such as sole proprietorships, cooperatives and public savings banks, are not covered by the legislation, even though they satisfy the

required conditions. To remedy this situation, the Commission has proposed that the two directives should cover all companies established in the EC and subject to corporation tax, regardless of legal form.

The second revision aims to ensure consistency between the two directives. In transposing the "parent companies/subsidiaries" legislation, many member states also applied it to parent companies with holdings of less than 25% in subsidiaries. By contrast, some provisions of the "mergers" directive apply only if holdings exceed 25%. The proposal would harmonize the "mergers" legislation with the conditions on minority stakes set out in the "parent/subsidiaries" directive.

### **BRUSSELS WANTS CHANGES IN US TREATIES**

In a move designed to clear up any ambiguity on EC trade policy, the Commission has requested that eight member states modify their bilateral friendship, commerce and navigation (FCN) treaties with the US.

Under a Commission proposal, Belgium, Denmark, Germany, Greece, Ireland, Italy, Luxembourg and the Netherlands would give one year's notice that they will revise FCN treaties with the US to accommodate Article 29 of the EC Utilities Directive.

This initiative responds directly to the informal US-German "non-aggression" agreement announced on June 11 (see EURECOM, June 1993), in which both sides agreed to exempt each other from trade sanctions in the EC-US row over public procurement. Germany asserts that its 1954 FCN treaty with the US precludes it from applying Article 29 and the counter-sanctions agreed (unanimously) by the member states in reaction to US sanctions against EC firms on public procurement.

No other member state with similar provisions in its FCN agreement with the US has followed the German interpreta-

tion (which the Commission considers a violation of Community law). Thus far, the German government has not exchanged formal letters with the US to confirm the deal. If necessary, the Commission is ready to take Germany to the European Court of Justice to reaffirm its role as sole trade negotiator of the EC.

### **NO CHANGES FOR MERGER CONTROL RULES**

After an in-depth survey of businesses, industry associations and legal professionals, the Commission has decided not to seek lower thresholds for the EC merger control regulation at the present time.

Under the current thresholds — a combined worldwide turnover of at least 5 billion ecu (1 ecu=\$1.16) and an EC-wide turnover of at least 250 million ecu for each party — the Commission annually reviews about 60 mergers for anti-competitive effects. Mergers that fall short of the thresholds are handled by national competition authorities.

By lowering the thresholds to 2 billion ecu and 100 million ecu, respectively, the number of Commission examinations would increase to 110 cases per year. Yet while the Commission's survey found that business is broadly in favor of the Commission handling more merger probes, several member state governments are not.

"We obviously want to have a 'one-stop' shop in the single market to make cross-border transactions as easy as possible," said EC Competition Commissioner Karel Van Miert, "but if we are to widen the net, it must be evident to everyone...that the extra cases to be handled by the Commission will be of genuine significance for the Community as a whole."

Notwithstanding business support for threshold reduction, the Commission believes that further experience with the regulation is necessary before any formal amendments to the rules are "put on the table". Still, it suggests that the



Council should reconsider threshold reduction by the end of 1996 at the latest.

Implementation of the merger regulation has been widely recognized as successful. In particular, businesses have greatly valued the speed, legal certainty and one-stop regulatory control the Commission has provided.

Through the end of June 1993, the Commission had received 159 formal merger notifications since the rules went into effect on September 21, 1990. Of these notifications, 142 fell within the regulation's scope, and 90% of these cases were cleared within the initial one-month investigation period. Thus far, the Commission has disallowed only one merger (see EURECOM, October 1991), but it has imposed conditions (e.g. divestitures, cancellation of exclusive agreements) before clearing deals in 15 other instances.

## UK RATIFIES MAASTRICHT

Ending a tortuous political drama which deeply split Prime Minister John Major's Conservative Party and almost brought down his government, the UK finally ratified the Maastricht Treaty on European Union on August 2.

Immediately after a legal challenge to the treaty in the British courts was dropped by Lord Rees-Mogg, the UK government presented its "instrument of ratification" to the Italian Foreign Ministry in Rome, officially completing the ratification process.

With the UK's assent, 11 of the 12 EC member states have now ratified the EC's blueprint for closer political and economic integration. Only Germany, where court cases on Maastricht's constitutionality are still pending, has not yet fully ratified the treaty. Decisions on these cases at the Federal Constitutional Court (Bundesverfassungsgericht) in Karlsruhe are expected in October.

Ironically, the UK formally ratified on the same day that the ERM nearly collapsed. In September 1992, also in response to massive speculation, the UK

## QUOTES

*"It could be said that as the currencies are floating, so the Community is floating. It is hard to predict which way it will go." EC Commissioner **Karel Van Miert**.*

*"We must on no account ease the very strict conditions for national economies for the budget and the debt situation...of the Maastricht treaty...(If) the timetable now envisaged is delayed by one or two years...then I ask, what does that change in the basic course." German Chancellor **Helmut Kohl**.*

*"I don't think we can go back to nar-*

*row (ERM) bands unless it is underpinned by a clear political determination to coordinate economic policies much better...It will take some time, and I don't believe we will see rapid decisions. We need some time for reflection." EC Commissioner **Henning Christophersen**.*

*"There is no other single source of hope for Western Europeans as important as the rapid growth of Central and Eastern Europe." **Peter Ludlow**, Director of the Centre for European Policy Studies in Brussels.*

withdrew the pound from the ERM. Commenting on the recent crisis, Prime Minister John Major, who secured a UK opt-out vis-a-vis a single European currency, said: "We have always made clear that we did not believe the timetable for European Monetary Union set out in the Maastricht treaty was right or practicable. The EMU timetable looks totally unrealistic now."

## PROPOSAL FOR EC INDUSTRIAL DESIGN PROTECTION

Under a new Commission proposal, industrial designs with an "individual character" would be eligible for EC-wide protection for up to 25 years.

In recent years, legal protection of industrial design has grown in importance. For European industries, superior design is a crucial tool in their competition with third country industries having lower production costs. Commented EC Internal Market Commissioner Vanni d'Archirafi: "(This) proposal is a very important step towards the creation of the internal market for intellectual property...It will help prevent counterfeiting and therefore strengthen the Community's added value."

Although registration-based design

protection exists in 11 member states (Greece offers no specific protection), it varies considerably. And protection only at a national level is clearly incompatible with the functioning of the single market.

The EC legislation calls for the establishment of a **Registered Community Design (RCD)**, which would give parties the exclusive right to determine how their designs are used. This right would enter into force after a "simple and inexpensive" registration with a new Community Design Office, which would be connected to the proposed Community Trademark Office. It would last for five years and would be renewable for periods of five years up to a maximum of 25 years.

For sectors producing large numbers of designs with short shelf lives (e.g. textiles and fashion), the proposal would also create a maximum three-year **Unregistered Community Design (UCD)**. This would apply automatically once a design is made available to the public. Compared with the RCD, however, which confers a truly exclusive right as regards use, the UCD would provide protection only against unauthorized reproduction of a design.

A choice between the two instruments would not have to be made im-



mediately: during its first 12 months, a UCD could be transformed into a RCD.

**...IN BRIEF**

...The European Investment Bank (EIB) — the EC's financial institution and development bank — recently disclosed that it now surpasses the World Bank in the amount of its borrowing and lending. In addition to financing EC infrastructure and development projects, the EIB assists the EC's development aid programs in more than 80 countries. Further, the EIB is helping finance the economic transition in Central and Eastern Europe, and is also a shareholder in the European Bank for Reconstruction and Development.

...Aggregate EC unemployment dropped to 10.6% in July from 10.7% in June, but according to Eurostat, the slight fall does not reflect an upward trend: in July 1992 the rate was 9.5%. In fact, the EC Commission has forecast that the unemployment rate will exceed 11% by the end of 1993 and will reach around 12% (20 million) in 1994. By contrast, US unemployment has fallen from 7.6% in July 1992 to 6.8% in July 1993.

...Stuart Eizenstat, a Washington lawyer and domestic policy advisor under former US president Jimmy Carter,

has been appointed by President Clinton to be the US Ambassador to the EC. He replaces James Dobbins.

...The European-American Chamber of Commerce in Washington, DC, in cooperation with the law firms Shearman & Sterling (US) and Linklaters & Paines (UK), is sponsoring a seminar entitled "Antitrust and Competition Policy: Developments in the US and Europe." It will be held at the Carlton Hotel in Washington DC on October 8, 1993, and aims to inform senior corporate executives on regulatory developments on both sides of the Atlantic. The impressive cast of

speakers includes EC Competition Commissioner Karel Van Miert, who will give the keynote address. For more information, please contact Ms. Marianna Knight at (202) 347-9292.

...Fordham Law School is holding a conference on "Entering the US Securities Markets: Opportunities and Risks for Foreign Companies" in New York City on November 17, 1993. It will feature Richard Breeden, former Chairman of the Securities and Exchange Commission, as the luncheon speaker. For more information, please contact Scott Lilly at (212) 636-6777.

**EURECOM** Monthly bulletin of European Community Economic and Financial News

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

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EURECOM is published by Barbara Noël, Director of Press & Public Affairs, the Commission of the European Communities, 3 Dag Hammarskjöld Plaza, 305 East 47th Street, New York, NY 10017. It is edited by Christopher Matthews. The contents of EURECOM do not necessarily reflect the views of the European Communities' institutions or of the member states. Any article may be reproduced without express permission. However, acknowledgement of the source and a copy of any material published would be appreciated.

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Commission of the European Communities  
3 Dag Hammarskjöld Plaza, 305 East 47th St., New York, NY 10017  
Telephone (212) 371-3804