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CARDIFF SUMMIT INTENSIFIES DEBATE ON EU'S FUTURE

At the European Council meeting in Cardiff, Wales on June 15-16, EU heads of state and government conducted wide-ranging discussions on reform of EU policies and institutions, future financing, enlargement and "subsidiarity"—the Treaty-based principle that decision-making should be devolved to the lowest appropriate level.

Commented European Commission President **Jacques Santer** after the summit: "This European Council has faced the future. There, too, optimism prevails. The debate on the future of Europe has been open and constructive. The European Union is a pole of stability in the world, and it will remain that."

In preparing for a larger Union, EU leaders stressed that the first priority must be the ratification of the Amsterdam treaty (which is well underway). They also agreed to a **March 1999** deadline for decisions on "Agenda 2000" measures, proposed by the Commission last July (see EURECOM, July/August 1997), on the development and future financing of key EU policies. Final adoption should take place before European Parliament elections in June 1999. Within this exercise, the Common Agricultural Policy and Community Structural Funds will undergo further reform, and the EU's new financial framework will cover the 2000-2006 period based (in principle) on the current budgetary ceiling (1.27% of EU GDP).

In terms of the membership negotiations with the six "first wave" countries (Czech Republic, Cyprus, Estonia, Hungary, Poland and Slovenia) that started formally on March 31, 1998, the Commission will submit the **first regular reports** on each candidate's progress toward accession by the **end of 1998.**

Beyond these important short- and medium-term issues, the Cardiff European Council called for a **special summit during the Austrian Council presidency,** probably in October, for more intensive discussions on institutional changes to improve EU decision-making "not resolved at Amsterdam", and "to bring the Union closer to the people."

Economic discussions focused on the introduction of the euro in January 1999, the need for sound public finances, making the single market a job-creating motor (through the Single Market Action Plan) and the fostering of entrepreneurship and competitiveness (i.e. improving the EU environment for business start-ups and innovation). The European Council also gave its support to a "comprehensive new round of liberalizing negotiations at the third World Trade Organization (WTO) Ministerial Conference toward the end of 1999." On the EU-US front, the EU leaders took note of the proposed Transatlantic Economic Partnership (see EURECOM, June 1998) and agreed that the further development of transatlantic relations on a broad basis will remain one of the EU's important objectives.

CONDITIONAL CLEARANCE FOR WORLDCOM/MCI MERGER

The European Commission has conditionally cleared the merger between WorldCom, Inc and MCI Communications Corporation (see EURECOM, March 1998), subject to MCI's divestiture of its Internet business activities.

Both groups are US-based international telecommunications companies offering a range of services, including long distance voice telephony and data transmission and Internet services. While neither firm is EU-based, their combined EU operations generate sales well above the 250 million ecu (1 ecu=$1.08) threshold for EU antitrust scrutiny.

The Commission's investigations found significant overlaps in the market for "top level" or universal Internet connectivity. In fact ,WorldCom is currently the leading Internet Service Provider (ISP) in the market, with MCI being one of its main competitors. The merger would have given the combined entity an almost 50% market share in the relevant market, and would have enabled the merged entity to behave independently of its ISP competitors (many of whom rely on WorldCom/MCI Internet "trunk" networks). To address this anti-competitive concentration, the parties have committed to divesting MCI's Internet assets, thus eliminating the overlap with WorldCom's Internet business.

The Commission conducted its investigations and negotiations of remedies in parallel with the US Department of Justice's (USDOJ) ongoing examination of the case. Thus far, the process has been marked by considerable cooperation between the two authorities, including exchange of views on the analytical method to be used, coordination of information gathering and joint talks with the parties. The Commission and the USDOJ will continue their cooperation until the parties' undertakings are fully implemented and they have exchanged formal letters to this effect.

EU REQUESTS WTO PANEL ON US EXPORT SUBSIDIES

After several rounds of failed bilateral consultations, the EU has formally requested a WTO panel investigation into US export subsidies (see EURECOM, January 1998)—worth around $2 billion a year—granted through Foreign Sales Corporations (FSCs).

The proliferation and expanding scope of FSCs are major concerns for the EU. Commented EU Trade Commissioner **Sir Leon Brittan:** "The FSC scheme is a clear subsidy from the US taxpayer to industry. The sums involved lead to a significant distortion of international trade by granting an unfair advantage to US products in highly competitive markets. This is a violation of fundamental WTO rules."

FSCs are usually subsidiaries of US corporations located in tax havens such as the Virgin Islands, Barbados or Guam. US firms exporting through FSCs qualify for income tax relief only if a large part of the exported item has been manufactured in the US. In addition, payments by FSCs to their US parents are not subject to US taxation.

The Commission considers the FSC program to be in violation of the WTO Agreement on Subsidies and Countervailing Measures, which prohibits tax systems that favor exports over like products sold for domestic consumption.

FSCs account for estimated annual sales of $152 billion and gross profits of $10 billion, which are exempt from US taxation. And in September 1997, the US extended FSC benefits to the US software industry, which will save it around $700 million in taxes over the next five years.

EU OFFENSIVE AGAINST HARMFUL EMISSIONS

A raft of decisions and proposals on limiting harmful gas emissions has emanated out of the EU recently, setting some of the most rigorous (and challenging) environmental protection benchmarks in the world.

As part of the EU's commitments made at Kyoto last December (see EURECOM, May and January 1998), the Council has agreed on how to cut **"greenhouse" emissions across the Union** by a binding 8% over the next 10-14 years. Under the accord, Luxembourg (-28%), Germany and Denmark (both -21%) will have to make the largest reductions, followed by the UK (-12.5%). Five member states (Greece, Ireland, Portugal, Spain and Sweden) will be allowed to increase their emissions. Although the agreement marks a major step forward, EU Environment Commissioner **Ritt Bjerregaard** cautioned that without fundamental changes in transport and energy policies, it would be "very difficult" to reach the 8% target.

Through a "Conciliation Committee", the Council and the European Parliament have reached a compromise agreement on measures to **decrease pollution from road transport**—the so-called **"Auto-Oil" package.** The deal calls for a 70% reduction in emissions from cars and light commercial vehicles—compared with current standards—in a two-step process by 2010. Further, leaded fuels will be phased out by 2000 (with limited exceptions until 2005), new specifications for unleaded gas and diesel fuels will take effect in 2000 and very low sulphur fuels will be mandatory from 2005. "We shall have cleaner air in our cities...and fewer and less severe ozone episodes in the summer," declared Commissioner Bjerregaard.

Last, the Commission has proposed a new regulation to **phase out the remaining ozone depleting substances** (ODS) still in use, in line with the Montreal Protocol, the 1987 international agreement on limiting ozone-depleting substances to which the EU and its member states are signatories. Under the legislation, methyl bromide, used chiefly as an agricultural pesticide, would be phased out by 2001 (with a "critical use" exemption). Following up on the 1996 production ban of chlorofluorocarbons (CFCs), the proposed regulation would also ban their sale and use, thus reducing the scope for illegal trade in CFCs. And for hydrochlorofluorocarbons (HCFCs), the initial replacements for CFCs, they, too, would be phased out by 2003, since less harmful alternatives are now available for all HCFC applications.

NO NEW TAXES ON E-COMMERCE

There should be no new taxes levied on electronic commerce ("e-commerce"), and policy toward indirect taxation of e-commerce should adapt to and simplify the existing tax system, suggests a new Communication from the Commission, which will serve as the EU's contribution to the OECD Ministerial Conference in Ottawa in October.

"Electronic commerce is only in its early stages, but its development could soon become a major source of growth and job creation," said EU Indirect Tax Commissioner **Mario Monti.** "We need to find solutions, in cooperation with all interested parties at the Community and international level, so that the tax system does not impede the development of this highly promising sector."

The Communication proposes a set of guidelines as a first step in an open debate on the application of indirect taxation to e-commerce. The Commission's aim: to ensure that e-commerce can develop where the tax burden is minimal and where neutrality vis-a-vis other forms of commerce (i.e. no advantage or disadvantage) is guaranteed. Four main principles anchor the Commission's approach on this issue: **1)** *No new taxes.* Adapt to existing ones (namely VAT); **2)** When e-commerce involves the supply of a product—including the sale of "virtual goods"—it should be treated as *the provision of a service* for VAT purposes. Such services supplied within the EU should be *taxed at the place of consumption;* **3)** Ensure *tax neutrality* to avoid any distortion of competition; and **4)** *Make compliance easy.* Businesses should be able to discharge their tax obligations through electronic VAT returns and accounting. Such tools should result from international consensus, and must be capable of controlling and preventing abuse.

At the **Business Roundtable on Global Communications** hosted by EU Information Technology Commissioner **Martin Bangemann** on June 29, 60 US and European firms agreed to cooperate more closely to remove barriers to the development of e-commerce. They stopped short, however, of endorsing the Commission's proposal for an **International Charter** (see EURECOM, February 1998). Participants identified seven crucial issues to the emerging "online economy": taxation of e-commerce over the Internet, tariffs, intellectual property protection, encryption, authentification, data protection and liability.

QUOTES

"We don't want a centralized superstate. We do want nation states that feel comfortable with their own identities but recognize the value of cooperating with others." British Prime Minister ***Tony Blair*** *after the Cardiff European Council hosted by the UK presidency.*

"Unpredictability in our laws is the worst thing we can do to anybody." ***George Munoz,*** *President and chief executive of the Overseas Private Investment Corporation (OPIC), commenting on sanctions imposed on other countries via US laws.*

"If European Union countries (as diverse) as Denmark, Portugal, Germany and Greece can create economic union, there is no reason why the same kind of thing can't be envisioned among various Arab countries." ***Rassem Zaouk,*** *Vice President, Merrill Lynch International.*

"Conducting an extra-tight monetary policy to make us more credible, I regard as nonsense. This credibility must be earned. You do not gain it in one day." ECB President ***Wim Duisenberg*** *in an interview with the Dutch daily NRC Handelsblad.*

"We need enlargement, but we need to talk about transition periods. We have to protect markets from external shocks." Austrian Chancellor and current EU Council President ***Viktor Klima.***

COMMISSION ANNOUNCES "EU CENTERS" FOR US

To promote a major tenet of the New Transatlantic Agenda (NTA) —building people-to-people "bridges" across the Atlantic (see EURECOM, December 1995)—the European Commission has announced a new **"EU Centers"** initiative to promote study of the EU, its institutions and policies and EU-US relations at universities across the US.

"The EU Centers will be an essential fortifying link in the chain of transatlantic relations by building better understanding and cooperation among our future leaders," commented European Commission Ambassador to the US **Hugo Paemen.**

"In the past, most of our efforts have concentrated on helping working professionals to learn what the European Union is all about. We believe it makes sense to contribute to the learning process much earlier, while people are part of the education process and becoming qualified in their chosen field."

The EU Centers will join the biannual exchanges of the European Parliament and the US Congress and the EU Visitors Program (now celebrating its 25th anniversary!) in fostering the people-to-people ties outlined in the NTA. Each Center will host visiting scholars and other short-term visitors from the EU, including representatives of non-governmental organizations, labor unions, businesses and the policy community. Further, the Centers will also cooperate to form a national network, and conduct regional outreach programs involving local businesses, chambers of commerce and World Affairs Councils to promote greater knowledge of the EU.

The following 10 universities (some of which being university systems and/or consortiums) have been selected in principle as European Union Centers in the US:

- University System of Georgia and Georgia Institute of Technology;
- Harvard University;
- University of Illinois at Urbana-Champaign;
- University of Missouri-Columbia;
- New York Consortium for European Studies (New York University, Columbia University, the Graduate School and University Center of CUNY and The New School for Social Research);
- University of North Carolina (Chapel Hill) and Duke University;
- University of Pittsburgh;
- Scripps College, the Claremont Colleges and the University of Southern California;
- University of Washington (Seattle);
- University of Wisconsin-Madison.

...IN BRIEF

...After over two years of examination, the Commission has given its preliminary approval to two transatlantic airline alliances—one between **British Airways** (BA) and **American Airlines** (AA), and the other between **Lufthansa, SAS** and **United Airlines** (see EURECOM, June 1998)—provided certain conditions are met. In the BA/AA case, the alliance would have to cede a total of 267 slots between London's Heathrow and Gatwick airports to other carriers, without compensation, to prevent the creation of a "dominant position". For Lufthansa/SAS/United, they would have to give up a total of 108 slots between airports in Frankfurt and Copenhagen (also without compensation). In both cases, other proposed conditions concern frequent flyer programs, computerized reservation systems, relations with travel agencies and corporate customers and interlining. Ultimately, however, the involved member states' competition authorities will make the final determinations. The US government must give its blessing to the alliances as well.

...European trade and consumer groups have agreed on a code of conduct for pricing in euros during the three-year transition period. Any business that abides by the code's six "commitments" will be able to display a logo indicating compliance. Accordingly, traders will display prices in national currencies and euros ("dual display") in line with EU conversion and rounding rules, and customers will be able to pay in euros—at no extra charge. This agreement will help establish a climate of confidence during the changeover to the euro, which is in the interests of both consumers and retailers.

...According to the Commission's just released ***Sixth Survey of State Aid in the European Union,*** member states provided 83 billion ecu in state aid in the 1994-1996 period, of which 38.5% went to the manufacturing sector. While the new survey shows a 10% decline in manufacturing aid compared with the preceding 1992-1994 report, the Commission believes that aid levels are still far too high, distorting trade and undermining the advantages of the single market. Those member states spending the most on aid—Germany, France and Italy—are generally reducing it. Spain, the UK and Sweden have the lowest state aid levels in the EU.

...A Eurostat report on household consumption "knocks some Euro-stereotypes on the head". Southern European countries are, for example, considered large consumers of breads and cereals (particularly pasta), but in fact, Scandinavian countries top the list. On the other hand, Scandinavians do not eat the most fish (as might be assumed), but rather the Spanish and Portuguese do. And the Finns, not the Italians, drink the most coffee. Further, the study detected "no strict similarity in geographical groupings" with regard to consumption; in other words, there is no such thing as a "euro-consumer". In general, southern member states spend higher than average shares on food, drink and tobacco, but so do Ireland, Finland and Austria. Northern member states tend to spend more on gross rent, fuel and power, but this is largely because of climate.

...The Fordham Corporate Law Institute will hold its 25th annual conference on **"International Antitrust Law and Policy"** on October 22-23, 1998 at Fordham Law School in Manhattan (140 E. 62nd St.). The program offers a top-flight international roster of antitrust officials (including a number of high-level EU officials, headed by **Alexander Schaub,** Director-General, DGIV), legal practitioners and 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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