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EU ADOPTS LEGAL DEFENSE AGAINST HELMS-BURTON ACT

Overcoming a serious legal objection from Denmark, the EU foreign ministers have unanimously approved an anti-boycott regulation defending EU companies against the extraterritorial effects of the US' Helms-Burton legislation on Cuba (see EURECOM, October 1996).

EU Trade Commissioner Sir Leon Brittan described the decision as "an historic breakthrough in the development of the EU's capacity to protect its legitimate interest and to give practical effect to its unity of purpose." He also said that the EU had transformed an idea into law "at record speed", much faster than the passage of the Helms-Burton Act itself, proving that Europe can act rapidly when it is unified.

Denmark's eleventh hour objection did not concern the principle behind the regulation, but rather the legal basis for the EU action: namely, the use of a general provision of the EU treaty (Article 235), which the Danish government considered an unacceptable compromise of its national sovereignty. Sir Leon said that Denmark's difficulties were "understandable", but had been resolved — without affecting the regulation's substance — through clarification of its legal base in accordance with international and intergovernmental principles.

The anti-boycott legislation aims to protect against and counteract the effects of the extraterritorial application of the Cuban Liberty and Democratic Solidarity (Libertad) Act, or any actions resulting from it. It forbids any EU person or company from complying with those laws, whether through a subsidiary or an intermediary, and whether actively or by omission. Exemptions are possible if non-compliance would seriously risk damaging a company's (or the EU's) interests. Member states are responsible for imposing "effective, proportional and dissuasive" penalties on companies violating the regulation.

Under the regulation, companies are required to notify the Commission of all information (with full confidentiality) about how their operations are being affected by the laws in question. Any legal judgement by a non-EU court giving effect to these extraterritorial laws can neither be recognized nor enforced.

Amounts awarded against EU companies could be recovered from any successful US claimant who has a presence anywhere in the EU, as long as it is clear that they result from the extraterritorial measures listed in the anti-boycott regulation.

EU'S SINGLE MARKET PAYING DIVIDENDS

It is no longer just conjecture: the single market is proving effective, and has contributed to higher growth and investment, lower inflation and more competition in the EU. These findings come out of an exhaustive two-year survey — consisting of 38 economic impact studies — recently completed for the Commission.

"For the first time, there is objective confirmation that the single market is indeed serving as a launching pad for...job creation and growth and for improving competitiveness," said EU Single Market Commissioner Mario Monti.

Despite the overall positive effects, however, Monti said that if the member states had been more diligent in implementing and applying single market measures at the national level, the benefits and opportunities would have been even greater thus far.

Nonetheless, the figures on the single market's impact are impressive. According to the report, EU GDP was 1.1-1.5% higher in 1994 because of the single market, and investment was 2.7% higher, while inflation rates were 1.0 to 1.5% lower than they would have been in its absence. Moreover, the single market has helped create as many as 900,000 jobs across the EU. It has also attracted significant foreign direct investment (FDI): the EU absorbed 44.4% of world FDI flows in the early 1990s compared with 28.2% between 1982 and 1987. And cross-border investment within the EU increased five-fold from 1985-1993 in both services and manufacturing.

Beyond these macroeconomic benefits, the studies undertaken for the Commission yield concrete evidence of growing competition in both manufacturing and services, and a wider range of products and services available to retail, public sector and industrial consumers at lower prices (especially in newly liberalized service sectors such as transport, financial services and telecommunications). For example, telecommunications equipment prices have decreased by around 7% (from 1985 to 1995) as a result of single market directives, while the increasing liberalization in telecommunications services reduced the price of phone calls to the US by some 42% between 1990 and 1995.

Conflicts between some 100,000 sets of national technical specifications which existed in the mid-1980s have, to a large extent, been overcome, either by mutual recognition of different national standards or by the development of EU standards. Without action at the EU level, around 76% of intra-EU trade (by value) would be at risk of disruption by technical trade barriers.

Further, the abolition of border controls and customs documentation for goods has contributed to faster and cheaper cross-frontier deliveries and remarkable efficiencies in the distribution sector, generating savings of about 5 billion ecu (1 ecu=$1.27), 0.7% of the total value of intra-EU trade a year.

At the same time, the single market has not led to higher trade barriers with the rest of the world: manufacturing imports from non-EU countries increased by 2.5% between 1991 and 1994.

To achieve the single market's full potential, the Commission has called for more resources for better enforcement of existing single market and EU treaty rules at the national level. Second, there are still a few key incomplete areas (e.g. taxation, company law and border controls on persons) from the 1985 White Paper that need action. Last, the introduction of a single currency will make the single market more effective by eliminating transaction costs and exchange risks.

"BENCHMARKING" EUROPE BACK TO COMPETITIVENESS

While the single market has clearly improved business conditions in the EU, it has been no panacea for the competitiveness of EU industry. In fact, a new Commission report — "Benchmarking the Competitiveness of European Industry" — says that European business is badly trailing its main competitors.

"The situation of European industry, even if it has improved somewhat, is not satisfactory when compared with Japan and the US," remarked EU Industry Commissioner Martin Bangemann.

While acknowledging that firms have the primary responsibility for remaining competitive, the report tags the high costs of energy, telecommunications and labor in Europe, coupled with low research and development expenditure, as the chief culprits dragging down European industry's productivity. Efforts made by the EU member states to liberalize and restructure their economies in the face of growing global competition have fallen short of what is necessary.

Symptomatic of this relative decline is the EU's high and continually rising structural unemployment rate. Even worse, in terms of job creation, since 1960, the EU has added only 10 million new jobs, compared with 20 million in Japan and 50 million in the US.

In addition, the EU's share of OECD export markets (excluding intra-EU trade) has been falling steadily since 1987, which is primarily attributable to insufficient presence in high growth (e.g. Asian) markets. Net profit margins and return on investment for European firms remain inadequate (7%), as they are lower than the rate of interest on long-term public debt (8%).

Although EU governments certainly need (and have a responsibility) to improve conditions for industry, the report recommends a system of "benchmarking" to measure European companies' performance in relation to growth, costs, productivity, investment and innovation against "best practices" worldwide.

The European employers' organization UNICE welcomed the report as proof that the Commission "has understood the concerns of companies faced with the continuing decline of European competitiveness and is prepared to act to reverse the trend."

EU'S AUTUMN FORECASTS: GROWTH THROUGH CONVERGENCE

In the Commission's recently published Autumn economic forecasts, the overall tone is positive: economic convergence among the member states and progress toward the euro are contributing to stronger growth and the first signs of improvement in the employment situation.

For the EU as a whole, the Autumn forecasts closely track the Commission's Spring forecast figures (see EURECOM, June 1996). Aggregate EU GDP growth is expected to be 1.6% in 1996 (versus 1.5% last spring), 2.3% in 1997 and 2.8% in 1998. Over the next three years (1996-1998 inclusive), a net increase of 2.3 million jobs is anticipated, which would bring the EU's unemployment rate down to 10.4% in 1998.

This positive growth outlook is underpinned by a number of factors: strong demand for EU exports; high profitability of investments; historically low rates of inflation; falling interest rates (both long- and short-term); and stable exchange rates both inside and outside the European Monetary System (EMS).

In terms of convergence, most member states are making impressive efforts, in particular by cutting excessive government deficits. In fact, based on the current forecasts, 12 member states (all except Greece, Italy and the UK) are expected to meet the Maastricht criteria for an annual public deficit (i.e. 3% of GDP) in 1997. By 1997, 14 member states should meet the criteria for inflation and long-term interest rates. Further, 11 member states belong to the exchange rate mechanism (ERM) of the EMS (see next piece). And while the outstanding stock of debt in most countries is expected to stay above the 60% of GDP reference value, in many cases it is on a downward track.

It is important, however, not to exaggerate the significance of these forecasts, since decisions on EMU participation will be taken at the start of 1998 based on actual 1997 figures. Nevertheless, it is the Commission's view that there should be a significant (and probably increasing) number of EU countries capable of meeting the necessary conditions to participate in the euro from January 1, 1999.

FINLAND JOINS EXCHANGE RATE MECHANISM

Showing its determination and commitment to be among the first to qualify for the euro in 1999, Finland decided to take its currency, the markka, into the exchange rate mechanism (ERM) of the EMS on October 14. This occurred after consultations with the EU's Monetary Committee in a common procedure that also involves the European Commission and the European Monetary Institute.

The markka went into the ERM at a central rate of 1 ecu to 5.80661 markkas (1 ecu=\$1.27). The current ERM fluctuation margins of 15% will be observed around its ecu central rate and its bilateral central rates with the other ERM currencies.

EU finance ministers and central bank governors welcomed Finland's participation, congratulating the Finnish authorities on the substantial structural adjustment already achieved in the Finnish economy, which was reflected in this decision.

A statement released by Commission President Jacques Santer and Economic and Monetary Affairs Commissioner Yves-Thibault de Silguy also hailed the markka's entry, saying that the enlargement of the ERM to include a new currency is a very positive sign for the realization of the euro. Since the monetary fluctuations in spring 1995 (see EURECOM, March 1995), the EMS has returned to great stability. Finland's ERM participation reinforces monetary stability and credibility in Europe.

According to the Commission, the rapid consolidation of public finances and the absence of inflation are positive factors for the durable stability of the markka within the system.

Now only four EU member currencies — the British pound, the Italian lira, the Greek drachma and the Swedish krona — remain outside the ERM.

QUOTES

"Legislation such as Helms-Burton makes it more difficult for (the EU and the US) to work together. It drives a wedge between us and gives comfort only to Castro." Commission Vice President ***Sir Leon Brittan*** *in a recent speech to the European-American Chamber of Commerce in New York.*

"It is necessary to have an active European role alongside the role of the United States in the (Middle East) peace process — without Europe's role it will not be possible to achieve progress." Egyptian President ***Hosni Mubarak.***

"All over Southern Europe, the issue isn't, 'It's the economy, stupid'; it's, 'It's Maastricht, stupid,'." ***Jorge Hay,*** *Managing Director, Banco Central Hispano.*

"(Monetary) union must begin with Germany, France, the Benelux nations, Ireland and Austria, but not immediately with the Mediterranean nations." ***Ulrich Cartellieri,*** *Board Member, Deutsche Bank AG.*

"If enlargement doesn't come, people in Eastern Europe will feel such a frustration that this could turn into a security risk for us at some point in time." German State Secretary and IGC negotiator ***Werner Hoyer.***

"The mentality of Europe is in many ways the mentality of a dying society. We suffer from hedonism, narcissism and the unwillingness to take risks. We are moving from a society of commitments to a society of options." ***Helmut Maucher,*** *Chairman of Nestlé.*

PROTECTION OF MINORS IN THE INFORMATION SOCIETY

The Commission has approved two new discussion documents — the **Green Paper on Protection of Minors and Human Dignity and Information Security** and the **Communication on Harmful and Illegal Content on the Internet** — which it hopes will lead to better protection of minors who are vulnerable to pornographic and other harmful material available on the Internet or other electronic services.

Drawn up at short notice, the papers respond to a recent call by EU telecommunications ministers for practical measures to deal with the dissemination of illegal content via the Internet. Both documents will be reviewed at the next Telecommunications Council meeting (November 28, 1996).

In Brussels, Belgium, which is still reeling from the discovery last August of a major child pornography and prostitution ring, EU Information Technology Commissioner Martin Bangemann commented on the need for new measures at the EU level:

"We are not presenting measures which could be misconstrued as censorship. What is criminal off-line should be criminal on-line."

While noting that the vast majority of traffic on the Internet is within the norm for business and personal use, both documents advocate closer cooperation among the EU member states, and internationally, where potential dangers exist, recommend the use of filtering software and rating systems. They also encourage self-regulation of access-providers.

Copies of both documents are available via the Commission's Europa server at **http://www.europa.eu.int.**

...IN BRIEF

...Despite the negative impact of the Helms-Burton Act, the New Transatlantic Agenda continues to move forward. To wit: On November 7, the EU and the US initialled an **agreement on customs cooperation and mutual assistance in customs matters.** One of the key goals set out last December in Madrid (see EURECOM, December 1995), the agreement will establish: 1) cooperation between the EU and US to simplify customs procedures, thereby facilitating trade; 2) "mutual assistance", i.e. a mechanism of information exchange between customs authorities, to fight commercial fraud; 3) exchange of customs authorities to advance their understanding of each other's customs techniques, procedures and computerized systems; 4) coordination in international organizations such as the Customs Cooperation Council; and 5) technical assistance to third countries in the customs field.

...Citing "various technical reasons", Cenelec, the European electrical standards body, has pulled the plug on five years' worth of work toward a single European electrical plug, at least for the time being. Hence, Cenelec's 18 member states, which include the EU's 15, will continue to use 20 different plug and socket systems. "Establishing a European single currency appears easier than establishing a single European plug," said Nick Glover of the UK's Radio and Electrical Equipment Manufacturers Association.

...**Eurostat**, the European Union's statistical office, has opened its first **Data Shop** outside the EU **in New York**, providing access to a huge range of EU data and customized statistics on this side of the Atlantic. Located on 60 East 42nd St. (Suite 2424) in midtown Manhattan, the Data Shop is a cooperative venture between Eurostat and the US firm **Haver Analytics** (which will operate the shop).

With the opening of the Data Shop, Americans will now be able to buy customized statistical services based on 70 million statistical data series covering every European social and economic sector. Customers will be charged according to the type of service.

The Eurostat Data Shop will be open 9:00 am to 5:00 pm, Monday - Friday; tel.(212) 986-9300, fax (212) 986-5857. It can also be contacted at the following e-mail address: **"eurodata@haver.com".**

...In the US and European political lexicons, the concept of "confederation" has a bad image and is largely ignored. Despite these obstacles, a new work by Frederick K. Lister, *The European Union, the United Nations and the Revival of Confederal Governance,* reexamines the confederal model, finding many positive elements in historical (and current) examples to recommend its revival in a world prone to ethnic strife and division. Lister explores the many structural and procedural similarities between the EU and traditional confederal governance — the "missing link" between intergovernmental organizations like the United Nations and federal states like Germany and the US. He concludes that the EU is in most respects a confederal-type body, although its far-reaching legislative, executive and judicial capabilities give it a much greater capacity than that of any earlier confederation. To order this unique analysis, please call 1-800-225-5800 (Greenwood Press, Westport, CT).

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