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MAASTRICHT FINALLY RATIFIED AFTER GERMAN COURT RULING

Germany's constitutional court (Bundesverfassungsgericht) recently upheld the Maastricht Treaty on European Union's constitutionality, allowing the EC to move ahead finally with its planned political and monetary union on November 1, 1993 (see EURECOM, September 1993). Germany is the last EC country to ratify the treaty.

Although the German parliament comfortably approved the treaty last year, the German court was forced to rule on Maastricht's constitutionality after 20 lawsuits, including one from Manfred Brunner, former chief of staff to EC Commissioner Martin Bangemann, were filed against it. The common argument in the various lawsuits was that in approving the treaty, the German government had violated the following passage in the German constitution: "All state power emanates from the people."

The court refuted this argument: "Overall, the concerns of the plaintiffs — that the EC, because of its ambitious goals, will develop without new parliamentary rights into a political union whose sovereignty rights cannot be foreseen — were unfounded."

However, the court reserved the right to review the progress of European integration at a later date to make sure the Community respects the guarantee of democracy in the German constitution. "It is of decisive importance that the democratic basis of (European) union should keep pace with integration," it said.

Further, it stated that the transition to a single currency was not automatic, and that parliament would have to be consulted before any German government proceeds with currency union. "With ratification of the union treaty, Germany is not subordinating itself to an unclear and automatic mechanism toward currency union which it cannot steer," said the court.

EC Commission President Jacques Delors welcomed the ruling, hoping that Maastricht's final ratification will allow the EC "to end a period of waiting and moroseness" and provide "the new impetus" to fight against economic stagnation and unemployment and to reinforce Europe's security.

Right after the court's ruling, the Belgian government, current holder of the EC presidency, announced a special European Council of EC heads of state and government for October 29. The summit will focus on the next steps toward creating monetary union and a common EC foreign and security policy.

SINGLE MARKET UPDATE: SO FAR, PRETTY GOOD

Despite currency crises, Maastricht difficulties and a deep recession, the EC's single market, now into its tenth month of operation, has been a quiet success. Goods are moving (more or less) unimpeded across Community borders.

Looking at the single market "narrowly defined" (i.e. the 282 White Paper measures to complete the single market), 95% of the legislation has been adopted at the EC level, 90% of which has already entered into force. While 18 measures still require final Council approval, only 13 are considered essential to the single market.

Still outstanding is the European Company Statute, which would provide a legal framework for companies to incorporate on a EC-wide basis, avoiding legal hassles arising from 12 different legal systems. And although a decision is close, the EC Trademark is still held up because the member states have not been able to agree on a site for the EC Trademark Office.

Although there is still room for improvement, the member states' overall implementation rate of single market directives has risen to 84%, the highest level recorded since the Commission started publishing such statistics four years ago. Still, of the 219 EC directives which should have already been "transposed" into member states' laws, only 106 have been implemented by all 12 EC countries. EC Internal Market Commissioner Raniero Vanni d'Archirafi has warned EC governments that they risk being taken to the European Court of Justice if they fail to implement and enforce single market legislation

Once again, Denmark sports the best implementation rate at 94%, followed by the UK at 90%. This is ironic, considering that Denmark and the UK are often tagged as the least enthusiastic EC members.

Bringing up the rear are Ireland (79%), Germany (78%) and Greece (77%).

The most significant delays in implementation are in the areas of company law, intellectual property, insurance and public procurement. In particular, lags in applying public procurement directives could carry a heavy price: EC public procurement markets are worth an estimated 15% of EC GDP.

EC APPLAUDS CHANGES IN CALIFORNIA'S UNITARY TAX

At least partly a result of member state and Commission pressure, the California legislature has amended the state's unitary tax system in a way that should end the serious tax discrimination suffered by European subsidiaries operating there.

Under the modifications, EC subsidiaries will be able to opt for taxation based on profits accrued in California itself, rather than on a flat rate proportion of a parent company's worldwide earnings.

EC Tax Commissioner Christiane Scrivener welcomed this "decisive progress" toward equal treatment, something which should govern the taxation of firms "on both sides of the Atlantic."

Also in response to the California amendment, the UK government suspended its threat to eliminate a tax credit for Californian firms on British soil if the issue was not settled this year.

Although now substantially defused, the dispute is still in front of the US Supreme Court, where it awaits a decision on whether the Court will hear the case. Breaking with the Bush and Reagan governments, the Clinton Administration has filed a brief with the Court arguing that the case is no longer of "continuing legal significance" after California's amendments (see EURECOM, May 1993). However, the EC and the UK government still hope the Court will hear the case and endorse the internationally accepted "arm's length" principle as the only valid method of taxing foreign companies in any state.

AGREEMENT ON BANK DEPOSIT PROTECTION

Representing an important addition to the EC's single market in banking, EC economic and finance ministers have reached a political agreement on a plan to provide a minimum level of protection for EC depositors in the event of bank failures.

Under the directive, which now goes back to the European Parliament for approval, all member states must ensure by January 1, 1995 that banks registered in their countries offer a minimum cover of 15,000 ecu per depositor (1 ecu= $1.19) Thereafter, they have a five-year transition period (until January 1, 2000) to raise the guarantee to 20,000 ecu. The ministers also agreed that depositors should bear some responsibility for investing in an insolvent bank; hence, EC countries will be able to limit the protection to 90% of the minimum 20,000 ecu.

Deposit insurance systems already exist in most member states, and are predominately more generous than the EC plan. Nevertheless, several member states provide either no cover or less protection than offered in the directive. Member states will be free to set (or keep) protection levels above 20,000 ecu, and will determine how their plans will be financed.

Unlike existing deposit guarantees in the member states, the EC legislation will cover deposits in all Community currencies and in ecu.

INVESTOR PROTECTION PLAN PROPOSED

To safeguard the small investor from bankruptcy or default by an investment firm, and to ensure the proper functioning of the single market for investment services, the Commission has proposed a directive on investor compensation (ICD).

Mirroring the directive on bank deposit protection (see previous item), the proposal sets 20,000 ecu as the minimum EC-wide coverage for stock investors. Each EC investment firm holding the single license (see EURECOM, April 1993) would be required to belong to an investor compensation plan in its home state covering all its clients, including those in other member states. However, because the Commission believes investors should bear some risk in their investment choice, the directive would allow EC countries to repay only 90% of the minimum 20,000 ecu. Compensation would have to be paid within three months after an investor's rights have been proven.

Most member states not only already have investor compensation arrangements, but they also offer more protection than the proposed EC minimum. Still, some EC countries offer no protection at all at present, and member states that do have plans would remain free to provide more protection than the harmonized minimum.

Details on the financing and organization of the compensation plans would be left to the member states. As with the Investment Services Directive (which the ICD complements), the Commission aims for the directive to take effect on January 1, 1996.

A NEW APPROACH TO POLLUTION CONTROL

Taking an innovative and "subsidiarity"-oriented approach to pollution prevention, the Commission has unveiled a draft directive on integrated pollution control in the EC.

Until now, the EC strategy to prevent industrial pollution has been to attack water, air and ground pollution separately. As most forms of pollution are interrelated, however, the Commission believes an "integrated" approach would be more effective, cost-efficient and more easily adhered to by industrial (and other) polluters.

Under the directive, member state governments would have to establish limits on polluting substances (within certain margins) for each industrial sector using the "best available techniques" defined in the legislation. Emission limits already set at the EC level would remain in effect.

Companies would have to apply for a single operating license through a "competent authority" (also to be established by the member states), which would analyze their control processes for all types of pollution against the established values for admissible pollutant levels. At present, companies face multiple procedures in the separate areas of water air and ground contamination.

As of June 30, 1995, new industrial plants with high pollution potential would be required to obtain a permit before starting operation. Under normal circumstances, this permit would be issued within six months. Existing plants would have until June 30, 2005 at the latest to obtain an operating permit.

The member states would have to inform the Commission on their emission limit values and the "best available techniques" on which they were based. If "necessary", the Commission could propose that the Council adopt certain emission values at the EC level.

The directive offers another innovative aspect: public access. Competent authorities would have to make available to the public environmental information obtained through companies' permit procedures. Further, it would give the public the right to comment on applications for permits.

QUOTES

"In the Anglo-Saxon world, there exist organizations and personalities who prefer a divided Europe, condemned to a secondary economic role, rather than a strong Europe with its own monetary and foreign policy." Belgian Foreign Minister and current Council President ***Willy Claes.***

"I hope my fellow heads of government will resist the temptation to recite the mantra of full economic and monetary union as if nothing had changed. If they do recite it, it will have all the quaintness of a rain dance and about the same potency." British Prime Minister ***John Major.***

"Cars are free to circulate but there are still speed limits; therefore, I do not see why, at the international level, we should not study ways to limit monetary movements." EC Commission President ***Jacques Delors.***

"International financial integration has encompassed practically the whole world...It would be neither desirable nor indeed technically feasible to isolate Europe from the rest of the world in this respect." ***Alexandre Lamfalussy,*** *General Manager, Bank for International Settlements.*

"Could Europe be breaking down because it is no longer adapted to the world's new deal?" ***Jacques Chirac,*** *leader of the French RPR political party and Mayor of Paris.*

NEW RULES FOR CABLE AND SATELLITE BROADCASTERS

The Internal Market Council has formally adopted a directive harmonizing copyright and related rights rules applicable to satellite and cable TV transmission in the EC.

Chiefly, the directive aims to prevent right holders from having their works broadcast without receiving payment.

For satellite transmission, broadcasting rights will be subject to permission from the holder of rights, which must be obtained in the country of origin. At present, rights are claimed in the country of destination, complicating matters as multiple countries are often involved. Contracts concluded before the directive enters into force on January 1, 1995 will have a five-year transition period to adapt to the new rules.

Rights for cable broadcasting will be negotiated exclusively through collective management bodies representing the various categories of rights holders.

The directive also provides a framework to solve disputes when a broadcaster "unreasonably" forbids retransmission of a program by cable: member states will be free to establish arbitration bodies which can have a maximum life span of eight years after the legislation takes effect. Thereafter, cable and satellite operators will be on their own to negotiate contracts.

EC CLEARS MCI/BRITISH TELECOM MERGER

After an initial examination, the Commission has found that the transactions notified by British Telecommunications Plc (BT) and MCI, a US telecommunications company, do not fall within the scope of the EC merger regulation.

The alliance between the companies comprises three transactions: the creation of a joint-venture, Newco, for the provision of value-added global telecom services to multinational businesses; BT taking a 20% stake in MCI; and MCI acquiring BT's existing North American subsidiary.

The Commission concluded that none of the three transactions fall within the merger regulation's scope for the following reasons: Newco is cooperative rather than concentrative in nature; BT's 20% stake in MCI will not give it joint control over the company and is therefore not a concentration; and MCI's acquisition of BT North America does not have a "Community dimension" since its turnover is below the 250 million EC turnover threshold above which the EC merger rules apply.

...IN BRIEF

...US media mogul Ted Turner's TNT and Cartoon Network could run afoul of the EC's 1989 broadcasting directive, which requires EC governments to ensure "where practicable" that broadcasters use a majority of European programming. In a letter to the UK government, EC Audiovisual Commissioner João de Deus Pinheiro asked for clarification on the satellite service license issued by Britain's Independent Television

News (ITN) to the US-based TNT, which intends to beam its film and cartoon service across the Community. First, the Commission has doubts on the legality of ITN's licensing regime in light of the directive. Second, it appears that TNT's programming falls far short of having a European majority. Based on the directive, both Belgium and France have already banned distribution of Turner's network. According to Turner, the whole affair is a "misunderstanding". "We have no intention of imposing ourselves on anybody," he said. In any case, EC-wide sightings of Yogi Bear could be delayed.

...In a recent survey commissioned by British Telecom (BT) and conducted by Harris Research, most of Europe's top companies rank telecommunications as the most important industry to liberalize. In fact, 60% of the 500 senior executives surveyed believe it is more important to liberalize telecommunications than airlines, railways, energy or health care. Eighty-five percent said more competition would lower costs, 91% said the range of services would expand and 92% believe quality would improve. According to BT, the results indicate that the EC should accelerate its timetable for opening up voice telephony to competition.

...Speaking of telecommunications, Europeans are talking more to each other, especially by phone. A new Eurostat publication on communication services reports that value-added communication services (at market prices) increased in all EC and EFTA countries in the 1980s, with Portugal sporting the highest growth (over 80%) followed by Iceland (over 70%). At 20%, Greece and Denmark experienced the lowest growth in the sector. Telephone density rose everywhere. It is highest in Sweden, where there are almost 70 main lines per 100 inhabitants, and lowest in Portugal (around 20).

...A report in the latest *Eastern European Investment Magazine* (EEIM) refutes the widely held belief that private investors are arriving slowly in the region. In fact, in the recent six-month period private investment almost tripled to 979 deals compared with the previous six months. Russia continues to be the most popular destination for Western investment in terms of the number and value of transactions. Hungary has the highest investment per capita. The US remains the largest single investor in the region, having made 469 investments worth $13.6 billion over the 18-month period ending March 31, 1993. Taken together, however, EC investors have entered 672 deals with a value of $21 billion over the same period. For more information please call Wendy Steavenson at EEIM. (212) 388-1500.

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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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