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MONTHLY BULLETIN OF EUROPEAN UNION ECONOMIC AND FINANCIAL NEWS

VOLUME 9, NUMBER 11 DECEMBER 1997

EU'S EMPLOYMENT SUMMIT DOES THE JOB

At the EU's first-ever European Council meeting of heads of state and government devoted solely to the issue of unemployment (see EURECOM, July/August 1997), the special Luxembourg "jobs summit" on November 21-22 generated agreement on new common guidelines on employment policy, which will be backed by national action plans.

In an important preface, however, the European Council stressed that there is no real, lasting prospect of expanding employment without a favorable economic environment, which requires a sound macroeconomic framework and genuine single market.

Based on four themes or "pillars" — improved employability, entrepreneurship, adaptability and equal opportunity — the guidelines put forth by the Commission set out some specific targets for member states to achieve in order to increase employment levels on a lasting basis. In particular, they entail quantified targets with regard to "fresh starts" for the young and long-term unemployed, and on access to training for these two groups.

Other guidelines include simplifying rules for small and medium-sized enterprises (SMEs), reversing the long-term trend of higher taxes and charges on labor (see "...In Brief" section) and making working arrangements and contracts more flexible.

Once adopted by the Council (a decision is expected at the December 15, 1997 Social Affairs Council), the member states will have to incorporate the guidelines into national employment action plans. These will then be analyzed and agreed on in a procedure similar to the multilateral surveillance of economic policies used in the EMU convergence process, a method that has proved very successful. The member states have undertaken to submit these plans in time for examination by the Cardiff European Council scheduled for June 1998.

The EU leaders also endorsed a European Investment Bank initiative to lend an additional 10 billion ecu (1 ecu=$1.11) to support SMEs, new technology ventures and trans-European networks, which could further stimulate investment of 30 billion ecu. In addition, extra EU funding of 450 million ecu will be available to encourage SMEs to create sustainable jobs.

MAJOR EU TAX DEAL ACHIEVED

Marking the first time that EU member states have agreed on proposals affecting direct taxation — an area that requires unanimity for decisions — EU finance ministers recently adopted a package to curb harmful tax competition (see EURECOM, October 1997).

The deal's centerpiece is a **voluntary code of conduct on corporate taxation**. On the code, not only did the member states agree to refrain from adopting any harmful tax measures with significant impact on the location of businesses, but they also agreed to phase out any existing "predatory" tax regimes within five years (with exceptions possible for peripheral areas, like the Canary Islands, and for Ireland, which has long had a special 10% tax rate for manufacturing firms).

Other parts of the package include a commitment to consider new legislation on an **EU-wide minimum withholding tax on non-resident savings income**, and a political agreement to adopt a **directive facilitating companies' transfers of interest and royalty payments across borders**, primarily by eliminating withholding taxes on such transactions.

EU Taxation Commissioner Mario Monti called the agreement "an historic breakthrough...which will make the distortions to the single market caused by taxes even more visible." He also added, however, that this process must not lead to an increase in the EU's tax burden, which would be incompatible with maintaining its international competitiveness. Nor is there any question of a vast tax harmonization effort, which would run counter to the subsidiarity principle.

EU GOES TO WTO OVER US FOREIGN SALES CORPS

Taking the US by surprise, the European Commission recently announced it was taking action at the World Trade Organization (WTO) against the US policy of subsidizing exports via so-called Foreign Sales Corporations (FSCs). The US government grants tax exemptions for exports carried out by FSCs.

Export subsidies — which favor exports compared with the treatment of like products when sold for domestic consumption — are prohibited under the

WTO Agreement on Subsidies and Countervailing Measures.

FSCs are usually subsidiaries of US corporations located in tax havens such as the Virgin Islands. These subsidies are only available if a large part of the exported item has been manufactured in the US. They are, therefore, a clear violation of WTO subsidy rules in the EU's view.

Commented EU Trade Commissioner Sir Leon Brittan: "The FSC scheme clearly breaks the WTO rules and distorts international trade by giving US companies an unfair advantage over their European competitors...This action is the first step in the WTO disputes settlement procedure, and has been carried out through the EU's Market Access Strategy for opening foreign markets (see EURECOM, November 1997). It enjoys wide support from EU governments and industry."

According to the US Trade Representative's Office, "the law is fully WTO-compatible," and will be defended in the dispute settlement process "if it comes to that."

COUNCIL AGREES PHASE-OUT OF TOBACCO ADVERTISING

"The tobacco industry is finally waking up to the reality...that it is not acceptable to allow their product to be advertised," remarked EU Social Affairs Commissioner Padraig Flynn after EU Health Ministers reached a Common Position on an eight-year phase-out of tobacco advertising in the EU on December 4.

"We can now look forward to the day when advertising and sponsorship of tobacco products will not be able to influence young people to take up the habit," said Commissioner Flynn.

Advertising of tobacco products on television has been banned in the EU since 1989, and all EU countries currently restrict advertising of tobacco products in other media to some extent including, in some cases, a total ban. However, the different national approaches have impeded the proper operation of the single market and have undermined efforts to protect young people from tobacco promotion. After eight years of effort and compromise, the Commission's proposal for a total ban on tobacco advertising finally achieved a qualified majority in the Council, ensuring a common EU approach on the issue. Germany voted against the legislation (along with Austria), and indicated that it might file a legal challenge to the ban.

Under the agreement, most tobacco advertising (e.g. billboards) must be phased out within three years, print media advertisements within four years and tobacco sponsorship of most sports and arts events (and other indirect advertising) within six years. Assuaging the concerns of the UK government, major international events like Formula One motor racing must end tobacco sponsorship only by October 2006 at the latest.

The Common Position, which still requires the European Parliament's approval, will permit tobacco trade publications, advertising at point of sale, presentation of tobacco products (and their prices) and the import of third country publications containing tobacco advertising. It will also allow member states to maintain stronger national rules if they wish.

SINGLE MARKET SCORECARD: GOOD NEWS WITH THE BAD

As part of the **Single Market Action Plan** (see EURECOM, June 1997), which aims to complete decisively the single market by January 1, 1999, the Commission has released its first **Single Market Scorecard**. Endorsed by the Amsterdam European Council last June, it is a new tool for citizens, economic operators, EU institutions and member states to assess the implementation of single market directives, the status of outstanding infringement procedures and progress with the Action Plan itself.

As of November 1997, there are still 359 out of 1,339 existing single market-related directives not implemented in all member states, some 27% of the total. The overall rate of non-implementation varies from around 3% in Denmark and in the Netherlands, to over 8% in Germany and 10% in Austria. Sectors with the highest rates of non-implementation include **transport** (60%), **public procurement** (55.6%) and **intellectual property** (50%). For the first time, however, all member states have submitted detailed timetables for implementing outstanding single market directives (as required by the Action Plan). If these legislative timetables are respected, the Scorecard concludes that the bulk of outstanding legislation would be in place by April 1, 1998, well in advance of the January 1, 1999 goal.

Concerning infringement procedures, member states' responses to formal notices from the Commission take on average 108 days, compared with the normal deadline of two months. The existence of an infringement procedure does not mean there is a breach of EU law — only the EU Court of Justice may definitively decide this — but it does indicate a problem area. Over the period September 1996-September 1997, Italy (40 formal letters) and France (35) were the biggest alleged offenders of single market rules.

But how is the single market affecting businesses on the ground? Apparently, the expected benefits from the single market are starting to feed into the economy and trade between the member states according to an opinion poll of over 3,500 European business executives (around 3,000 of which from small businesses) carried out for the Commission in September 1997.

The survey confirms that competition has intensified and that most obstacles to EU trade have been removed. In fact, 45% of all the respondents believe that the increasing competition stemming from the single market has been positive for their businesses, compared with only a quarter that sees the competition negatively.

Still, despite the progress, 59% of large enterprises and 55% of small businesses in the poll reported that they have encountered at least one obstacle (and on average three) doing business across frontiers. The most frequently cited barrier? **VAT rules**, especially for the small enterprises (21% experienced difficulties), followed by **product testing and certification procedures.**

The full text of the Single Market Scorecard is available on the EU's Europa website: *http://europa.eu.int/comm/dg15/.*

PROMOTING SAFE USE OF THE INTERNET

Moving from the technical (see EURECOM, November 1997) to the content side, the Commission has proposed an Action Plan on promoting safe use of the Internet.

It identifies three main areas where concrete measures are needed: the development of **hotlines** (along with codes of conduct) to enable Internet users to report and to control illegal or harmful material; the development of internationally compatible (and interoperable) **rating and filtering systems** to protect users, especially children; and **awareness exercises** targeted at parents, teachers, children and other consumers that also involve Internet service and content providers and consumer organizations.

The Action Plan results from the dialogue launched in October 1996 by the Commission's Communication on Harmful and Illegal Content on the Internet (see EURECOM, November 1996), which concluded that the best approach to this challenge would be a combination of self-regulation of service providers, new technical solutions (e.g. filtering and ratings systems) and well-informed users, particularly parents and teachers.

The Action Plan will receive EU funding (the amount to be determined), and will cover the 1998-2001 period.

On another, related front, the Commission has just released a discussion paper on **The Future Regulation of Converging Electronic Media** in the telecommunications, media and information technology sectors. Through digital technology, formerly distinct services such as broadcasting, telephony and computing can now use the same "platform", like the Internet. According to the paper, the EU needs the right regulatory framework to maximize the benefits of this increasing overlap in terms of job creation, growth, consumer choice and cultural diversity. This convergence should not, however, lead to additional regulation, says the paper.

QUOTES

"The EU is not deciding on Turkey, it is deciding on itself, it is deciding on its identity and vision. It is deciding whether it will be an introvert entity confined to its present limits, or an organization with a major role to play in the next millennium." Turkish Foreign Minister ***Ismail Cem****.*

"For America, the EU may seem solid and unglamorous. But it is also predictable and fundamentally like-minded." European Commission Vice President ***Sir Leon Brittan****.*

"The UK has not played the role in Europe it could, given its tradition of diplomacy, its savoir faire and the way it is present in EU institutions. This is not Europe's fault." French Prime Minister ***Lionel Jospin****.*

"We cannot have a minister with a different currency participate in talks among countries with the same currency. It's not reasonable." French Finance Minister ***Dominique Strauss-Kahn****.*

"The question that remains is whether the creation of the euro, successful in its intra-European objective, will also tend to stabilize transatlantic and trans-Pacific exchange rates and capital flows. The closest test case we have had (the dollar/yen rate) is not reassuring." Former US Federal Reserve Chairman ***Paul Volcker****.*

EU, US SIGN ACCORD ON SCIENCE AND TECHNOLOGY

Before opening the second of the biannual US-EU summits on December 5 in Washington DC, the US and the EU signed a **Science and Technology Agreement**, a key instrument for advancing the New Transatlantic Agenda's (NTA) goal of expanding US-European scientific cooperation across the Atlantic. Current EU Council President and Luxembourg Foreign Minister Jacques Poos and European Commission Vice President Sir Leon Brittan signed on behalf of the EU, while US Deputy Secretary of State Strobe Talbott signed for the US.

Based on principles of mutual benefit, reciprocal opportunities for cooperation and equitable and fair treatment, the agreement should enable the most distinguished scientists and research institutions on both sides (including researchers from subsidiaries of US and European companies) to work more closely in areas where the EU and the US are doing some of the most advance research in the world: environment, agriculture, biomedicine, information technology and manufacturing processes. It will extend and strengthen cooperative activities between EU scientific institutions and a range of US government agencies, including Commerce, Agriculture, Energy, Transportation, the National Science Foundation, the Environment Protection Agency and the National Institutes of Health.

The agreement also establishes common ground for handling the allocation and protection of intellectual property rights resulting from the joint research, and provides for the monitoring of activities and government-to-government cooperation through regular high-level meetings of a Joint Consultative Group.

The accord is valid for a five-year period, and may be extended in additional five-year increments by mutual consent of the parties.

...IN BRIEF

...Sweden has the EU's highest "implicit tax rate" on employed labor at 56.2% of employees' total compensation (1995 data), with Finland in second place (53.7%), according to a recent report from Eurostat. At the lower end of the scale are the UK (27%), Luxembourg (29.6%) and Ireland (30.1%), compared with an EU average of 42.1%. The levels of taxation, particularly on employed labor, have generally risen since 1970, when the "implicit tax rate" for the (then) six member states was but 28.7%.

...The EU's trade balance in goods with the US was back in the black in 1996, registering a 1.6 billion ecu surplus. In 1995 it was 1.4 billion ecu in deficit. Last year, the US accounted for 19.5% of total EU imports (112.6 billion ecu) and 18.3% of total EU exports (114.2 becu). In both directions, machinery and transport equipment represented the biggest slice of total goods transactions (around 47% of each side's exports to the other). Broken down by member state, the four biggest EU importers of US goods were the UK (25.7% of the EU total), Germany (18.2%), France (13.5%) and the Netherlands (11.2%). Germany was the EU's largest exporter to the US (27.5% of the EU's total), followed by the UK (20.8%). In terms of services (1995 data), the US covered almost 40% of both EU imports and exports.

...EU annual inflation dipped to 1.7% in October from 1.8% in September according to Eurostat's European Index of Consumer Prices (EICP). Last October it was 2.3%. Ireland took the poll position (0.8%), followed by France and Austria (both at 1.1%). Among the member states, only Greece (4.6%), Sweden (2.7%) and the Netherlands (2.4%) had rates above 2%. Although not strictly comparable with the EICP, inflation also fell in the US (to 2.1%), but rose in Japan (to 2.5%).

...Eurostat's Internet site is now available through EUROPA, the Commission's Brussels-fed external server. It offers regularly updated, easily navigable information, such as on-line indicators, news releases and a plethora of EU statistics. One can search either by date, key word or subject. The address is: *http://europa.eu.int/eurostat.html.*

...The Fordham University School of Law's Center on European Union Law and International Antitrust is sponsoring a conference, "**The European Union and the United States: Constitutional Systems in Evolution**", on February 26-28, 1998 at Fordham Law School in Manhattan (140 West 62nd St.). The extensive program includes a review of recent EU constitutional developments (principally the Treaty of Amsterdam) and comparisons of important issues (federalism, human rights protection, interstate commerce and equal rights for men and women) in EU and US case law. Speakers include five present and former EU Court of Justice judges, US judges, EU Commissioner **Marcelino Oreja**, EU Ambassador to the US **Hugo Paemen** and US, Canadian and European legal academics. For more information, please contact T. Scott Lilly at: tel (212) 636-6777, fax (212) 636-6984 or e-mail *Slilly@mail.lawnet.fordham.edu.*

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