Single Market news

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EDITORIAL

by Alexander Schaub

This is a fascinating period in the development of the EU and the Internal Market in particular. The mandate of the current Commission is coming to an end which for the Internal Market portfolio means saying farewell to Frits Bolkestein. Commissioner Bolkestein has battled very hard and very effectively during his five year tenure to push the Internal Market Strategy. In a thought-provoking article on page 4 he gives us his views on what we have achieved, what more can be expected and, crucially, how we can achieve it.

The Lisbon Strategy is on everyone's lips at the moment and we are awaiting the mid-term progress report being drawn up by former Dutch Prime Minister Wim Kok. In this issue of Single Market News we have invited the current Dutch Presidency to give us their insight on the crucial issue of EU competitiveness and we are delighted to welcome the current chairman of the Competitiveness Council and Dutch Economics Minister Laurens Jan Brinkhorst who gives us his views on where our priorities should lie (see page 18).

Many commentators point to the importance of the Internal Market in achieving the Lisbon objectives and in our Special Feature (p.15) we take a look at the state of play, what our Internal Market programme has achieved and what more is come. Indeed a lot has been done already; major pieces of legislation are in the pipeline, but there are blockages in getting the pieces of the competitiveness jigsaw put into effect at the national level. Success here could be the key to kickstarting once again the economic engine of Europe - the Internal Market.

Corporate governance is an ongoing concern for the Commission and in recent weeks we have put forward Recommendations on the disclosure of boardroom pay (see p.8) and on the independence of non-executive directors (p.10), as well as launching a consultation on improving the rights of cross-border shareholders (p.9). The introduction from January 2005 of International Accounting Standards will make company accounts throughout the EU more reliable and easier to compare (p.6). Meanwhile new measures are being proposed to counter financial crime (p.11) and to prevent payment fraud (p.12).

I am sure that we in the Internal Market Directorate-general will be as busy over the next five years as we have been during Mr Bolkestein's mandate. That's the way we like it and we are looking forward immensely to the next few years.

Director General
Internal Market DG

A message

As Frits Bolkestein steps down as Commissioner responsible for Internal Market policy, Single Market News takes the opportunity to ask him to reflect on his period in office.

Résumé

Alors qu'il quitte son poste de Commissaire en charge de la politique du Marché intérieur, Frits Bolkestein revient sur son mandat en soulignant que les États membres doivent d'abord mettre en œuvre et appliquer correctement et dans les délais les dispositions relatives au Marché intérieur. "Comment pouvons-nous attendre des entreprises et des citoyens qu'ils se conforment aux lois si leurs propres gouvernements les enfreignent," s'interroge-t-il. Le Commissaire insiste sur les progrès accomplis en ce qui concerne le plan d'action pour les services financiers (PASF) et rappelle l'importance de la Directive sur les services qui permet de retirer de nouveaux avantages du Marché intérieur.

The Internal Market is one of Europe's finest achievements. Since 1993, our economy has grown by an extra 1.8% – yielding about 900 billion euro in additional prosperity and an extra 2.5 million jobs: all because our separate national markets have been merged into a large single market.

The logic behind the Internal Market is both simple and compelling. Access to one market enables our companies to exploit the economies of scale, so that they are stronger and better equipped to stand up to fierce global competition. Consumers benefit directly from more intensive competition and more cross-border investment, which leads to a wider choice of high quality products and to prices which are lower than they would have been if markets had been less integrated.

But we know from empirical research and from what we hear from companies that the benefits could be even greater. Too many companies still encounter technical barriers and red tape when they try to do business across borders or when they try to set up a branch office in another Member State.

The situation in the field of services remains particularly difficult. Many service activities have hardly been touched by Internal Market rules. The Commission's proposal for an Internal Market in services launched in January, 2004, is therefore possibly the most ambitious initiative that has been taken since the Internal Market was formally declared "up and running" in 1993.

"If EU productivity in only a handful of sectors (e.g. retail, wholesale, finance) had kept pace with that in the United States, it would be the US which would have a competitiveness problem, not the EU."

The Directive seeks to apply the Internal Market legal framework to about 50% of economic activity and 60% of employment. It covers a wide range of different services activities such as retail and distributive trades, construction, tourism and leisure related services, businesses such as employment agencies and management consultants and services provided by regulated professions. A recent study from the Netherlands Bureau for Economic Policy Analysis (see p.29) estimates that a well functioning internal market in services could increase trade as well as foreign direct investment between 15% and 35%.

Productivity gap

It is critical that this proposal be adopted without delay – and that it is not watered down.

for Europe!

The lack of a genuine Internal Market in the services sector is the main cause of our (growing) productivity gap with the US. Between 1996 and 2000, productivity in services grew by only 0.6% in the EU, against 1.5% in the US. If EU productivity in only a handful of sectors (e.g. retail, wholesale, finance) had kept pace with that in the United States, it would be the US which would have a competitiveness problem, not the EU.
Similarly, implementing the Financial Services Action Plan (FSAP) and introducing a better performing capital market will represent a huge boost for all sectors of the EU economy, bringing direct benefits estimated at about 130 billion euros over 10 years.

Frits Bolkestein with Commissioner-designate Charlie Mc Creevy at a recent conference.

The adoption of outstanding legislative proposals is a necessary, but not sufficient condition for making the Internal Market work better. Internal Market Directives also have to be implemented correctly and on time. And they must be applied in practice and effectively enforced. Too often, Member States fail to do this. In the "best" scenario, late or wrong implementation drives up companies' cost of doing business, making them less competitive – in the "worst" case, it prevents companies from operating across borders altogether.

> *"...applying the EU's public procurement rules correctly could reduce prices paid by public authorities for their supplies by as much as 34%."*

Citizens also suffer from late implementation and/or weak application of the rules. We know, for example, that applying the EU's public procurement rules correctly could reduce prices paid by public authorities for their supplies by as much as 34%. If public authorities could save some 10% on their procurement bills, which is certainly feasible, all Member States would comfortably meet the Stability and Growth Pact. This would not only be good news for Finance Ministers. Savings achieved could be returned to the tax payer or could be better used for investments in education, R&D, or pension provision.

The bottom line is that if we want a dynamic Internal Market which empowers our companies and serves the interests of our citizens we can have one. The choice is entirely that of our Member States. What I can say is that when I was the Minister of Trade in the Netherlands in the late eighties, no Minister ever came to Brussels trying to delay or derail important legislative proposals which were necessary to establish the Internal Market.

Nowadays, however, several Member States appear to find it perfectly normal to block critical measures such as the Community Patent, dilute a meaningful takeover bids Directive or run up a major deficit in implementing EU law. In addition, the principles of "mutual recognition" and "country of origin", which are an essential part of the foundation of the Internal Market, are increasingly called into question as if we are proposing to apply the rule of the jungle, when nothing is further from the truth.

If this is Member States' attitude, the Internal Market will not live up to its promise. And if we squander one of our greatest assets – the largest single market in the world – we might just as well drop our ambitions of becoming the most competitive economy in the world in accordance with the Lisbon Strategy.

I hope very much, as I pass the Internal Market baton on to my successor, that all Member States will "rediscover" what a great asset the Internal Market is to the EU - and will act accordingly to protect and further improve it.

See Special Feature on page 15 :
'What more can the Internal Market do?'

Resümee

Frits Bolkestein, der sein Amt als Binnenmarktkommissar aufgibt, betont rückblickend auf seine Amtszeit, dass die Mitgliedstaaten anfangen müssen, die gemeinsam vereinbarten Binnenmarktvorschriften korrekt und fristgerecht umzusetzen. Man könne von Unternehmen und Bürgern nicht verlangen, dass sie sich an Gesetze halten, wenn es ihre eigenen Regierungen nicht tun. Herr Bolkestein hebt die Fortschritte beim Aktionsplan für Finanzdienstleistungen hervor und macht deutlich, wie wichtig die Dienstleistungsrichtlinie für die weitere Entwicklung des Binnenmarktes ist.

The wider impa

International Accounting Standard

Résumé

Nouvelles normes comptables internationales

Au cours des prochains mois, des milliers d'entreprises européennes vont se préparer à passer des normes comptables nationales aux normes internationales. Un nouveau régime de normes comptables internationales (IAS/IFRS) entre en vigueur le 1er janvier 2005 et aura des répercussions immédiates sur les comptes consolidés de quelque 8.000 entreprises européennes cotées en bourse. La norme IAS/IFRS doit devenir la norme comptable européenne – et potentiellement mondiale – pour les comptes consolidés et aura un impact progressif sur les procédures comptables de la plupart des entreprises cotées.

In the coming months, thousands of European companies will prepare for the change in accounting principles from domestic standards to international ones. A new regime of International Accounting Standards (IAS/IFRS) comes into force on 1 January, 2005, and will immediately apply for the consolidated financial statements of some 8,000 European companies with stock market listings. IAS/IFRS is set to become the European accounting standard for consolidated financial statements - and potentially the global standard – and will have a progressive impact on the accounting procedures of most listed companies. The IAS Regulation, which was adopted by the Commission in July 2002, aims to help eliminate barriers to cross-border trading in securities by ensuring that company accounts throughout the EU are more reliable, transparent and more easily comparable.

Legitimation and Endorsement

To ensure appropriate political oversight, the IAS Regulation has established a new EU mechanism to assess IAS/IFRSs adopted by the IASB, and to give them legal endorsement for use within the EU. The Accounting Regulatory Committee (ARC) chaired by the Commission and composed of representatives of the Member States, decides whether to endorse IAS/IFRSs on the basis of Commission proposals.

In its task, the Commission is assisted by EFRAG, the European Financial Reporting Advisory Group, a body composed of accounting experts from the private sector in several Member States. EFRAG provides technical expertise concerning the use of IAS/IFRSs within the European legal environment and participates actively in the international accounting standard setting process.

The IAS 39 debate

IAS 39 "Financial instruments: Recognition and Measurement" was adopted by the IASB in March 2004, but was heavily criticised by financial regulators and industry. After much debate in the Accounting Regulatory Committee, the Commission considered that a limited carve out of certain provisions in the standard is the best way forward. Implementing IAS/IFRS without adopting any rules on the recognition and measurement of financial instruments before 1 January 2005 would be a major drawback. Only those provisions, which allow companies to apply the full fair value option and which prevent portfolio hedging of core deposits, are 'carved out' and excluded therefore from mandatory application.

As far as the EU is concerned, two issues still needed to be resolved:

- **the full fair value option** for all financial assets and liabilities. In the light of observations from the European Central Bank and prudential supervisors represented in the Basel Committee, the IASB issued an Exposure Draft in April 2004 in order to limit the scope of this option; discussions are now taking place between the parties involved in order to find a solution for this issue. The Commission hopes that a solution will emerge no later than December 2004.

- **the hedge accounting provisions**, which, according to many European banks, pose a problem for their risk management. According to these banks, the limitation of hedges to either cash flow hedges or fair value hedges and the strict requirements on the effectiveness of those hedges, make it impossible for them to hedge their core deposits on a portfolio basis. The IASB has now agreed to discuss a new hedging method, i.e. interest rate margin hedge. The Commission hopes that a solution will be found no later than September 2005.

But, is it legally possible under the IAS Regulation to carve out some provisions of a standard?

The IAS-Regulation provides that the Commission can make mandatory either the application of standards elaborated by the IASB or can decide not to apply such standards in accordance with Article 3 (1). The Commission has large discretion to take a decision in this respect with one exception: it is prevented from adopting a standard where the conditions under Article 3 (2) are not complied with. The system is therefore designed to conclude that adoption or non adoption of standards by the Commission within the framework of its wide discretion should take

A new regime of International Accounting Standards (IAS/IFRS) comes in to force on 1 January, 2005, and will immediately affect the consolidated financial statements of some 8,000 European companies.

ct of IAS/IFRS

s - IAS 39 adopted with exceptions

place as a whole. Nevertheless, a standard may in reality cover two or more accounting subjects which are entirely autonomous, distinct and separable. This is for instance the case where a standard has a very wide scope and effectively covers several accounting subjects which are brought together, but remain autonomous. If the Commission were to adopt such a norm "as a whole", the Commission would be unduly bound by the scope chosen by the IASB.

Can Member States require listed companies to respect IAS 39 in full?

■ In respect of the **full fair value,** Member States cannot allow or require companies to fair value liabilities beyond what is specifically allowed under Article 42a or under other provisions in the EU Accounting Directives, such as Article 31 of the Insurance Accounts Directive (Directive 1991/674/EEC), which allows insurance companies in the case of unit-linked contracts to value liabilities – where the policyholders bear the investment risk or where benefits are determined by a certain index – according to the value of the underlying units, assets, share index or reference value. Article 42a of the Fourth Company Law Directive explicitly restricts the type of liabilities which may be subject to valuation at fair value and does not allow a fair valuation of all liabilities.

■ The situation is different **for the provisions on hedge accounting**, because they are not the subject of specific provisions in the Accounting Directives. Member States may therefore require companies to fully comply with the hedge accounting provisions of IAS 39. However, in doing so, Member States should take account of the reasons of this carve out, i.e. to provide a solution particularly for those banks which are operating in a fixed interest environment. Member States' competence however ceases to apply once the Commission adopts a revised standard covering these issues as well, or rejects its adoption on the basis of the criteria in Article 3 (2) of the IAS Regulation.

The same logic applies to European Companies in respect of the voluntary application of the carve out provisions. The method applied should be laid down in the accounting principles of the individual company or group.

What about 'first time adopters of IAS/IFRS'

IFRS 1, which was adopted under Commission Regulation No 707/2004, requires in principle companies to comply with each IAS/IFRS at the reporting date for its first IFRS financial statements, but grants limited exemptions in specified areas. This standard is therefore of major importance for the great majority of listed European companies which do not yet report according to IAS/IFRS before 2005. Those companies which apply IAS 39 – as endorsed with the two carve outs under the present Regulation – can still make use of the exemptions under IFRS 1 because the reasoning is exactly the same: IFRS 1 should help "first time adopters" since the costs for complying with full IAS/IFRS will outweigh the benefits for the users of financial statements of such companies. As the two carve outs under IAS 39 are as limited as possible in substance and in time and the issues are likely to be resolved during 2005, it would be disproportionate in terms of costs for companies to take away the advantages granted under IFRS 1 whilst not offering any advantages to users of financial statements. The Commission regulation expressly confirms this.

Next steps

The objective of the Commission is to arrive as soon as possible – and by no later than around the end of 2005 – at a situation whereby an amended IAS 39 can be adopted in full by the Commission. Accordingly, the Commission will review the applicability of IAS 39 once the provisions relating to the fair value option and the hedge accounting have been amended by the IASB and at the latest by 31 December 2005.

The expert group reports are available at:
http://europa.eu.int/comm/internal_market/en/finances/actionplan/stocktaking.htm

* Financial instrument: A contract that gives rise to a financial asset of one entity and a financial liability or equity instrument of another entity.
A derivative is a financial instrument whose value changes in response to the change in an underlying variable such as an interest rate, commodity or security price, or index.

Resümee

Neue Internationale Rechnungslegung mit weitreichenden Konsequenzen

In den nächsten Monaten werden sich tausende europäische Unternehmen auf Änderungen ihrer Rechnungslegungsprinzipien vorbereiten – weg von rein nationalen Regelungen hin zu internationalen Prinzipien. Denn ab dem 1. Januar 2005 treten die neuen Regelungen der Internationalen Rechnungslegungsstandards (IAS/IFRS), die dann mit sofortiger Wirkung die Konzernabschlüsse von ungefähr 8.000 börsennotierten Unternehmen beeinflussen, in Kraft. Die IAS/IFRS werden als europäischer Maßstab für die Konzernabschlüsse fungieren – möglicherweise auch weltweit – und einen progressiven Einfluss auf die Rechnungslegung der meisten börsennotierten Unternehmen ausüben.

"IAS 39 - Both carve outs are considered to be limited in scope as well as in time."

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Recommendation on directors' pay

Résumé

Rémunération des administrateurs de sociétés

La Commission européenne a adopté une recommandation sur la rémunération des administrateurs des sociétés cotées. Elle invite les États membres à veiller à ce que ces sociétés publient des informations sur la politique de rémunération de leurs administrateurs et divulguent à leurs actionnaires combien gagne chaque administrateur et sous quelle forme. La Commission veut également inciter les actionnaires à exercer un contrôle adéquat sur ces questions et sur les formules de rémunération basées sur les actions.

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Listed companies in the EU should disclose their policy on directors' remuneration and tell shareholders how much individual directors are earning (and in what form) and ensure that shareholders are given adequate control over these matters and over share-based remuneration schemes. These are the main points of a non-binding Recommendation adopted by the Commission following a public consultation.

The Commission has been concerned that there can be a conflict of interest when executive directors take part in setting their own pay. In February 2004, it launched a consultation on 'Fostering an Appropriate regime for the Remuneration of Directors' and proposed a set of measures covering primarily disclosure of remuneration policy and of individual remuneration, as well as shareholder approval of share-based remuneration schemes.

> ***"Member States should ensure that companies get remuneration policy right and are seen to do so by investors."***

Proper disclosure to restore confidence

While the Commission has no wish to interfere in companies' internal affairs or individual decisions on remuneration, it believes that Member States should ensure that companies get remuneration policy right and are seen to do so by investors. Proper disclosure and giving shareholders effective control are essential to restore confidence in EU companies and securities markets.

Taking into account the feedback from the consultation, the Commission has drawn up a Recommendation and has invited Member States to adopt measures in four areas:

- **Remuneration Policy:** all listed companies should release a statement of their policy on directors' remuneration for the following year. It should include information on the breakdown of fixed and variable remuneration, on performance criteria and on the parameters for annual bonus schemes or non-cash benefits. It should also explain the company's contract policy. The company should not have to disclose commercially-sensitive information.
- **Shareholders meeting:** policy on remuneration for directors should be on the agenda of the shareholders' general meeting. To increase accountability, it should be submitted to a vote which may be either binding or advisory. An advisory vote would require neither directors' contractual entitlement or remuneration policy to be amended.
- **Disclosure of the remuneration of individual directors:** this should include detailed information about: the remuneration and/or emoluments of individual directors; the shares or rights to share options granted to them; their contribution to supplementary pension schemes; and any loans, advances or guarantees to each director.
- **Approval of share and share option schemes:** variable remuneration schemes under which directors are paid in shares, share options or any other right to acquire shares should be subject to prior approval of the Annual General Meeting of Shareholders. The approval relates to the system of remuneration and the rules applied to establish individual remuneration under the scheme. It would not relate to the individual remuneration of directors.

The Recommendation takes due account of efforts already made by several Member States and aims to foster these developments by identifying best practices to ensure greater convergence in the EU.

The Commission will closely monitor the application of the Recommendation to identify whether additional measures may be desirable in the medium term.

The full text of the Recommendation is at:
http://www.europa.eu.int/comm/internal_market/company/directors-remun/index_en.htm

Resümee

Vergütung von Direktoren

Die Kommission hat eine Empfehlung über die Vergütung von Direktoren verabschiedet. Darin wird empfohlen, dass die Mitgliedstaaten gewährleisten, dass börsennotierte Unternehmen ihre Politik zur Vergütung von Direktoren offen legen und den Aktionären mitteilen, wie viel die einzelnen Direktoren verdienen und in welcher Form sie bezahlt werden. Außerdem sollen die Mitgliedstaaten gewährleisten, dass die Aktionäre eine geeignete Kontrolle über diese Fragen und über Vergütungen auf Aktienbasis erhalten.

Consultation launched on shareholders' rights

Corporate governance

Résumé

La Commission consulte sur les droits des actionnaires

Dans un nouveau document de consultation, la Commission propose de faciliter aux actionnaires l'exercice de leurs droits dans les entreprises situées en dehors le leur pays d'origine. Les investissements à l'étranger rencontrent actuellement des obstacles sérieux dans de nombreux États membres de l'Union, notamment lorsque les actionnaires souhaitent exercer leur droit de vote.
De l'avis de la Commission, les investisseurs devraient pouvoir voter par voie électronique et par correspondance. La Commission a également fait savoir qu'elle souhaite interdire les dispositions de «share blocking» (blocage d'actions) qui empêchent la réalisation de transactions avant les réunions d'actionnaires et qui découragent les actionnaires d'exercer leur droit de vote. La consultation publique sur les propositions est ouverte jusqu'au 16 décembre.

The Commission has launched a public consultation on proposals to facilitate the exercise of basic shareholders' rights in company general meetings and to resolve problems in the cross-border exercise of such rights, particularly voting rights. One of the issues raised is whether investors should be allowed to vote electronically and by post.
The Commission is also seeking views as to whether 'share blocking' requirements that prohibit trading ahead of shareholder meetings should be prohibited. This process can discourage shareholders from exercising their voting rights.
The public consultation on the proposals is open until December 16th.

The main issues on which the Commission is seeking contributions are:

• The scope – listed companies only?
The Commission is considering whether the proposal should only apply to listed companies, while clearly giving the possibility to Member States to apply the same facilities to non-listed companies.

• Entitlement to control the voting right.
The entitlement to vote usually accrues to shareholders. There are, however, instances where investors in shares do not become shareholders of companies they invest into. This is particularly acute in cross-border investments, where shareholders invest in shares through chains of securities intermediaries. A solution, therefore, has to be designed for shareholders' rights and intermediaries' obligations, so as to determine the entitlement of the ultimate investor to control the voting right and decide how the votes attaching to his shares should be cast. The Commission is considering whether a system should be designed at EU level which would address this critical issue.

• Dissemination of information pre - General Meeting.
Investors can only make well-informed decisions if they are provided with all the relevant materials in a timely fashion. The Commission is therefore considering whether the forthcoming proposal should contain provisions regarding the disclosure of the General Meeting notice and accompanying documentation, and some standards for the dissemination of information.

• Admission to and participation in General Meetings.
It is increasingly recognised that share blocking requirements as a condition to participate in a vote at the GM are considered overly restrictive and reduce the ability of shareholders to participate in the vote effectively. The Commission is considering whether the forthcoming proposal should prevent such requirements and whether an alternative system such as a record date system should be set at EU level.

• Shareholders' rights in relation to the General Meeting.
Legal requirements or restrictions on the right to ask questions, to submit proposals for decision-making or to vote in absentia often prevent small shareholders from being active. The Commission considers that the exercise of such rights should be facilitated by the establishment of minimum standards at EU level and by allowing voting in absentia, in particular by electronic means.

• Dissemination of information post-General Meeting.
Shareholders also face some difficulties in receiving the results of the votes and the minutes of the discussions, including answers to questions asked by shareholders. Another difficulty lies in the absence of any confirmation that their votes have been executed as instructed. The Commission is considering whether an obligation should be put on companies to disseminate the results of the vote or to confirm, at shareholders' request, the execution of vote instructions.

• Additional issues
Interested parties are invited to identify any additional issues which in their view should be addressed by the forthcoming proposal for a Directive to enhance shareholders' rights, and may have been omitted in this consultation document.

The consultation paper is available at:
http://europa.eu.int/comm/internal_market//company/shareholders/index_en.htm

Resümee

Konsultation zu Aktionärsrechten

Die Kommission hat eine öffentliche Konsultation zu den Aktionärsrechten eingeleitet, in der es vor allem darum geht, wie die Ausübung grundlegender Aktionärsrechte in der Hauptversammlung erleichtert und Probleme bei der Ausübung dieser Rechte im Ausland, insbesondere von Stimmrechten, gelöst werden können. Die Antworten sollen in einen Richtlinienvorschlag eingehen, der Teil des Aktionsplans der Kommission zur Corporate Governance ist. Antwortfrist ist der 16. Dezember 2004.

info

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Commission recommends a stronger role for independent directors

Résumé

Les actionnaires, les salariés et le public pourraient être mieux protégés contre les conflits d'intérêt potentiels à travers un renforcement du rôle des directeurs indépendants dans les conseils d'administration, car ces directeurs sont bien placés pour vérifier les décisions prises dans le domaine de la gestion. À la suite des récents scandales intervenus dans le monde des entreprises, la Commission est d'avis qu'une telle mesure serait particulièrement apte à restaurer la confiance dans les marchés financiers. Les recommandations de la Commission ont été élaborées à l'issue d'une consultation publique et les États membres sont formellement invités à renforcer la présence et le rôle des directeurs indépendants dans les sociétés cotées en bourse.

Shareholders, employees and the public should be given greater protection against potential conflicts of interest, by strengthening the role of independent directors on company boards to check on management decisions. This is the Recommendation issued to Member States by the Commission following a public consultation undertaken in May 2004. Following recent corporate scandals the Commission believes that independent directors can make a key contribution to restoring confidence in financial markets.

Avoiding conflicts of interest

The Commission takes the view that within listed companies there are groups which sometimes have different interests – in particular management, major shareholders, minority shareholders.

Boards should consequently have a sufficient number of independent non-executive or supervisory directors who can identify and help resolve potential conflicts of interest.

The main principles in the Commission's Recommendation are:

- The administrative, managerial and supervisory bodies should include overall an appropriate balance of executive/managing and non-executive/supervisory directors so that no individual or small group can dominate decision-making.
- Boards should be organised so that a sufficient number of independent non-executive or supervisory directors play an effective role in defining and dealing with potential conflicts of interest. To this end, nomination, remuneration and audit committees should normally be created within the (supervisory) board. The Recommendation defines minimum standards for the creation, composition and role of those committees.
- A director is considered independent when free from any business, family or other relationship – with the company, its controlling shareholder or the management – which might jeopardise his or her judgement.
- The (supervisory) board should be composed of members who, taken together, have the diversity of knowledge, judgement and experience to properly complete their tasks.
- All directors should devote to their duties the necessary time and attention. When the appointment of a director is proposed, his or her other significant professional commitments should be disclosed.

Applying the principles

The Recommendation is non-binding on Member States. Since differing approaches to corporate governance are deeply rooted in national traditions, particular care has been taken to provide for flexibility in the ways Member States can apply the principles in the Recommendation. The Commission's proposals already take account of efforts already made in Member States and by identifying best practices, aim to foster convergence on these issues in the EU.

EU Corporate Governance Forum created to promote convergence

The European Corporate Governance Forum has been set up by the Commission to promote the convergence of national corporate governance codes and raise standards across the board.

The body, which will be chaired by the Commission, will examine and promote best practices in Member States and provide advice to the European institutions. Many Member States are currently reviewing their own corporate governance codes and the Forum, with its distinguished membership, will be well placed to help build consensus on key issues. The Forum comprises fifteen senior experts from various professional backgrounds (issuers, investors, academics, regulators, auditors, etc.) whose experience and knowledge of corporate governance are widely recognized at European level. Members of the Forum have been appointed for three years. The Forum will meet two to three times a year and will deliver a yearly report to the Commission.

Further information at:
http://www.europa.eu.int/comm/internal_market/company/ecgforum/index_en.htm

A sufficient number of independent directors can help provide balance and resolve potential conflicts of interest.

The full Recommendation is at:
http://www.europa.eu.int/comm/internal_market/company/independence/index_en.htm

Resümee

Die Kommission hat die Mitgliedstaaten mit einer Empfehlung förmlich aufgefordert, die Präsenz und Stellung unabhängiger nichtgeschäftsführender Direktoren im Verwaltungs-/Aufsichtsrat börsennotierter Unternehmen zu stärken. Der Schutz der Aktionäre, Beschäftigten und der Öffentlichkeit gegen potenzielle Interessenskonflikte durch eine unabhängige Überprüfung von Entscheidungen der Geschäftsleitung ist besonders wichtig, um das Vertrauen in die Finanzmärkte nach den jüngsten Skandalen wiederherzustellen.

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New strategy launched to counter financial and corporate malpractice

Résumé

Nouvelle stratégie de lutte contre des pratiques irrégulières des sociétés

La Commission a lancé, en septembre, une vaste stratégie de prévention des irrégularités économiques et financières. Cette stratégie met l'accent sur des actions coordonnées dans les domaines des services financiers, du droit des entreprises, de la comptabilité, de la fiscalité, de la supervision et de la mise en œuvre, l'objectif étant de réduire le risque d'irrégularités financières.

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The creation of the Single Market and the removal of cross-border barriers has boosted legitimate business in the Union. But recent scandals have shown that there are still some crooks to flush out. Whilst significant European legislation has already been adopted to protect the financial system from being misused for money laundering, further action is necessary and in September, the Commission launched a broad strategy to prevent financial and corporate malpractice. Its strategy concentrates on co-ordinated action in the areas of financial services, company law, accounting, tax, supervision and enforcement – all with a view to reducing the risk of financial malpractice.

Effective EU framework

Many of the measures needed are already in the legislative pipeline and in its September Communication 'Preventing and combating financial and corporate malpractice', the Commission calls for timely and effective implementation of the Financial Services Action Plan and the Action Plan for Company Law and Corporate Governance.

These measures, it believes, provide an effective EU framework for dealing with most of the financial issues raised by the recent scandals. The Commission, however, also suggests new policy initiatives in tax and law enforcement with particular focus on: enhanced transparency, improved traceability and better co-ordinated enforcement.

Internal coordination

The Communication has been developed jointly by different policy areas within the Commission, namely Internal Market, Customs & Tax and Justice (JAI). Scandals such as Parmalat and Enron cut across many sectors of regulation (e.g. financial services, company law, accounting, auditing, tax, supervision and enforcement).

Any policy response needs to be integrated. The aim of this Communication is to provide a holistic approach to reducing the risk of financial and corporate malpractice, covering also taxation and law enforcement.

The Communication proposes a broad strategy, covering financial services, justice and home affairs and tax policy.

The objective is to reinforce the four lines of defence against malpractice:

- The first line is internal control within a company, in particular by the board members.
- The second line of defence is primarily the auditors. Auditors must be independent and certify that a company's accounts give a true and fair view of the financial situation of a company. Other advisors – such as banks, rating agencies etc. – should not assist in, for example, bond issuance if they are aware that a company cannot meet its obligations.
- The third line of defence is supervision and oversight. Recent scandals show scope for improvement, including better cooperation between supervisors across sectors and borders and ensuring supervisors have sufficient powers.
- The fourth line of defence is law enforcement.

The Communication also calls for more transparency about special purpose vehicles and offshore activities. The Commission's forthcoming proposal to amend the Accountancy Directives will help provide that. The Communication also recommends undertaking new studies on beneficial ownership and on transparency in the bond market. Policy work is already underway on Credit Rating Agencies which should be completed in early 2005.

In the taxation area new policy initiatives are called for to improve transparency of tax systems so as to better deal with complex corporate structures and to promote principles of transparency and the exchange of information on as wide a basis as possible.

Issues that will be examined include possible improvements to the Mutual Assistance Directive (77/799/EEC), developing common definitions of tax fraud and avoidance, exchanges of experience and best practice between tax administrations, the use of new technology to improve information exchange, and, in the longer term, examining with Member States the use of a common company identification number for

Further information at:
http://www.europa.eu.int/comm/internal_market/en/company/financialcrime/index.htm

Resümee

Neue Strategie zur Verhinderung missbräuchlicher Praktiken im Finanzbereich

Die Europäische Kommission hat eine Strategie zur Koordinierung von Initiativen in den Bereichen Finanzdienstleistungen, Gesellschaftsrecht, Rechnungslegung, Steuern, Beaufsichtigung und Durchsetzung eingeleitet, um die Gefahr missbräuchlicher Praktiken im Finanzbereich einzudämmen.

A new EU Action Plan to prevent payment fraud

Résumé

La Commission a publié un nouveau plan d'action pour combattre la fraude sur les paiements durant la période 2004-2007. Ce plan vise à renforcer la confiance dans les moyens de paiement autres que les espèces par exemple les paiements par carte de crédit ou par virement bancaire et à stimuler ce faisant les achats transfrontaliers et le commerce électronique. Le nouveau plan d'action pour la prévention de la fraude («PAPF»), qui s'appuie sur le plan précédent (2001-2003), viendra compléter la directive sur les services de paiement que la Commission compte présenter en 2005 pour jeter les bases d'un espace de paiement unique dont l'objectif ultime étant de rendre les paiements transfrontaliers aussi faciles, rapides et sûrs que les paiements nationaux.

The Commission intends to step up its action against payment fraud through a new EU Fraud Prevention Action Plan (FPAP) covering the period 2004-2007. The Action Plan has been drafted in consultation with the EU Fraud Prevention Expert Group and other relevant groups and will build on the work of the first Action Plan (2001-2003). It aims to underpin the creation of a Single Payment Area in the EU and should further strengthen existing initiatives to prevent fraud and help to maintain and increase confidence in payments.

Early success

It is widely recognised that the Commission's involvement in fraud prevention through the first Action Plan has been highly beneficial. The key principle of the FPAP is cooperation among all stakeholders. Fraud prevention is principally the responsibility of the payment systems industry and the most important improvements are enhancements in the security of payments (such as the introduction of chip cards). However, all stakeholders also play a role in fraud prevention and should be involved.

In the implementation of the first FPAP, the Commission acted as a catalyst. It promoted better information exchange, raised awareness and strengthened cross-border cooperation. In particular, it established the EU Fraud Prevention Expert Group, the exchange of best practices and and the provision of educational material. As a result, co-operation to prevent fraud has intensified, notably at cross-border level.

In the period covered by the FPAP, the combined initiatives of the payment industry, national authorities and other parties led to a reduction of the annual growth of fraud in the EU. The FPAP also helped draw increased attention to the issue of payment fraud.

Evolving fraud techniques

The initiatives of the first FPAP must be continued in order to keep up momentum. In the EU payment fraud exceeds one billion euros annually. As always, fraud is evolving. Criminal actions such as the use of counterfeit cards in cash machines, on-line fraud, data hacking and identity theft are growing at a worrying pace. Priority areas will continue to be the security of payment products and systems and increased co-operation between public authorities and the private sector.

The impossibility of exchanging data on high-risk and fraudulent merchants within the EU remains a significant issue. Clarification of existing EU data protection legislation is necessary to allow an effective and wider exchange of information, notably at cross-border level.

The integration of new Member States in the EU fraud prevention framework and stronger relations with public authorities in third countries will continue to be a priority. Emerging threats will also be addressed.

The EU Fraud Prevention Expert Group itself should be strengthened. The membership of the FPEG will be streamlined by identifying fraud prevention experts in each sector and/ or country as contact points and advocates for its work.

Using technology

The payment industry itself is expected to provide the highest economically viable level of security for electronic payments.

The changeover to chip cards in the EU within a reasonable timeframe would increase security, help reduce fraud and boost user confidence. It is a priority which requires concerted efforts by all stakeholders. The Commission and national authorities should be prepared to assist the changeover to chip cards in the EU, if necessary.

The new Action Plan and a report evaluating the earlier one are available at:
http://www.europa.eu.int/comm/internal_market/payments/fraud/index_en.htm

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Resümee

Die Europäische Kommission hat einen neuen Aktionsplan zur präventiven Betrugsbekämpfung vorgestellt, mit dessen Hilfe bis zum Jahr 2007 Betrug im Zahlungsverkehr bekämpft werden soll. Ziel dieses Plans ist es, das Vertrauen in den bargeldlosen Zahlungsverkehr, z.B. in Kreditkartenzahlungen und Banküberweisungen, zu stärken und dadurch zu Käufen im Ausland zu ermuntern und den elektronischen Geschäftsverkehr anzukurbeln. Der neue Aktionsplan schreibt die Maßnahmen seines Vorgängers (2001-2003) fort und wird mit der Richtlinie über Zahlungsverkehrsdienstleistungen, die die Kommission 2005 vorschlagen will, zur Schaffung eines gemeinsamen Zahlungsverkehrsraums in der EU beitragen (siehe IP/03/1641, MEMO/03/248). Am Ende steht das Ziel, dass grenzübergreifende Zahlungen ebenso bequem, schnell und sicher sind wie Inlandszahlungen.

The future of financial services: What do the experts say?

Résumé

L'avenir des services financiers

En juin, une conférence de haut niveau organisée à l'initiative du Commissaire Bolkestein a permis de réunir plus de 250 hauts fonctionnaires, chefs d'entreprises et associations de consommateurs dans le cadre du processus de consultation qu'a lancé la Commission pour évaluer le niveau d'intégration des marchés financiers européens.
Les orateurs et les participants ont largement confirmé les messages des groupes d'experts, considérant le PASF comme un succès et reconnaissant qu'il a permis de jeter les bases juridiques de l'intégration des marchés financiers européens.

In June, a high-level conference, convened by Commissioner Bolkestein, brought together over 250 senior officials, leading business personalities and consumer representatives as part of the consultation process the Commission is undertaking to assess the state of integration of European financial markets. Speakers and participants widely confirmed the messages from the expert groups (see SMN 34), and see the FSAP as a success, recognising that it has laid the legal foundations for an effectively integrated EU financial market.

Crucial input

The results of this monitoring and consultation process are providing crucial input for the Commission's financial markets' strategy. Reports from four expert groups in the banking, insurance, securities and asset management sectors were published in May and were the springboard for wider public consultation which has been open until September this year.

Absence of retail integration

At the conference, participants were broadly in agreement with the expert groups and intensive discussion centred primarily on the methods to be used to achieve an integrated financial market, the pace of change and the selection of priority areas for action.

A recurrent theme throughout the conference was the absence of integration in European retail financial markets. While acknowledging structural barriers, it was argued that it would be a mistake to shut the door on retail financial integration. European consumers and citizens would judge the success and relevance of financial integration in terms of whether it gave them better access to better and more competitive retail products.

Regulatory pause

Speakers and participants called for a 'regulatory pause' to assimilate and properly implement the legislation already underway. More systematic consideration, they indicated, should be given to non-legislative remedies to single market failures. However, at the same time, they pointed to areas where further targeted legislative action may be required including capital adequacy, re-insurance, insurance solvency and common accounting rules. Furthermore, targeted legislative action in response to specific market failures or regulatory gaps was considered necessary in areas such as asset management and clearing and settlement. The recent intensification of regulatory dialogue between EU and US authorities was broadly applauded.

Consistent implementation

Pleas were issued to the incoming Commission and to Member States to make the consistent implementation of FSAP rules their leading priority. A number of participants highlighted the crucial need to improve supervisory cooperation – driven by a real commitment to enhancing the common regulatory framework and market access. Some argued that the lead supervisor concept should be strengthened. Others argued that the objective must be to find more pragmatic solutions in a relatively short timeframe, focusing on enhancing practical application of concepts which are already provided for in European financial legislation.

Commissioner Bolkestein concluded that the conference had helped to put the FSAP experience in context and the single market vision into sharper focus.

The conference was an important milestone in framing the core policy questions. However, it would be up to the new Commission to present its new financial services strategy after the results of the public consultation have been analysed, which will most probably be in early 2005.

Further information at:
http://europa.eu.int/comm/internal_market/en/finances/actionplan/stocktaking.htm

Resümee

Die Zukunft der Finanzdienstleistungen

Im Juni hat Kommissar Bolkestein eine hochrangige Konferenz einberufen an der 250 hochrangige Beamte, führende Geschäftsleute und Konsumentenvertreter teilgenommen haben.
Die Konferenz ist Teil der Konsultation, die von der Kommission durchgeführt wird, um den Integrationsfortschritt der europäischen Finanzmärkte beurteilen zu können.
Die Redner und Teilnehmer der Konferenz stimmten den Ergebnissen der Experten-Gruppen weitgehend zu, welche den FSAP als erfolgreich bewertet haben, da er die rechtlichen Grundlagen für einen tatsächlich integrierten europäischen Finanzmarkt geschaffen hat.

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Proposition de nouvelles exigences de fonds propres pour les banques et les entreprises d'investissement

Summary

In July the Commission adopted a Directive proposal for a new capital requirements framework for banks and investment firms suitable for the 21st century.
The proposal will ensure the coherent application throughout the EU of the new international capital requirements framework recently agreed by the Basel Committee on Banking Supervision ('Basel II'). By making sure that financial institutions' capital is more closely aligned with the risks they face, the new framework will enhance consumer protection, reinforce financial stability and promote the competitiveness of European industry.

En juillet, la Commission a adopté une proposition de Directive fixant de nouvelles exigences de fonds propres pour les banques et les entreprises d'investissement à l'aube du 21e siècle. Cette proposition assurera l'application cohérente dans toute l'UE du nouveau cadre international concernant les exigences de fonds propres récemment adopté par le comité de Bâle sur le contrôle bancaire («Bâle II»). En garantissant que les fonds propres des institutions financières sont plus étroitement alignés sur les risques auxquels elles sont exposées, le nouveau cadre améliorera la protection des consommateurs, renforcera la stabilité financière et accroîtra la compétitivité de l'industrie européenne.

Trois approches différentes

La proposition fixe de nouvelles règles concernant les exigences de fonds propres – c'est-à-dire le montant de ressources financières propres que les banques et les entreprises d'investissement doivent détenir pour couvrir leurs risques et protéger leurs déposants. Elle reflète la structure flexible et les principales composantes de l'accord Bâle II, mais elle a été adaptée aux caractéristiques spécifiques du marché de l'UE.

En lieu et place de l'approche standard existant actuellement, le nouveau cadre proposé consiste en trois approches différentes qui permettent aux institutions financières de choisir celle qui leur convient le mieux: une approche simple, une approche intermédiaire et une approche avancée. Les approches simple et intermédiaire seront disponibles pour fin 2006 (mais les banques pourront toujours choisir d'appliquer les règles actuelles jusqu'à fin 2007) et l'approche la plus avancée à partir de fin 2007.
Cinq années de travail et une consultation sans précédent des parties intéressées de l'UE ont été nécessaires pour élaborer ce nouveau cadre qui rendra les institutions financières plus sûres et plus saines tout en tenant compte des situations différentes des institutions et de leur clientèle.

Exigences de fonds propres plus faibles dans certains cas

Le nouveau cadre fixe des exigences de fonds propres plus faibles pour le financement des petites et moyennes entreprises et prévoit un traitement préférentiel pour certains types de capital-risque.
Il reconnaît également les risques plus faibles associés aux prêts de détail aux particuliers – tant pour des utilisations générales que pour l'acquisition d'un logement – en instaurant des exigences de fonds propres plus faibles pour ces types de prêts.
Afin d'éliminer certains obstacles au marché unique résultant de la pluralité d'autorités de surveillance nationales compétentes, celles-ci seront tenues de collaborer plus étroitement entre elles, notamment pour autoriser l'utilisation par les institutions financières des méthodes les plus sophistiquées.
Le comité européen des contrôleurs bancaires qui a été institué récemment aura un rôle important à jouer pour assurer la cohérence des approches des diverses autorités de surveillance.

Un rapport publié récemment par Price Waterhouse Coopers à la demande du Conseil européen conclut que le nouveau cadre constituera un progrès pour les structures prudentielles de l'UE et pour la grande majorité des PME et qu'il pourrait donner un petit coup de pouce à l'économie européenne.

Resümee

Im Juli nahm die Kommission einen Vorschlag für neue Eigenkapitalrahmenanforderungen für Banken und Wertpapierfirmen an, der den Bedürfnissen des 21. Jahrhunderts Rechnung trägt.
Mit dem Vorschlag wird eine kohärente EU-weite Anwendung des neuen internationalen Eigenkapitalrahmens gewährleistet, auf den sich der Baseler Ausschuss für Bankenaufsicht unlängst geeinigt hat („Basel II").
Indem sichergestellt wird, dass das Eigenkapital der Finanzinstitute stärker den Risiken angepasst wird, denen es ausgesetzt ist, wird der neue Eigenkapitalrahmen den Verbraucherschutz stärken, die Finanzstabilität erhöhen und die Wettbewerbsfähigkeit der europäischen Industrie ausbauen.

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Le texte intégral de la proposition de Directive peut être consulté à l'adresse suivante:
http://www.europa.eu.int/comm/internal_market/regcapital/index_fr.htm stocktaking.htm

Improving Competitiveness – Lisbon Strategy 4 years on

What more can the Internal Market do?

At the Lisbon European Council in 2000, Heads of State and Government sounded alarm bells about the need to revive and reform the EU economy and to reshape it for the future. The Council set out a ten-year programme of measures and reforms – the Lisbon Strategy – to make the EU the world's most dynamic and competitive economy. Many of the measures focused on developing and strengthening the EU's Internal Market – the engine house of a stronger EU economy. But at the Spring European Council earlier this year doubts were raised about the speed of progress.
With former Dutch Prime Minister Wim Kok currently undertaking a mid-term review, Single Market News takes a look at what the Internal Market programme has done so far to boost EU competitiveness and what more can be done in the future to achieve the ambitious Lisbon objectives.

How to kick start once again the engine of Europe – the Internal Market?

Wheels in motion – the Internal Market ten-point plan

In May 2003, the Commission published its Internal Market Strategy 2003-2006, a ten-point plan to make the Internal Market work better and build on the 2.5 million jobs and € 877 billion of wealth already created since Europe's frontiers were dismantled at the end of 1992. The Strategy is targeted at the challenges of adjusting to EU Enlargement and an ageing population, and keeping the Lisbon Strategy on course.
Particular priorities in the IM Strategy include improving the implementation and enforcement of Internal Market law, making the free movement of services a practical reality, removing remaining obstacles to trade in goods and building genuinely European public procurement markets.
While identifying new areas for EU action, the IM Strategy focuses attention on action at national level to put into effect existing agreed measures. Work to be done by national capitals is becoming increasingly important as the EU expands. In a Union of 25, the onus is increasingly on Member States to make the Internal Market work on a day-to-day basis. The Strategy calls on them to implement Internal Market laws promptly and correctly, inform citizens and businesses of their rights, solve problems when they arise and refrain from adopting national laws which conflict with Internal Market principles.

Progress with key legislation

Economic competitiveness is essentially about creating the framework for EU companies, whether large or small, to be able to set themselves up, trade, grow, create jobs and prosper at the greatest speed and with the minimum of obstructions and costs along the way.
Many of the key Internal Market legislative initiatives are designed to facilitate this and are agreed and on their way to the statute book. The measures contained in the Financial Services Action Plan, for example, are nearly complete. Europe's financial markets are being progressively integrated, raising the prospect of greater competitiveness for financial operators themselves as well as better and cheaper access to finance – particularly investment funds – for the business community as well as consumers.

Indeed, the fragmentation of financial markets has been one of the key disadvantages facing EU businesses, particularly when compared to the United States. National markets have been, and to some extent still are, regulated by a patchwork of different rules governing investment and insider trading, investor protection, information disclosure, take-overs, pension provision and supervision and many other areas. The Financial Services Action Plan is introducing the basis for a single set of EU rules that will set free respectable financial services companies to give customers

everywhere in Europe wider choice and better value, while reining back the less scrupulous and the incompetent.
For consumers as well, a real Europe-wide market in financial services will reduce the costs of borrowing and provide a wider choice of investment products — such as savings plans and pensions — which they will be able to buy from anywhere in Europe they choose.

A study carried out for the European Financial Services Round Table found that a fully integrated single market for financial services could add between 0.5 and 0.7 percentage points a year to growth in the EU countries. The two German institutes responsible for the study concluded that, in an integrated market, house owners could have saved between € 800 and € 2 500 a year through lower interest payments on a € 100 000 mortgage between 1995 and 1999.

Improving the business environment

The Commission's action plans on company law and on statutory audit will help ensure that businesses produce reliable accounts which give investors the confidence to provide the funds which Europe's industry needs to grow. The Commission has also proposed Directives to facilitate cross border mergers and transfers of company headquarters as well as Recommendations on the role of independent directors (see page 10) and on improving the information shareholders and the public get about directors' pay (see pages 8 & 9). The Commission is shortly also to propose amendments to the Accounting Directives to establish collective board responsibility and make sure adequate information on transactions with related companies and individuals, on special purpose vehicles and on corporate governance is included in company accounts.

Recommendation for Best Practice in implementing EU Directives

On the basis of discussions in the Internal Market Advisory Committee, a number of 'best practices' have emerged.
These include the appointment of a senior national transposition co-ordinator, who 'owns' the problem. One Ministry or government body should be responsible for monitoring transposition as a whole.
Other 'best practices' include the establishment of advance planning schedules, systematic measurement of ministries' performance as well as regular reporting of results to national parliaments.
Guidelines should be issued setting out how transposition should be carried out, thereby ensuring a common approach throughout the administration.
A central national database should be maintained on transposition and be accessible to all ministries.
Timely reminders should be sent to relevant ministries well before a transposition deadline is reached.
Drafting of national legislation should start as soon as a Directive is published in the EU's Official Journal.

EU public procurement Directives have over the past ten years greatly increased cross-border competition in procurement markets and reduced by around 30% the prices paid by public authorities for goods and services. In a market worth € 1,500 billion – some 16% of GDP – this is an enormous saving and the latest legislative package promises even further savings to the public purse.

The Internal Market Strategy proposes a more structured approach to mutual recognition, whereby conformity with national laws in a product's Member State of origin allows it to be marketed everywhere else in the EU. It outlines a new Regulation which the Commission will propose to introduce a range of new disciplines (e.g. mandatory notification in cases where mutual recognition is refused, procedures to allow companies to appeal).

Enforcing the rules

So a lot is being done to improve the legal framework underpinning the Internal Market and to ensure that it provides the potential for real benefits for citizens and businesses. But that potential cannot be realised unless EU laws are applied properly and made to work in practice. Yet the latest Internal Market Scoreboard (July 2004) shows little or no improvement in national delays in implementing EU law or in the number of infringements.
The latest figures show that the transposition deficit – the average percentage per Member State of Internal Market Directives in force that have not been written into national law – was 2.2% for the original EU-15 Member States, barely changed from January 2004. The figures also show that 134 – or 9% – of Internal Market Directives had not been transposed on time into national law in one or more Member State.
France had the worst record of the EU-15, followed by Greece, Germany, Italy and the Benelux countries. Only Denmark, Spain, the UK, Ireland and Finland met the 1.5% interim target set by the European Council.
At a time when Member States need to redouble their efforts, many of them appear to have stalled. Indeed there are almost as many infringement cases against Member States as a year ago, despite the Internal Market Strategy 2003-2006 having called for a reduction of 50% by 2006.

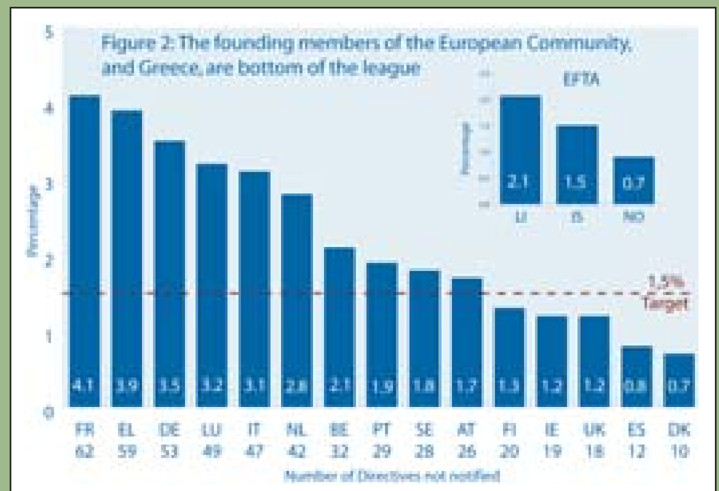
What can be done?

Though the EU can have recourse to legal action and infringement procedures, this is a slow and costly route and the IM Strategy favours strengthening enforcement through closer co-operation between the Commission and Member States, so that quick and effective solutions can be obtained. For example, many individuals and businesses who have suffered from the misapplication of EU law by national authorities have obtained speedy redress free of charge through the Commission's SOLVIT network, which brings together contact points in each Member State who work together to solve problems.
Ensuring that delays in transposing Internal Market Directives into national law do not go on indefinitely is also im-

portant. This is why EU Heads of State and Government have set a 'zero tolerance' target for Directives whose transposition is over two years late.

Part of the problem lies in administrative procedures in national capitals. With some being more effective than others the Commission has drawn up a 'best practice' Recommendation based on the most effective techniques employed to facilitate the correct and timely transposition of Internal Market Directives into national law (see box).

Speaking at the Competitiveness Council meeting in September, Internal Market Commissioner Frits Bolkestein appealed to Member States to implement the best practices outlined in the Commission's Recommendation. He pointed out to Ministers that there is no substitute for strong commitment at high political level in Member States for prompt and proper implementation.



The transposition deficit for Internal Market Directives is 2.2%. This means that as many as 134, or 9% of, Internal Market Directives have not been transposed into national law in all the EU-15 Member States, despite the deadline for transposition having passed.

A real Internal Market in Services: a crucial next step for Europe's competitiveness

The Internal Market is at a crossroads. A great deal has been achieved. But if the EU is to build on those successes and reach the competitiveness goals set out in the Lisbon Strategy, the further consolidation and development of the Internal Market is a necessity. Perhaps the most crucial measure in this regard is the Directive on Services proposed by the Commission. The sooner this is adopted by the European Parliament and the Council, the quicker the huge economic potential of the service sector can be unleashed.

Services represent more than 50% of EU GDP and employment. They are the backbone of the European economy on which the performance of our manufacturing sectors also rely. Yet until now, as far as services are concerned European businesses and consumers have been losing out because of the huge gap between the vision of an integrated European economy, which in principle has existed since the Internal Market was launched on 1 January 1993, and the day to day reality they experience.

Following a thorough legal and economic analysis of the issues and of persistent Internal Market barriers and an open consultation with stakeholders, a draft Directive – the Services Directive – was adopted in January 2004.
This is not just any piece of legislation. In the Commission's view it could provide the biggest boost to trade within the EU since that 1993 "big bang". It is an ambitious but well-balanced proposal, which aims to eliminate obstacles to cross-border service trade and investment without sacrificing the need to strive for growth, both in terms of employment and output. It is intended to improve the competitiveness not just of service enterprises, but of European industry as a whole.

The aim is to establish a modern European regulatory framework, remove discriminatory barriers and cut unnecessary and duplicative red tape, without sacrificing consumer protection and employees' rights. The proposed Directive also aims to make Member State administrations co-operate much more systematically.

Sticking points

Several strategic measures proposed by the Commission to increase competitiveness have not yet been implemented because of political disagreement. One such initiative is the proposed Community patent, which would make it much easier and cheaper for companies to protect their inventions throughout Europe, with a single application process. New rules which clarify that patents can be obtained for computer-implemented inventions but not for computer programmes themselves, are also still lacking the green light from the European Parliament and the Council of Ministers. Also pending is a Directive to simplify the recognition of professional qualifications in the Union, and agreement on the definition of a consolidated common base for taxing company profits. These delays have inevitable consequences for the sectors affected.

The challenge ahead

The Internal Market has served Europe well since 1993. It has made European companies much stronger by exposing them to more competition and by freeing up markets and creating new opportunities. There is a lot more in the pipeline and finding appropriate solutions to the bottlenecks to further reforms in the Internal Market will put Europe in a much better position to face up to the ever stiffer competition from the world outside.

http://www.europa.eu.int/comm/internal_market/en/update/strategy/index.htm

Presidency Perspective:

Giving new impetus to the Lisbon strategy

Dutch Economics Minister and Chairman of the EU's Competitiveness Council Laurens Jan Brinkhorst believes that the Internal Market programme is a key component of the Lisbon Strategy for making Europe the most competitive knowledge economy in the world in 2010. In this article for SMN he highlights the importance of better regulation, better implementation and the Services Directive as primary action areas for achieving the Lisbon objectives.

Laurens Jan Brinkhorst, the Netherlands'Minister for Economic Affairs and Chairman of the EU's Competitiveness Council: "three priorities for the Internal Market".

The Internal Market Strategy is, I believe, an indispensable component of the Lisbon Strategy to make Europe the most competitive knowledge economy in the world in 2010.We are now halfway through the implementation period of the Lisbon Strategy and a Mid Term Review is being prepared. The report of the high level working group chaired by the former Dutch Prime Minister Mr Wim Kok, which is forthcoming in early November, is expected to provide important input for our discussion on how to give renewed stimulus to the Lisbon Strategy and to improve the delivery of its objectives.

I expect that the recommendations of Mr Kok's working group on the Lisbon Strategy as a whole could also make a valuable contribution when looking for ways to increase the effectiveness of the Internal Market Strategy. I am for instance looking forward to the recommendations of Mr. Kok's working group on the topic of prioritising objectives and communicating the benefits of the Lisbon Strategy to European citizens and enterprises.

With respect to prioritisation, I am of the opinion that the focus of the Lisbon Strategy should be on reforms that are conducive to economic growth and employment.As for the Internal Market, the Dutch Presidency has identified three priority areas which deserve particular attention: better regulation, better implementation, and the removal of barriers to the free movement of services.

Three priorities

Better regulation: Regulation should contribute towards a business-friendly environment. It is a major improvement that since 2003, new Commission proposals are subject to impact assessments, which review whether they strike the right balance between competitiveness principles and other goals.

We also need to look at existing regulation which in some cases is overly complex and demanding in terms of administrative requirements. Therefore, together with the Irish Presidency, I initiated a process to determine proposals of EU legislation which could be integrated in the Commission's simplification procedure.

Better implementation: A striking 9% of Internal Market Directives are not transposed in a timely way into national law by all Member States. I think an improvement in the quality of regulation will help increase the implementation rate.

In addition to the complexity of legislation, time-consuming legislative and administrative processes also result in implementation backlogs. I am very pleased that during the most recent meeting in September, the Competitiveness Council recognised the need for intensified Member State efforts to increase their transposition rates.

Services Directive: The new Services Directive is a priority for the Dutch Presidency. Measures still need to be taken to remove the substantial and numerous impediments hampering free movement of services. Considering the importance of the service sector in the EU, I expect the level of economic benefits to be generated by freeing up this sector to be as important as the gains reached by the creation of the Internal Market for goods in the beginning of the nineties. This is why we need vigorous and speedy action on this topic.

Services Directive - benefits

The Dutch Presidency has commissioned an economic impact assessment study by the Netherlands Bureau for Economic Policy Analysis (CBP) concerning the Services Directive proposal (see page 28).

The study indicates that, if the proposals were implemented in full:

- intra-EU bilateral trade in commercial services could increase by 15-35%,
- total trade within the EU could increase by 1-3%
- foreign direct investment (FDI) in services could increase by 15-35%.

Info: http://www.cpb.nl/eng/news/2004_39.html

Améliorer la compétitivité – la stratégie de Lisbonne au quatre ans plus tard

Que faire de plus dans le domaine du Marché intérieur

Lors du Conseil européen de Lisbonne qui s'est tenu en 2000, Les chefs d'État ou de gouvernement ont tiré la sonnette d'alarme en ce qui concerne la nécessité de raviver et de réformer l'économie de l'UE et de la remodeler pour l'avenir. Le Conseil a mis au point un programme de dix ans – la stratégie de Lisbonne – reprenant des mesures et des réformes destinées à faire de l'UE l'économie la plus dynamique et la plus compétitive au monde. Une grande partie de ces mesures mettent l'accent sur le développement et le renforcement du Marché intérieur de l'UE, qui constitue le moteur de l'économie communautaire. Lors du Conseil européen qui s'est tenu ce printemps, des doutes ont cependant été émis sur le rythme auquel ce projet avance.

Alors que l'ancien premier ministre néerlandais, M. Wim Kok, effectue actuellement un examen à mi-parcours de la stratégie, Single Market News se penche sur les résultats obtenus jusqu'à présent par le programme «Marché intérieur» en ce qui concerne le renforcement de la compétitivité de l'UE et les autres mesures qui pourraient être prises à l'avenir pour atteindre les objectifs ambitieux de Lisbonne.

Comment relancer le Marché intérieur, moteur de l'Europe?

Une stratégie en mouvement – le plan en dix points pour le Marché intérieur

En mai 2003, la Commission a publié sa stratégie du Marché intérieur 2003-2006, un plan en dix points visant à améliorer le fonctionnement du Marché intérieur et à se fonder sur les 2,5 millions d'emplois et les 877 milliards d'euros de richesses qui avaient été créés depuis le démantèlement des frontières de l'Europe en 1992. La stratégie est destinée à relever les défis liés à l'élargissement de l'UE et au vieillissement de la population et à maintenir le cap de la stratégie de Lisbonne.

Au nombre des priorités de la stratégie du Marché intérieur (MI) figurent l'application et l'amélioration du droit du Marché intérieur, la concrétisation de la libre circulation des services, la levée des obstacles subsistants dans le domaine des échanges de biens et la création de vrais marchés publics européens.

Tout en identifiant de nouveaux domaines d'action pour l'UE, la stratégie du MI insiste sur des mesures de niveau national afin de mettre en œuvre les mesures convenues. Les travaux incombant aux capitales nationales gagnent en importance à mesure que l'UE s'élargit. Dans une Union à 25, il appartient de plus en plus aux États membres de faire fonctionner le Marché intérieur au quotidien. La stratégie leur commande de faire appliquer promptement et correctement les dispositions relatives au Marché intérieur, d'informer les citoyens et les entreprises de leurs droits, de résoudre les problèmes qui se posent et de ne pas adopter des lois nationales contraires aux principes du Marché intérieur.

Progrès réalisés dans le domaine de la législation

Améliorer la compétitivité de l'économie communautaire, c'est essentiellement créer un cadre dans lequel les entreprises de l'UE, grandes ou petites, sont en mesure de s'établir, de créer des emplois et de prospérer le plus rapidement possible moyennant un nombre d'obstacles et un volume de coûts minimums.

Une grande partie des initiatives législatives clés du Marché intérieur sont destinées à faciliter la création d'un tel cadre et sont en train d'acquérir force de loi. Les mesures figurant dans le plan d'action pour les services financiers sont ainsi presque achevées. Les marchés financiers de l'UE sont en voie d'intégration, ce qui devrait permettre aux opérateurs d'accroître leur compétitivité et aux entreprises ou aux consommateurs d'avoir plus facilement accès à des moyens financiers – en particulier des fonds d'investissement – à moindre coût.

En effet, la fragmentation des marchés financiers est l'une des principales faiblesses des entreprises de l'UE, notamment par rapport aux États-Unis. Les marchés nationaux ont été réglementés, et le sont encore dans une certaine mesure, par une mosaïque de dispositions régissant les investissements, les délits d'initiés, la protection des investisseurs, la diffusion de données, les fusions-acquisitions, les régimes de retraite et leur supervision ainsi que de nombreux autres domaines. Le plan d'action pour les services financiers crée les fondements néces-

saires à l'établissement d'un ensemble unique de règles communautaires qui permettra à des prestataires de services financiers respectables de proposer un plus grand choix de services à moindre coût partout en Europe tout en mettant un frein aux activités des prestataires moins scrupuleux ou incompétents.
Pour les consommateurs également, la mise en place d'un vrai marché européen des services financiers réduira le coût des prêts et offrira un plus grand choix de produits d'investissement – tels que les plans d'épargne et les fonds de pension – disponibles partout en Europe. Selon une étude sur les services financiers réalisée pour le compte de la table ronde européenne, un marché unique et pleinement intégré des services financiers pourrait apporter un supplément de croissance de 0,5 à 0,7 point par an dans les pays de l'UE. Les deux instituts allemands qui ont réalisé l'étude concluent que, dans un marché intégré, les propriétaires de logements auraient pu économiser € 800 à 2.500 par an de versements d'intérêts sur un prêt au logement de € 100 000 entre 1995 et 1999.

Améliorer l'environnement des entreprises

Les plans d'action de la Commission concernant le droit des sociétés et le contrôle légal des comptes contribueront à faire en sorte que les entreprises présentent des comptes crédibles auxquels les investisseurs peuvent se fier pour financer les besoins de croissance de l'économie européenne. La Commission a proposé en outre des Directives visant à faciliter les fusions transfrontalières et le transfert du siège des sociétés ainsi que des recommandations destinées à améliorer les informations fournies aux actionnaires (cf. page 9) et au public en ce qui concerne la rémunération des directeurs (cf. page 8) et le rôle des directeurs indépendants (cf. page 10). Sous peu, la Commission devrait proposer des modifications aux Directives comptables afin d'instituer une responsabilité collective des conseils d'administration et de faire en sorte que les comptes des entreprises contiennent des informations adéquates sur les transactions avec des sociétés et des individus du même groupe, sur les structures spécifiques et sur la gouvernance d'entreprise.

Recommandation de meilleures pratiques pour la mise en œuvre des Directives de l'UE

Les discussions menées dans le cadre du comité consultatif «Marché intérieur» ont permis de faire ressortir un certain nombre de «meilleures pratiques».
Au nombre de celles-ci figure la désignation d'un coordinateur national de la transposition qui serait en charge de ce dossier. Un ministère ou un organe administratif serait responsable du suivi de la transposition dans son ensemble.
Il convient en outre d'élaborer des calendriers prévisionnels, de mesurer systématiquement les avancées des ministères et de rendre compte régulièrement aux parlements nationaux.
Des lignes directrices doivent être émises, indiquant comment les dispositions doivent être transposées, ce qui permettrait d'assurer une approche commune dans l'ensemble de l'administration.
Il y a également lieu d'établir au niveau national une base de données centrale sur la transposition, accessible à l'ensemble des ministères.
Des rappels devraient être envoyés en temps utile aux ministères concernés bien avant que le délai de transposition d'un texte ne soit dépassé.
L'élaboration de la législation nationale devrait démarrer dès qu'une Directive est publiée au Journal officiel de l'UE.

Au cours des dix dernières années, les Directives européennes sur les marchés publics ont permis de renforcer sensiblement la concurrence sur les marchés publics et de réduire d'environ 30 % les prix payés pour les biens et les services concernés. Sur un marché d'une valeur de € 1.500 milliards, c'est-à-dire 16 % du PIB de l'UE environ, de telles économies sont énormes et le dernier ensemble législatif devrait même permettre aux autorités de faire encore plus d'économies.
La stratégie du Marché intérieur propose une approche plus structurée de la reconnaissance mutuelle, par laquelle la conformité avec le droit national de l'État membre d'origine des produits autorise la commercialisation dans toute l'UE. Elle préconise un nouveau règlement que la Commission proposera en vue d'introduire un ensemble de nouvelles procédures (par exemple, notification obligatoire en cas de refus de la reconnaissance mutuelle, procédures de recours en faveur des entreprises).

Mettre en œuvre les réglementations

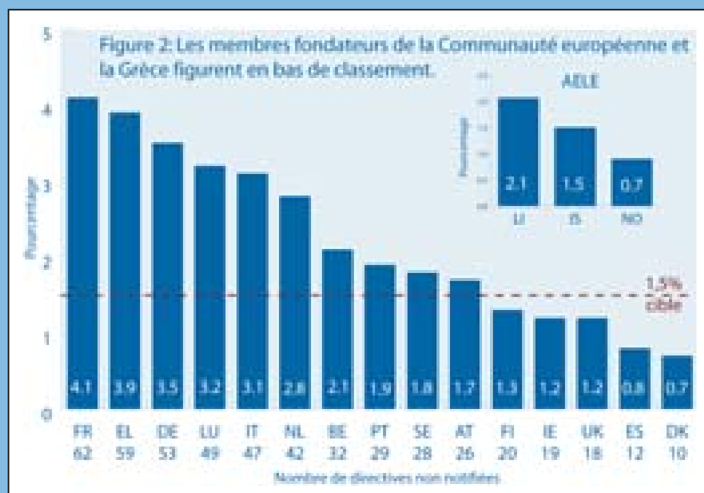
De nombreuses mesures sont donc prises pour améliorer le cadre législatif qui sous-tend le Marché intérieur et pour s'assurer qu'il a le potentiel d'apporter de réels avantages aux citoyens et aux entreprises. Ce potentiel ne peut toutefois être exploité que si le droit communautaire est appliqué convenablement et qu'il fonctionne dans la pratique. Le dernier tableau d'affichage (Scoreboard) du Marché intérieur (juillet 2004) montre qu'il n'y a pas ou peu d'améliorations en ce qui concerne les retards dans la mise en œuvre du droit communautaire au niveau national ou dans le nombre des procédures d'infractions.
Les derniers chiffres disponibles font apparaître que le déficit de transposition – le pourcentage moyen de Directives «Marché intérieur» qui n'ont pas été transposées dans le droit national d'un État membre – s'établit à 2,2 % pour les États membres de l'EU15 et reste pratiquement inchangé par rapport à janvier 2004. Il ressort également de ces chiffres que 134 Directives «Marché intérieur» – soit 9 % – n'ont pas été transposées à temps dans un ou plusieurs États membres.
La France est le pays de l'EU15 le plus à la traîne dans ce secteur, suivie de la Grèce, de l'Allemagne, de l'Italie et du Benelux. Seuls le Danemark, l'Espagne, le Royaume-Uni, l'Irlande et la Finlande remplissent le critère intermédiaire de 1,5 % fixé par le Conseil européen.
À l'heure où les États membres devraient redoubler d'efforts, un grand nombre d'entre eux semblent être au point mort. En effet, le nombre des procédures d'infractions à l'encontre des États membres est pratiquement identique à celui de l'an dernier, même si la stratégie 2003-2006 pour le Marché intérieur appelle à une réduction de 50 % du nombre de ces procédures d'ici 2006.

Que faire?

L'UE peut recourir à des actions en justice et des procédures d'infraction, mais il s'agit là d'outils coûteux et la stratégie du MI est plus favorable au renforcement de la coopération entre la Commission et les États membres, de manière à trouver rapidement des solutions efficaces. Par exemple, de nombreux individus et entreprises qui ont souffert d'une mauvaise application du droit communautaire ont été dédommagés rapidement grâce au réseau SOLVIT de la Commission qui réunit des

points de contact dans chaque État membre afin de résoudre ensemble les problèmes qui se posent. Il importe en outre de veiller à ce que les retards dans la transposition des Directives «Marché intérieur» ne se prolongent pas indéfiniment. C'est pourquoi les chefs d'État ou de gouvernement ont convenu d'appliquer une «tolérance zéro» aux Directives dont la transposition est en retard de plus de deux ans.
Le problème est partiellement lié aux procédures administratives suivies par les capitales nationales. Comme certaines d'entre elles sont plus efficaces que d'autres, la Commission a élaboré une recommandation de «meilleure pratique» basée sur les meilleures techniques de transposition rapide et correcte des Directives «Marché intérieur» (cf. encadré).

Lors du Conseil «Compétitivité» de septembre dernier, le commissaire en charge du Marché intérieur, M. Frits Bolkestein, a appelé les États membres à mettre en œuvre les meilleures pratiques figurant dans la recommandation de la Commission. Il a fait observer aux ministres qu'il n'y avait pas de solution de rechange à l'engagement vigoureux des plus hauts politiques des États membres en faveur d'une mise en œuvre rapide et correcte.



Le déficit de transposition s'établit à 2,2 % pour les Directives concernant le Marché intérieur. En d'autres termes, 134 Directives «Marché intérieur», soit 9 % du total n'ont pas été transposées dans le droit national de l'ensemble des États membres de l'EU15, même si le délai prévu à cet effet a été dépassé.

Un vrai Marché intérieur des services: une étape fondamentale pour la compétitivité de l'Europe

Le Marché intérieur est à une croisée des chemins. Beaucoup de bons résultats ont déjà été obtenus. Si l'UE veut toutefois aller de l'avant en s'appuyant sur ces succès et atteindre les objectifs de compétitivité figurant dans la stratégie de Lisbonne, il convient de consolider et de développer le Marché intérieur. La mesure la plus importante à cet égard est peut-être la Directive sur les services proposée par la Commission. Plus tôt cette proposition sera adoptée et plus tôt l'énorme potentiel économique du secteur des services pourra être pleinement exploité.
Les services représentent plus de 50% du PIB et de l'emploi en Europe. Ils constituent la colonne vertébrale de l'économie européenne sur laquelle se fondent également les performances des secteurs manufacturiers. Jusqu'à maintenant toutefois, les entreprises et les consommateurs européens sont perdants dans le domaine des services, car il existe un fossé énorme entre la vision d'une économie européenne intégrée – qui existe en principe depuis le lancement du Marché intérieur le 1er janvier 1993 – et la réalité quotidienne.
À la suite d'une analyse juridique et économique approfondie des obstacles au Marché intérieur ainsi qu'une concertation ouverte avec les parties prenantes, un projet de Directive – sur les services – a été adopté en janvier 2004.

Ce projet n'est pas seulement un dispositif législatif. Il peut, de l'avis de la Commission, apporter la plus grande impulsion aux échanges intra-UE depuis le «big bang» de 1993. Il constitue un ensemble ambitieux et équilibré qui vise à éliminer les obstacles aux investissements et aux échanges transfrontaliers de services sans sacrifier la nécessité d'œuvrer pour la croissance de l'emploi et de la production. Il vise à améliorer non seulement la compétitivité des entreprises de services, mais aussi celle de l'économie européenne tout entière.
L'objectif est de mettre en place un cadre réglementaire moderne, de supprimer les mesures discriminatoires et d'éviter les formalités administratives superflues ou faisant double emploi sans renoncer à la protection des consommateurs ou aux droits des travailleurs. La Directive proposée vise en outre à rendre beaucoup plus systématique la coopération entre les administrations des États membres.

Les obstacles

Plusieurs mesures stratégiques proposées par la Commission n'ont pas encore été mises en œuvre en raison de désaccords politiques. L'une des initiatives concernées porte sur le brevet communautaire qui permettait aux entreprises, moyennant une demande de brevet unique, de protéger leurs inventions plus facilement et à moindre coût dans toute l'Europe. De nouvelles dispositions précisant que des brevets peuvent être obtenus pour des inventions mises en œuvre par ordinateur, mais pas pour des programmes informatiques en tant que tels, attendent également le feu vert du Parlement européen et du Conseil des ministres, de même qu'une Directive visant à simplifier la reconnaissance des qualifications professionnelles dans l'Union et la définition d'une base commune consolidée d'imposition des bénéfices des entreprises. Ces retards ont des répercussions inévitables sur les secteurs concernés.

Le défi à relever

Le Marché intérieur a bien servi l'Europe depuis 1993 et même avant. Il a rendu les entreprises européennes beaucoup plus fortes en les exposant à une concurrence plus grande, en libéralisant les marchés et en créant de nouvelles opportunités. Il reste encore beaucoup à faire et la mise en place de solutions adéquates à certains freins à la réforme du Marché intérieur permettra à l'Europe d'être dans une position nettement plus confortable face au durcissement de la concurrence sur les marchés mondiaux.

http://www.europa.eu.int/comm/internal_market/en/update/strategy/index.htm

Perspective de la Présidence:

Donner une nouvelle impulsion à la stratégie de Lisbonne

Laurens Jan Brinkhorst, ministre néerlandais de l'économie et président du Conseil «Compétitivité» de l'UE, juge que la stratégie du Marché intérieur est une composante essentielle de la stratégie de Lisbonne qui vise à faire de l'Europe l'économie de la connaissance la plus dynamique du monde d'ici 2010. Dans cet article, il insiste sur l'importance d'une meilleure réglementation et met en évidence la nécessité de mieux appliquer la Directive «Services» en tant que domaines d'action prioritaires dans la perspective des objectifs de Lisbonne.

Laurens Jan Brinkhorst, ministre néerlandais de l'économie et président du conseil «Compétitivité» de l'UE: «Trois priorités pour le Marché intérieur».

La stratégie du Marché intérieur est, je crois, une composante indispensable de la stratégie de Lisbonne qui vise à faire de l'Europe l'économie de la connaissance la plus dynamique au monde d'ici 2010. Nous sommes arrivés à mi-parcours dans la mise en œuvre de cette stratégie. Un groupe de travail présidé par l'ancien premier ministre néerlandais Wim Kok étudie actuellement les moyens susceptibles de donner une nouvelle impulsion à la stratégie de Lisbonne et d'atteindre plus aisément ses objectifs.

Je pense que les recommandations du groupe de travail de M. Kok sur la stratégie de Lisbonne pourraient également être utiles dans la recherche d'une plus grande efficacité de la stratégie du Marché intérieur. J'attends par exemple de voir quelles seront ses recommandations en ce qui concerne la définition d'objectifs prioritaires et la communication aux citoyens et aux entreprises européennes des avancées réalisées aux citoyens.

Pour ce qui est des objectifs prioritaires, je suis d'avis que la stratégie de Lisbonne devrait mettre l'accent sur les réformes favorables à l'emploi et à la croissance économique. Quant au Marché intérieur, la présidence néerlandaise a identifié trois domaines prioritaires qui méritent une attention particulière: améliorer les réglementations, améliorer leur mise en œuvre et lever les obstacles à la libre circulation des services.

Les trois priorités

Améliorer les réglementations: les réglementations doivent contribuer à un environnement économique favorable aux entreprises. Il y a lieu de considérer comme un grand progrès le fait que les nouvelles propositions de la Commission sont soumises depuis 2003 à des évaluations d'impact qui cherchent à déterminer si l'équilibre entre les principes de compétitivité et les autres objectifs est bon.

Il convient aussi de se pencher sur les réglementations existantes qui sont parfois trop complexes et trop exigeantes sur le plan administratif. Aussi ai-je lancé, en liaison avec la présidence irlandaise, un processus visant à déterminer des propositions de législation communautaire susceptibles d'être intégrées dans la procédure de simplification de la Commission.

Améliorer leur mise en œuvre: Il est frappant de constater que 90 % des Directives «Marché intérieur» ne sont pas transposées à temps dans le droit national des États membres. Je pense qu'une amélioration de la qualité des réglementations permettra d'améliorer le taux de mise en œuvre. La longueur des processus législatifs et administratifs se traduit non seulement par des législations complexes, mais aussi par des retards de mise en œuvre. Je suis très heureux que le Conseil «Compétitivité» ait reconnu, lors de sa dernière réunion en septembre, que les États membres devaient faire davantage d'efforts pour faire augmenter leurs taux de transposition.

Directive «Services»: La nouvelle Directive «Services» est une priorité pour la présidence néerlandaise. Dans le secteur des services, il reste encore des measures à prendre pour supprimer les nombreux obstacles sensibles à la libre circulation des services. Compte tenu de l'importance du secteur des services dans l'UE, je pense que la libéralisation de ce secteur aura autant de retombées économiques que la création du Marché intérieur de biens au début des années 90. C'est pourquoi nous devons agir vigoureusement et rapidement dans ce domaine.

Directive «Services» - avantages

Le *Bureau for Economic Policy Analysis* (CBP) a évalué l'impact de la proposition de Directive «Services» pour le compte de la présidence néerlandaise.

L'évaluation en question montre qu'une mise en œuvre complète des propositions se traduirait par:

- un accroissement de 15 à 35 % des échanges bilatéraux de services commerciaux intra-UE,
- un accroissement à 1 à 3 % de l'ensemble des échanges au sein de l'UE,
- un accroissement des investissements directs étrangers (IDE) de 15 à 35 %.

Info: http://www.cpb.nl/eng/news/2004_39.html

Wettbewerbsfähigkeit steigern – Lissabon-Strategie nach vier Jahren

Was kann der Binnenmarkt noch mehr leisten?

Auf der Tagung des Europäischen Rates in Lissabon im Jahr 2000 haben die Staats- und Regierungschefs auf die Dringlichkeit hingewiesen, die Wirtschaft in der EU neu zu beleben, zu reformieren und für die Zukunft umzugestalten. Der Rat legte daraufhin ein auf zehn Jahre ausgelegtes Maßnahmen- und Reformprogramm vor – die so genannte Lissabon-Strategie. Mit Hilfe der Lissabon-Strategie soll die EU zum weltweit dynamischsten und wettbewerbsfähigsten Wirtschaftraum ausgebaut werden. Viele der Maßnahmen bezogen sich auf den Ausbau und die Stärkung des EU-Binnenmarktes, der als Motor für eine stärkere EU-Wirtschaft gilt. Auf der diesjährigen Frühjahrstagung des Europäischen Rates wurden jedoch Bedenken geäußert, dass die Fortschritte in diesem Bereich nicht schnell genug erzielt würden.
Der frühere Premierminister der Niederlande Wim Kok führt in diesem Zusammenhang derzeit eine Halbzeitüberprüfung durch. Single Market News untersucht, welchen Einfluss das Programm für den Binnenmarkt bisher auf die Stärkung der Wettbewerbsfähigkeit gehabt hat und welche Maßnahmen noch ergriffen werden können, um die ehrgeizigen Ziele der Lissabon-Strategie zu erreichen.

In Bewegung: der 10-Punkte-Plan für den Binnenmarkt

Im Mai 2003 veröffentlichte die Kommission ihre Binnenmarktstrategie für den Zeitraum 2003 bis 2006 – einen 10-Punkte-Plan, der ein besseres Funktionieren des Binnenmarktes zum Ziel hat. Er baut darauf auf, dass der Binnenmarkt seit Ende 1992, als die Binnengrenzen beseitigt wurden, 2,5 Millionen neue Arbeitsplätze geschaffen und einen Wohlstandsgewinn von EUR 877 Milliarden erwirtschaftet hat. Der Plan soll eine Antwort auf die Herausforderungen der Erweiterung und der Bevölkerungsalterung liefern, und er soll die Lissabon-Strategie auf Kurs halten.
Mit der Binnenmarktstrategie werden die vorrangigen Ziele verfolgt, die Umsetzung und Durchsetzung des Binnenmarktrechts zu verbessern, den freien Dienstleistungsverkehr praktische Wirklichkeit werden zu lassen, die noch bestehenden Schranken für den Warenhandel zu beseitigen und den Märkten für öffentliche Aufträge eine reale europäische Dimension zu verschaffen.
Im Rahmen der Binnenmarktstrategie werden neue Bereiche für EU-Maßnahmen ermittelt. Dabei stehen Aktivitäten auf nationaler Ebene im Mittelpunkt, mit deren Hilfe vereinbarte Maßnahmen umgesetzt werden. Angesichts der EU-Erweiterung wird die Arbeit, die die europäischen Hauptstädte leisten, immer wichtiger. In einer Europäischen Union mit 25 Mitgliedern werden zunehmend die Mitgliedstaaten dafür Sorge tragen müssen, dass der Binnenmarkt Tag für Tag korrekt funktioniert. Im Rahmen der Strategie werden sie dazu angehalten, das Binnenmarktrecht unverzüglich und korrekt umzusetzen, Bürger und Unternehmen über ihre Rechte zu informieren, Probleme bereits im Ansatz zu lösen und keine nationalen Gesetze zu verabschieden, die den Grundsätzen des Binnenmarktes zuwiderlaufen.

Wie läßt man den Motor Europas – den Binnenmarkt – nochmal anspringen?

Fortschritte bei zentraler Gesetzgebung

Wirtschaftliche Wettbewerbsfähigkeit bezieht sich vor allem darauf, für EU-Unternehmen aller Größenordnungen ideale Rahmenbedingungen in folgenden Bereichen zu schaffen: Unternehmensgründung, Handel, Schaffung von Arbeitsplätzen, Wachstum und Weiterentwicklung. Dies soll möglichst schnell und kostengünstig und mit so wenig Hindernissen wie möglich realisiert werden.
Viele der zentralen Gesetzesinitiativen für den Binnenmarkt, die auf die Erreichung dieser Ziele ausgerichtet sind, wurden bereits verabschiedet. Die im Aktionsplan für Finanzdienstleistungen vorgesehenen Maßnahmen sind beispielsweise schon fast vollständig umgesetzt. Auf den europäischen Finanzmärkten sind starke Integrationstendenzen zu verzeichnen. Dies verbessert auf der einen Seite die Wettbewerbsbedingungen für die Finanzdienstleister selbst und sorgt auf der anderen Seite für einen besseren und kostengünstigeren Zugriff auf Finanzprodukte – insbesondere Investmentfonds – sowohl für Unternehmen als auch für Verbraucher.
Die Fragmentierung der Finanzmärkte war in der Vergangenheit einer der zentralen Nachteile für EU-Unternehmen, insbesondere im Vergleich zu den USA. Die nationalen Märkte waren – und sind zu einem gewissen Maß auch noch – durch ein Flickwerk unterschiedlicher Vorschriften über Investitionen und Insider-Geschäfte,

Anlegerschutz, die Offenlegung von Information, Übernahmen, Altersversorgung und Aufsicht und viele andere Bereiche reguliert. Der Aktionsplan für Finanzdienstleistungen zielt darauf ab, die Grundlagen für einen gemeinsamen EU-Vorschriftenkatalog zu schaffen, der es ehrenhaften Finanzdienstleistungsunternehmen ermöglichen soll, Kunden überall in Europa eine größere Auswahl und ein besseres Preis-Leistungsverhältnis zu bieten, und die skrupelloseren und inkompetenten Unternehmen in Schach halten soll.

Auch für die Verbraucher bietet ein echter europaweiter Markt für Finanzdienstleistungen Vorteile, und zwar in Form von niedrigeren Zinsen und einem breiteren Angebot an Finanzprodukten (z. B. in den Bereichen Sparpläne und Renten), auf das sie von überall aus in Europa zugreifen können.

In einer vom European Financial Services Round Table in Auftrag gegebenen Studie wurde festgestellt, dass ein Binnenmarkt für Finanzdienstleistungen pro Jahr zwischen 0,5 und 0,7 Prozentpunkte zum Wachstum in den EU-Ländern beitragen könnte. Die beiden deutschen Institute, die die Studie durchführten, kamen zu dem Schluss, dass Hausbesitzer zwischen 1995 und 1999 auf einem integrierten Markt durch niedrigere Zinsen auf ein Baudarlehen von € 100.000 einen Betrag von € 800 bis € 2.500 jährlich hätten einsparen können.

Geschäftsumfeld verbessern

Die Aktionspläne, die die Kommission zum Gesellschaftsrecht und zur gesetzlichen Abschlussprüfung vorlegen wird, werden dazu beitragen, dass Unternehmen zuverlässige Abschlüsse vorlegen und Investoren genügend Vertrauen haben, um der europäischen Wirtschaft die Mittel zur Verfügung zu stellen, die sie zum Wachstum braucht. Die Kommission hat darüber hinaus Richtlinien vorgeschlagen, die grenzüberschreitende Fusionen bzw. die Verlagerung des Gesellschaftssitzes erleichtern sollen, sowie Empfehlungen über die Verbesserung der Informationen, die Aktionäre (siehe s.9) und die Öffentlichkeit über die Vergütung von Direktoren (siehe s.8) sowie über die Aufgaben unabhängiger Direktoren (siehe s.10) erhalten. Vor kurzem hat die Kommission darüber hinaus Änderungen der Rechnungslegungsrichtlinien vorgeschlagen, um eine gemeinsame Verantwortung des Vorstands zu erreichen und sicherzustellen, dass angemessene Informationen über Transaktionen mit zugehörigen Unternehmen und Einzelpersonen, über Zweckgesellschaften und über Corporate Governance in den Firmenkonten ausgewiesen werden.

Die EU-Vergaberichtlinien haben in den letzten zehn Jahren den grenzüberschreitenden Wettbewerb und die Transparenz auf den Beschaffungsmärkten deutlich erhöht und die Preise, die öffentliche Auftraggeber für Waren und Dienstleistungen zu zahlen haben, um etwa 30 % gesenkt. Angesichts eines Marktvolumens von über € 1.500 Milliarden – das sind mehr als 16% des gesamten BIP der EU – bedeutet dies enorme Einsparungen für den Steuerzahler. Das jüngste Legislativpaket bietet sogar ein noch größeres Einsparpotenzial.

Die Strategie schlägt vor, bei der gegenseitigen Anerkennung systematischer vorzugehen: Wenn ein Produkt im Einklang mit den Rechtsvorschriften des Ursprungsmitgliedstaats steht, soll es überall in der Europäische Union vermarktet werden dürfen. Es wird ein neuer Verordnungsvorschlag skizziert, mit dem die Kommission strengere Regeln aufstellen möchte (z.B. Meldepflicht für Fälle, in denen die gegenseitige Anerkennung verweigert wird, Einführung von Beschwerdemöglichkeiten für Unternehmen).

Vorschriften durchsetzen

Es wurde also eine Vielzahl von Maßnahmen ergriffen, um den Rechtsrahmen, auf dem der Binnenmarkt basiert, zu verbessern und sicherzustellen, dass der Binnenmarkt den Bürgern und Unternehmen echte Vorteile bieten kann. Dieses Potenzial kann jedoch erst ausgeschöpft werden, wenn das EU-Recht richtig umgesetzt wird und gewährleistet ist, dass es praxistauglich ist. Der neueste Binnenmarktanzeiger (Scoreboard - Juli 2004) dokumentiert geringe oder gar keine Verbesserungen hinsichtlich des Verzugs bei der Umsetzung des EU-Rechts auf nationaler Ebene oder bei der Anzahl der Vertragsverletzungen.

Die neuesten Zahlen zeigen, dass das Umsetzungsdefizit – der durchschnittliche Prozentsatz der geltenden Binnenmarktrichtlinien, die die einzelnen Mitgliedstaaten nicht fristgerecht in innerstaatliches Recht überführt haben – gegenwärtig 2,2 % für die EU-15-Mitgliedstaaten beträgt und sich damit gegenüber Januar 2004 kaum verändert hat. Außerdem belegen sie, dass 134 Binnenmarktrichtlinien, das entspricht 9 %, in mindestens einem der bisherigen Mitgliedstaaten nicht fristgerecht umgesetzt worden sind. Die schlechteste Umsetzungsbilanz der EU-15-Mitgliedstaaten weist Frankreich auf, gefolgt von Griechenland, Deutschland, Italien und den Beneluxstaaten. Nur Dänemark, Spanien, das Vereinigte Königreich, Irland und Finnland haben das vom Europäischen Rat gesteckte Zwischenziel von 1,5 % erreicht.

Zu einer Zeit, in der die Mitgliedstaaten ihre Bemühungen eigentlich verdoppelt sollten, scheint es in vielen zu einem Stillstand gekommen zu sein. Es sind fast ebenso viele Vertragsverletzungsverfahren gegen Mitgliedstaaten anhängig wie vor einem Jahr, und das obwohl in der Binnenmarktstrategie für den Zeitraum zwischen 2003 und 2006 gefordert wird, diese Zahl bis 2006 um 50 % zu senken.

Was kann getan werden?

Die EU kann zwar auf Klagen und Vertragsverletzungsverfahren zurückgreifen, doch ist ein solches Vorgehen mit einem hohen Zeit- und Kostenaufwand verbunden. In der Binnenmarktstrategie wird bevorzugt, die Durchsetzung der Vorschriften durch eine engere Zusammenarbeit der Kommission und den Mitgliedstaaten zu erreichen, so dass schnelle und wirksame Lösungen erzielt werden. So konnten z. B. viele Einzelpersonen und Unternehmen, die Nachteile durch eine fehlerhafte Umsetzung des EU-Rechts durch nationale Behörden erfuhren, die schnelle und kos-

Empfehlungen für bewährte Verfahren zur Umsetzung von EU-Richtlinien

Bei den Diskussionen des Beratenden Ausschusses für den Binnenmarkt sind eine Reihe von „bewährten Verfahren" erörtert worden.

Diese beziehen sich u. a. auf die Benennung eines nationalen Umsetzungskoordinators, dem die Verantwortung für ein Umsetzungsproblem übertragen wird. Ein einziges Ministerium oder Regierungsorgan sollte für die Überwachung der Umsetzung als Ganzes verantwortlich sein.

Zu weiteren „bewährten Verfahren" zählen die Aufstellung von Zeitplänen, die systematische Messung der Leistung der Ministerien sowie die regelmäßige Unterrichtung der nationalen Parlamente über die Ergebnisse.

Es sollten Richtlinien veröffentlicht werden, in denen die Umsetzungsmethoden dargelegt sind, um einen gemeinsamen Ansatz in der gesamten Administration sicherzustellen.

Darüber hinaus sollte eine zentrale nationale Datenbank zum Thema Umsetzung gepflegt werden, auf die alle Ministerien zugreifen können.

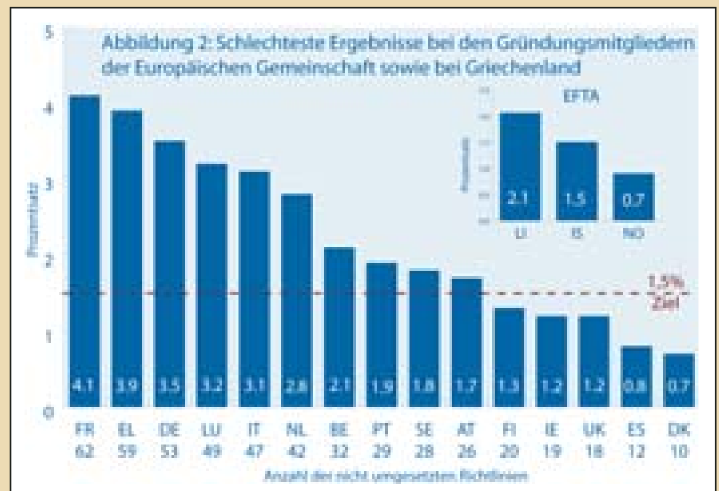
Rechtzeitig vor Ende der Umsetzungsfrist sollten den relevanten Ministerien Erinnerungen übermittelt werden.

Nachdem eine Richtlinie im Amtsblatt der EU veröffentlicht worden ist, sollte die nationale Gesetzgebung so schnell wie möglich entworfen werden.

tenlose Unterstützung durch das SOLVIT-Netz der Kommission in Anspruch nehmen, in dem SOLVIT-Stellen in den einzelnen Mitgliedstaaten gemeinsam Lösungen für Probleme erarbeiten.
Ebenso wichtig ist es, dafür Sorge zu tragen, dass sich der Verzug bei der Umsetzung der Binnenmarktrichtlinien in nationales Recht nicht unbegrenzt fortsetzt. Aus diesem Grund haben sich die Staats- und Regierungschefs der EU auf eine „Nulltoleranz" für Richtlinien geeinigt, deren Umsetzungsfrist seit über zwei Jahren abgelaufen ist.
Das Problem liegt zum Teil in den administrativen Verfahren in den Hauptstädten der Mitgliedstaaten begründet. Da einige hier bessere Leistungen zeigten als andere, hat die Kommission eine Empfehlung zu bewährten Verfahren erarbeitet, in der die wirksamsten angewandten Methoden beschrieben sind, die zur korrekten und fristgerechten Umsetzung der Binnenmarktrichtlinien in das nationale Recht eingesetzt wurden (siehe Kasten).
Bei einer Rede im Rahmen der Sitzung des Wettbewerbsfähigkeitsrats im September forderte Frits Bolkestein, Mitglied der Europäischen Kommission und zuständig für den Binnenmarkt, die Mitgliedstaaten dazu auf, die in der Empfehlung der Kommission beschriebenen bewährten Verfahren anzuwenden. Er führte gegenüber den Ministern aus, dass in den Mitgliedstaaten ein starkes Engagement auf hoher politischer Ebene unerlässlich sei, um die Richtlinien korrekt und fristgerecht umsetzen zu können.

Ein echter Binnenmarkt für Dienstleistungen: ein wichtiger nächster Schritt zur Sicherstellung der Wettbewerbsfähigkeit Europas

Der Binnenmarkt befindet sich am Scheideweg. Es ist bereits viel erreicht worden. Wenn die EU jedoch auf diesen Erfolgen aufbauen und die Wettbewerbsziele, die in der Lissabon-Strategie festgelegt sind, erreichen möchte, muss der Binnenmarkt noch stärker konsolidiert und weiterentwickelt werden. Die in diesem Zusammenhang vielleicht wichtigste Maßnahme ist die von der Kommission vorgeschlagene Richtlinie über Dienstleistungen. Je früher diese vom Europäischen Parlament und vom Rat angenommen wird, desto schneller kann das enorme wirtschaftliche Potenzial des Dienstleistungssektors ausgeschöpft werden.
Im Dienstleistungssektor werden mehr als 50% des BIP der EU erwirtschaftet. Ebenso hoch ist der Prozentsatz der im Dienstleistungssektor beschäftigten Erwerbstätigen. Damit stellt der Dienstleistungssektor das Rückgrat der Wirtschaft in Europa dar, von dem auch die Leistung der Fertigungsindustrie abhängt. Bisher jedoch profitieren die Unternehmen und Verbraucher in Europa nicht in vollem Maße vom Potenzial des Dienstleistungssektors, da eine große Lücke zwischen der Vision einer integrierten europäischen Wirtschaft, die es im Prinzip bereits seit der Einführung des Binnenmarkts am 1. Januar 1993 gibt, und der alltäglich erlebten Realität klafft.
Nach einer intensiven Analyse der rechtlichen und wirtschaftlichen Faktoren, die für Barrieren im Binnenmarkt sorgen, und einer offenen Anhörung der Betroffenen wurde im Januar 2004 der Entwurf der Richtlinie über Dienstleistungen angenommen.
Es handelt es sich hier nicht um eine gewöhnliche Richtlinie. Nach Ansicht der Kommission könnte der Vorschlag den größten Aufschwung im Handel innerhalb der EU seit dem „Big Bang" im Jahr 1993 bewirken. Die vorgeschlagene Richtlinie, die ehrgeizig, aber dennoch ausgewogen ist, zielt darauf ab, die Hindernisse beim grenzübergreifenden Dienstleistungshandel und bei entsprechenden Investitionen im Dienstleistungsbereich abzubauen und dabei gleichzeitig Wachstum bei Beschäftigung und Produktivität anstreben. Hierdurch soll nicht nur die Wettbewerbsfähigkeit der Dienstleistungsunternehmen, sondern der gesamten europäischen Industrie verbessert werden.



Das Umsetzungsdefizit für Binnenmarktrichtlinien liegt bei 2,2 %. Dies bedeutet, dass 134 Binnenmarktrichtlinien, das entspricht 9 %, nicht in allen EU-15-Mitgliedstaaten fristgerecht in nationales Recht umgesetzt worden sind.

Das Ziel der vorgeschlagenen Richtlinie besteht darin, einen modernen europäischen Rechtsrahmen zu schaffen, der diskriminierende Hindernisse und unnötige Bürokratie abbaut, ohne dabei Abstriche beim Verbraucherschutz oder den Rechten der Arbeitnehmer zu machen. Darüber hinaus wird angestrebt, dass die Verwaltungen der Mitgliedstaaten systematischer zusammenarbeiten.

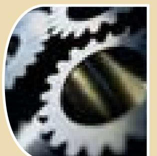
Problematische Punkte

Aufgrund politischer Divergenzen wurden einige von der Kommission vorgeschlagene Maßnahmen zur Steigerung der Wettbewerbsfähigkeit noch nicht umgesetzt. Eine dieser Initiativen ist das vorgeschlagene Gemeinschaftspatent, das Erfindern die Möglichkeit bietet, ein einheitliches Patent anzumelden, das in der gesamten Europäischen Union Rechtsgültigkeit hat. Für neue Gesetze, mit denen geregelt wird, dass zwar computerimplementierte Erfindungen, nicht aber Computerprogramme selbst patentiert werden können, steht ebenfalls noch die Annahme durch das Europäische Parlament und den Ministerrat aus. Das Gleiche gilt für eine Richtlinie, mit der die Anerkennung von beruflichen Qualifikationen vereinfacht wird, und für die Festlegung einer gemeinsamen Bemessungsgrundlage für die Besteuerung von Unternehmensgewinnen. Diese Verzögerungen wirken sich für die betroffenen Sektoren nachteilig aus.

Herausforderung für die Zukunft

Europa profitiert vom Binnenmarkt – und das nicht erst seit 1993. Der Binnenmarkt hat die Unternehmen in Europa gestärkt, da er sie einem stärkeren Wettbewerb aussetzt, neue Märkte erschlossen und neue Geschäftsmöglichkeiten eröffnet hat. Und das Potenzial ist bei weitem noch nicht ausgeschöpft: Wenn für Engpässe bei künftigen Reformen des Binnenmarkts Lösungen gefunden werden, stärkt dies die Wettbewerbsfähigkeit Europas weiter, so dass Europa auch dem immer größer werdenden Wettbewerbsdruck von außen gewachsen ist.

http://www.europa.eu.int/comm/internal_market/en/update/strategy/index.htm



Perspektive für Präsidentschaft

Neuer Anstoß für die Lissabon-Strategie

Der Wirtschaftsminister der Niederlande und Vorsitzende des Wettbewerbsfähigkeitsrats der EU Laurens Jan Brinkhorst ist der Überzeugung, dass die Binnenmarktstrategie eine Kernkomponente der Lissabon-Strategie darstellt, wenn es darum geht, Europa bis zum Jahr 2010 zur wettbewerbsfähigsten wissensgestützten Wirtschaft der Welt zu machen. In diesem Artikel für Single Market News zeigt er auf, welch eine zentrale Rolle eine bessere Gesetzgebung, eine wirksamere Umsetzung der EU-Richtlinien sowie die Richtlinie über Dienstleistungen für die Erreichung der Ziele der Lissabon-Strategie spielen.

Laurens Jan Brinkhorst, Wirtschaftsminister der Niederlande und Vorsitzender des Wettbewerbs fähigkeitsrats der EU: „drei Prioritäten für den Binnenmarkt"

Die Binnenmarktstrategie ist meiner Meinung nach eine wesentliche Komponente der Lissabon-Strategie, wenn wir Europa bis zum Jahr 2010 zu der wettbewerbsfähigsten wissensgestützten Wirtschaft der Welt machen möchten. Eine Arbeitsgruppe unter dem Vorsitz des früheren Premierministers der Niederlande Wim Kok untersucht derzeit, welche Möglichkeiten bestehen, der Lissabon-Strategie neuen Anstoß zu geben, und erarbeitet Vorschläge für eine wirksamere Erreichung ihrer Ziele. Ich gehe davon aus, dass die Empfehlungen, die die Arbeitsgruppe von Wim Kok hinsichtlich der Lissabon-Strategie insgesamt ausspricht, auch einen wertvollen Beitrag zur wirksameren Umsetzung der Binnenmarktstrategie leisten können. Besonders gespannt bin ich darauf, welche Prioritäten die Arbeitsgruppe hinsichtlich der Ziele empfiehlt und wie ihre Vorschläge lauten, die Bürger und Unternehmen in Europa über die Vorteile der Lissabon-Strategie zu informieren.
Was die Prioritäten angeht, bin ich der Meinung, dass der Schwerpunkt der Lissabon-Strategie auf Reformen liegen sollte, die das wirtschaftliche Wachstum und die Beschäftigung in Europa fördern. Die niederländische Ratspräsidentschaft hat für den Binnenmarkt drei Prioritätsbereiche ermittelt, die besonders berücksichtigt werden sollten: bessere Gesetzgebung, wirksamere Umsetzung sowie Beseitigung der Hindernisse für den freien Dienstleistungsverkehr.

Drei Prioritäten

Bessere Gesetzgebung: Die Gesetzgebung muss zu einem guten Geschäftsklima beitragen. Als wesentliche Verbesserung ist in diesem Zusammenhang die Tatsache zu bewerten, dass die neuen Vorschläge der Kommission seit 2003 einer Folgenabschätzung unterzogen werden, mit der ermittelt werden kann, ob sie auf einem ausgewogenen Verhältnis zwischen den Grundsätzen der Wettbewerbsfähigkeit und anderen Zielen basieren.
Auch die bestehende Gesetzgebung sollte geprüft werden, da sie in vielen Fällen übermäßig komplex und verwaltungsintensiv ist. Aus diesem Grund habe ich zusammen mit der irischen Ratspräsidentschaft einen Prozess eingeführt, mit dem EU-Gesetzesvorschläge ermittelt werden können, die in das Vereinfachungsverfahren der Kommission eingebunden werden könnten.
Wirksamere Umsetzung: Ganze 9 % der Binnenmarktrichtlinien werden nicht fristgerecht von allen Mitgliedstaaten in nationales Recht umgesetzt. Ich denke, dass durch eine wirksamere Gesetzgebung auch in diesem Bereich bessere Ergebnisse erzielt werden können.

Neben einer allzu komplexen Gesetzgebung führen auch zeitaufwändige rechtliche und administrative Prozesse zu Verzögerungen bei der Umsetzung der Richtlinien. Ich begrüße es sehr, dass der Wettbewerbsfähigkeitsrat bei seiner letzten Sitzung im September eindringlich darauf hingewiesen hat, dass die Mitgliedstaaten ihre Bemühungen zur Verbesserung der Umsetzungsquote verstärken müssen.
Richtlinie über Dienstleistungen: Die neue Richtlinie über Dienstleistungen ist für die niederländische Ratspräsidentschaft von hoher Priorität. Im Dienstleistungssektor müssen weiterhin Maßnahmen ergriffen werden, um die erheblichen und zahlreichen Hindernisse für den freien Dienstleistungsverkehr zu beseitigen. Angesichts der Bedeutung des Dienstleistungssektors in der EU gehe ich davon aus, dass die wirtschaftlichen Vorteile, die sich durch die Erschließung des Potenzials dieses Sektors ergeben, genauso bedeutend sein werden, wie die Gewinne, die durch die Schaffung eines Binnenmarkts für Waren zu Beginn der 1990er Jahre erzielt wurden. Daher müssen wir in diesem Bereich energisch vorgehen und die geeigneten Maßnahmen schnell einleiten.

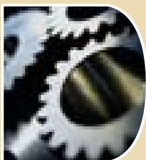
Vorteile der Richtlinie über Dienstleistungen

Die niederländische Ratspräsidentschaft hat eine Studie zur Abschätzung der wirtschaftlichen Auswirkungen der vorgeschlagenen Richtlinie über Dienstleistungen beim niederländischen Beratungsorgan Centraal Planbureau (CBP) in Auftrag gegeben. Die Studie kommt folgendem Ergebnis, wenn die Vorschläge vollständig umgesetzt werden:

- Der innereuropäische bilaterale Handel mit kommerziellen Dienstleistungen könnte um 15 bis 35 % zunehmen.
- Das Gesamthandelsvolumen innerhalb der EU könnte um 1 bis 3 % steigen.
- Die ausländischen Direktinvestitionen in Dienstleistungen könnten um 15 bis 35 % zunehmen.

Weitere Informationen:
http://www.cpb.nl/eng/news/2004_39.html

Spezial Dossier



Commission sets up expert group on clearing and settlement

The first meeting of the Commission's Clearing and Settlement Advisory and Monitoring Expert group (the 'CESAME' group) was held in July. The Group has been set up to advise and assist the Commission in the integration of EU securities clearing and settlement systems. It is chaired by the Commission and is composed of around 20 high level representatives of various mainly private bodies involved in clearing and settlement, along with four observers from public authorities, with Alberto Giovannini acting as Principal Policy Advisor.

Need for coordinated action

The integration of European securities clearing and settlement systems requires coordinated action by private and public sector bodies. Integration will change the way clearing and settlement functions are performed throughout the EU. For the success of the whole project, it is important that all market participants and service providers are aware of and share the overall objectives and direction of the project, and communicate them to the market at large.

The group will advise the Commission on the coordination of action between the public and the private sectors and. It will also monitor the removal of those 'Giovannini' Barriers for which the private sector has sole or joint responsibility to help the Commission ensure that its efforts will be sustained at a pace consistent with private sector reforms and developments.

Finally, it will liaise with two separate groups of experts (to be established in the next few months) that will tackle the legal barriers and the barriers raising compliance issues in relation to tax procedures which are expected to be more difficult to address, as well as with the 'Group of 30' and other international bodies.

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Further information at:
http://europa.eu.int/comm/economy_finance/giovannini/clearing_settlement_en.htm).

FIN-USE panel gives opinion on 'expert group' reports

FIN-USE, an expert panel set up by the European Commission in April 2004 to give opinions on financial services from a 'user' perspective (see SMN34), has delivered its first opinion on the four expert group reports produced in May 2004 (see page 13) which assess the state of financial integration in the EU.

In its opinion, which reflects the consensus view of the group members and not necessarily that of the Commission, FIN-USE sets out its views on the reports and makes ten principal recommendations. The Commission will take these into account, along with the results of the recent public consultation on the stocktaking reports, in the process of completing the implementation of the FSAP and in determining future financial services policy.

The FIN-USE opinion takes issue, in so far as consumer interests are concerned, with some of the conclusions of the four stocktaking reports. The opinion examines each report in detail and lists ten key recommendations as a general response.

In particular those recommendations advocate more effective involvement and representation of the user perspective at all levels of policy making, and view consumer confidence as a pre-condition for a successful integrated market in retail financial services.

The report also says that users need more independent advice and transparency about any ties which intermediaries such as financial services advisers and insurance brokers have with providers.

FIN-USE is sceptical about the use of self regulation at EU level.

The full FIN-USE Report entitled 'Financial Services, Consumers and Small Businesses - a user perspective on the reports on Banking Asset Management, Securities and Insurance of the Post FSAP Stocktaking Groups' can be found at:
http://www.europa.eu.int/comm/internal_market/finservices-retail/finuse_en.htm

New research shows the potential for significant economic growth

Résumé

Directive «Services» – avantages

Le Bureau for Economic Policy Analysis (CBP) a évalué l'impact de la proposition de Directive «Services» pour le compte de la présidence néerlandaise.
L'évaluation en question montre qu'une mise en œuvre complète des propositions se traduirait par un accroissement de 15 à 35 % des échanges bilatéraux de services commerciaux intra UE; un accroissement à 1 à 3 % de l'ensemble des échanges au sein de l'UE; un accroissement des investissements directs étrangers (IDE) de 15 à 35 %.

The first wave of EU measures in 1993 to create a frontier-free single market in Europe has over the past decade contributed directly to the creation of more than 2.5 million new jobs, increased growth by 1.8% and added nearly e 900 billion to Europe's prosperity. The majority of the benefits have been achieved as a result of the free movement of goods and opening up the markets for network industries such as energy and telecommunications to competition.
A major area of economic activity where a single market is yet to have a significant impact is the service sector – which itself accounts for more than 70% of economic activity in the EU – much of which involves Europe's small and medium sized companies.

In January of this year, the Commission launched the 'Services Directive' , containing a major set of measures aimed at removing barriers to cross-border trade in services (see SMN33). New research by the Netherlands Bureau for Economic Policy Analysis* (CPB) points to substantial economic benefits that could be achieved in international trade and investment when the measures are fully implemented. The study concludes that if the proposals were implemented in full, they could lead to an increase in cross-border trade in commercial services of between 13% and 35%. Foreign direct investment in services in the EU could increase by between 16% and 34%. The net effect could be to increase total intra-EU trade by 1-3%.

"...if the proposals were implemented in full, they could lead to an increase in cross-border commercial service trade by between 13% and 35%."

The CPB study, which was commissioned by the Dutch Presidency of the Council of Ministers, has investigated how cross-border service trade and foreign direct investment in commercial service sectors would change if this Directive were to be fully implemented.

The real trade burden of regulation results from the differences in regulation between the country of origin and of destination. Service providers have to comply with the procedures of the destination country each time they enter a new market, therefore a key issue is the differences in the form and content of national regulations for service markets.

Heterogeneity increases costs

Such divergences increase trade and investment costs of service providers doing business in other EU Member States, concludes the report.

A characteristic of country-specific regulations is that they cause additional fixed costs that often are independent of firm size. This implies that in relative terms the worst effects of policy heterogeneity fall upon small- and medium-size service firms.

Economic research by the OECD also suggests that reforming the regulation of services markets could bring significant economic benefits** which in some particular sectors could be very substantial.

Reducing regulatory burdens

The more that regulatory and administrative burdens and their 'heterogeneity' can be reduced, the greater the gains, the researchers conclude.

The full texts of the Services Directive proposal and impact assessment are available at:
http://www.europa.eu.int/comm/internal_market/en/services/services/index.htm

* http://www.cpb.nl/eng/news/2004_39.html
** OECD Report on regulatory reform, 1997

Resümee

Vorteile der Richtlinie uber Dienstleistungen

Die niederlandische Ratsprasidentschaft hat eine Studie zur Abschatzung der wirtschaftlichen Auswirkungen der vorgeschlagenen Richtlinie uber Dienstleistungen beim niederlandischen Beratungsorgan Centraal Planbureau (CBP) in Auftrag gegeben.
Die Studie kommt zu folgendem Ergebnis, wenn die Vorschlage vollstandig umgesetzt werden: der innereuropaische bilaterale Handel mit kommerziellen Dienstleistungen konnte um 15 bis 35 % zunehmen; das Gesamthandelsvolumen innerhalb der EU konnte um 1 bis 3 % steigen; die auslandischen Direktinvestitionen in Dienstleistungen konnten um 15 bis 35 % zunehmen.

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Commission consults on defence procurement

Résumé

La Commission a publié un Livre vert à caractère consultatif sur les moyens d'améliorer la concurrence trans-européenne dans certains types de marchés d'armement d'une manière compatible avec la nature particulière du secteur. La législation communautaire (article 296 du traité CE) n'impose pas de mise en concurrence pour les marchés de fournitures, de travaux et de services répondant à des besoins spécifiquement militaires et revêtant une importance cruciale pour la sécurité nationale. Cependant, la Commission souhaite aider les États membres à mieux tirer parti des marchés d'armement européens évalués à plus de 30 milliards d'euros et à aider les industries de la défense européennes à renforcer leur position concurrentielle en les conseillant dans l'interprétation des exceptions et des conditions prévues par le traité CE.

A consultative Green Paper on how to improve cross-border competition in certain areas of defence procurement has been published by the Commission. Though EU law (Article 296 EC) does not require competition in procuring supplies, works and services intended for specifically military purposes and crucial to national security, the Commission wants to help Member States to get better value in the € 30 billion plus EU market for defence procurement and to help EU defence industries to be more competitive, by providing guidance on how EC Treaty exceptions and requirements should be interpreted.

Defence cannot be included under general procurement rules but contracts for supplies such as boots and food often do not raise national security issues. With the exception of obviously sensitive areas, this is probably true of much other military equipment.
The Commission is exploring how to extend the benefits of more open procurement to those contracts.

Clarifying procurement criteria

The Green Paper assesses how the Commission might clarify in a Communication the criteria to establish when procurement of military equipment, services and works can be exempted from competitive procurement requirements and when they cannot. It would take into account the existing legal framework and case law.
The Green Paper also asks whether the Commission should propose a Directive coordinating procedures for defence procurement, in cases where the exemption under Article 296 EC is not applicable or a Member State chooses not to take advantage of it. For such contracts, it would introduce new, flexible, EU-wide rules in line with the special nature of the sector.
The Commission has worked closely with Member States and industry to prepare the Green Paper, announced in the March 2003 Communication "Towards an EU defence equipment market".

European Security and Defence Policy

The development of a European defence market is even more important given advances in European Security and Defence Policy (ESDP) and the recent creation of the European Defence Agency.
Currently, procurement for multinational defence programmes is often carved up along national lines. National procurement contracts are usually handed to national suppliers.
Article 296 of the EC Treaty stipulates that a Member State may take such measures "as it considers necessary for the protection of the essential interests of its security". But Article 296 EC also states that measures connected with the production or trade of arms, munitions and war material must not adversely affect competition in the market for "products not intended for specifically military purposes." In practice, contract notices are published, if at all, only at national level, technical specifications are based on differing standards and criteria for awarding contracts are vague.

European Defence Equipment Market

The Green Paper on Defence Procurement forms part of the European Commission's initiative to provide a contribution to the progressive establishment of a European Defence Equipment Market. It is one of the seven initiatives announced in the Communication "Towards a European Union defence equipment policy", adopted by the European Commission in March 2003.

The Green Paper aims to stimulate debate and collect the views of interested parties. The Commission will analyse the contributions received in order to draw conclusions and, if necessary, to propose specific initiative. The Commission invites all interested parties to submit their observations on the questions raised in this Green Paper by 23 January 2005 at the latest.

The Green Paper is available at:
http://europa.eu.int/comm/internal_market/consultations/index_en.htm

Resümee

Die Kommission hat ein Grünbuch zur Frage herausgebracht, wie der grenzüberschreitende Wettbewerb bei der Beschaffung bestimmter Verteidigungsgüter unter Berücksichtigung der Besonderheiten des Verteidigungssektors verbessert werden kann. Nach EU-Recht (Artikel 296 EG-Vertrag) gelten die Wettbewerbsvorschriften nicht bei der Vergabe von Bau-, Liefer- und Dienstleistungsaufträgen, die militärischen Zwecken dienen und wesentliche Sicherheitsinteressen berühren. Gleichwohl möchte die Kommission dafür sorgen, dass den Mitgliedstaaten ein besseres Preis-Leistungsverhältnis auf dem über 30 Mrd. schweren Markt für Verteidigungsgüter geboten wird. Außerdem möchte sie die EU-Verteidigungswirtschaft dabei unterstützen, wettbewerbsfähiger zu werden. Deshalb hat sie Leitlinien für die Auslegung der betreffenden Bestimmungen und Ausnahmeregelungen des EG-Vertrags aufgestellt.

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Consultation on electronic procurement

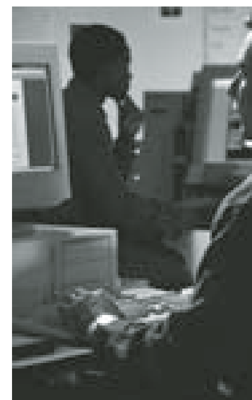
An on-line consultation aimed at identifying opportunities and challenges in electronic public procurement has been launched by the Commission.
The consultation is part of the process of drawing up an Action Plan to ensure Europe's economy gets the maximum possible benefit from the implementation of the new provisions on electronic public procurement included in the legislative package of procurement Directives adopted in February 2004. The deadline for responses is 15 November.

The Internal Market in electronic public procurement: Cutting costs and red tape

Public procurement is a key sector of the EU economy accounting for about 16% of GDP. Modernising and opening up procurement markets across borders – including the use of electronic procurement -– is important for Europe's competitiveness and for creating new opportunities for EU businesses in the Internal Market.

The Commission has identified electronic public procurement as an area where large gains can be achieved. Appropriate use of information technology can help reduce costs, improve efficiency and remove barriers to trade, ultimately resulting in savings for taxpayers and less red tape for businesses.

The Directives, which were adopted in February 2004 as part of the legislative package to modernise public procurement, provide a legal framework aimed at boosting the development and use of electronic procurement.



The Commission intends to issue an Action Plan to help Member States to fully implement the Directives and to release the full potential of using electronic public procurement.

As part of its preparations, the Commission needs input from businesses on existing barriers, expectations and challenges in this area.

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http://www.europa.eu.int/comm/internal_market/publicprocurement/index_en.htm

Buying green can help save the environment and taxpayer's money

The EU's new Public Procurement Directives, adopted in March 2004, make clear that public authorities can take account of environmental considerations in their procurement procedures in many different ways.

To help them in this, the Commission has produced a Handbook on Green Public Procurement. It explains in clear, non-technical terms how public purchasers, such as schools, hospitals and national and local administrations, can take into account the environment when buying goods, services and works.

The major barriers for public authorities doing this appear to be lack of knowledge about setting the right environmental criteria in tender documents, budgetary constraints due to the often higher "up front" price of green products and services, and legal uncertainty.

Each year public authorities spend some 16% of EU GDP, around € 1,500 billion, on goods, services and works. If they opt for environmentally sound goods, services and works, they will help the EU reach sustainable development. Green purchasing also covers efficient use of energy and resources as well as waste prevention, thus contributing to saving taxpayer's money.

The new Handbook gives best-practice examples and provides advice covering every step of a procurement procedure. It insists on the importance of taking into account the life-cycle cost of the purchased products, services and works, and it refers to an online database which gives environmental information on some 100 products and services. The Handbook and further information can be found at:
http://europa.eu.int/comm/internal_market/public-procurement/key-docs_en.htm

European Company Statute blocked by national delays

The European Company Statute became available for use in theory on 8 October 2004, more than thirty years since it was first proposed by the Commission. However, only six of the 28 EU and EEA Member States have implemented the regulations at national level which are necessary to allow European Companies to be set up on their territory. Until the rest do so, many companies operating in more than one Member State will be denied the option of being established as a single company under Community law and thus of being able to operate throughout the EU with one set of rules and a unified management and reporting system.

The European Company Statute makes it easier and cheaper for companies to expand and to manage cross-border operations without the red tape of having to set up a network of subsidiaries. Not only will that encourage more companies to exploit cross-border opportunities, the reduced costs should ultimately lead to downward pressure on prices and boost Europe's overall competitiveness.
Only Belgium, Austria, Denmark, Sweden, Finland and Iceland have so far taken the necessary measures to allow European Companies to be established on their territory, despite the fact that the European Company Statute was adopted at EU level in 2001.

Further information at:
http://www.europa.eu.int/comm/internal_market/en/company/company/official/index.htm

Consultations launched on fine-tuning of copyright legislation

A consultation exercise on the simplification and fine-tuning of existing EU legislation on copyright and related rights has been launched by the Commission. The consultation, open until 31 October 2004, is based on a Commission working paper which suggests that current EU copyright legislation is generally effective and consistent, but would benefit from some improvements.
The results of the consultation will be taken into account by the Commission before it proposes legislative amendments within the next year or so. The review of the existing Directives is in line with the Commission's Better Regulation Action Plan.
Seven copyright Directives have been adopted over ten years and it is important to ensure that the early Directives are consistent with the more recent ones.
The working paper assesses, in particular, whether any inconsistencies between the different Directives hamper the operation of EU copyright law or damage the balance between rights holders' interests, those of users and consumers and those of the European economy as a whole.
The working paper concludes that there is no need for root and branch revision of the existing Directives but that fine-tuning is necessary to ensure that definitions – for example of reproduction right - are consistent. Similar updating seems necessary with respect to the exceptions and limitations set out in the different Directives.
Some rights holders have argued for extending copyright protection for recorded music from 50 years to 95, to bring the EU in line with the US. However, the working document suggests that there is no apparent justification for such a change, given that there are, for example, no longer trade distortions arising from different terms of protection within the EU's Internal Market.

Further info at:
http://www.europa.eu.int/comm/internal_market/indprop/index_en.htm

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More competition proposed for automobile spare parts

Résumé

Renforcement de la concurrence sur le marché des pièces de rechange automobiles

La Commission européenne a proposé d'offrir aux consommateurs un meilleur choix à un meilleur prix pour l'achat de pièces de rechange de véhicules "visibles" telles que capots, pare-chocs, portières, phares, garde-boue, pare-brise et ailes. La proposition modifierait la protection juridique de la directive sur les dessins ou modèles (98/71) en enlevant aux États membres le choix de maintenir une protection des modèles pour ces articles.

Consumers should be given better choice and value when they buy 'visible' replacement parts for their cars. In some Member States, the design of such parts is protected, which means that car manufacturers have monopoly power and independent parts manufacturers are not allowed to produce protected parts. The Commission has proposed removing Member States' option to provide such design protection by amending the 'legal protection of designs Directive' (98/71).

Under the new Commission proposal, independent part manufacturers – not linked to the producers of finished vehicles – would be allowed to compete throughout the EU market for 'visible' replacement parts, worth potentially some € 10 billion annually.
'Visible' replacement vehicle parts are items such as bonnets, bumpers, doors, lamps, rear protection panels, windscreens and wings. To be marketable, such parts must look identical to the original component or nobody would buy them. If that "look" is protected from copying, independent parts manufacturers are excluded from the market.

Costly restriction on competition

The Commission estimates that these 'visible' parts are 6% - 10% more expensive in Member States where they are subject to design protection. Non-visible parts, like engine or mechanical parts are not concerned by the proposal. Neither are components in new vehicles.
In Member States where the design protection on spare parts is in force, independent suppliers were found to have a market share averaging just 15%. That limitation of competition costs car owners in those countries dearly according to a study analysing prices for 11 spare parts and 20 car models in 9 Member States plus Norway. In the six countries where there is design protection, 10 out of 11 spare parts examined cost significantly more than in Member States without design protection.

After-market in spare parts

The Commission has previously attempted to tackle this issue in 1996 but Member States were not able to agree on fully opening up the visible parts market.

The agreed regime allowed Member States to progress voluntarily towards market liberalisation with the result that nine Member States have opened their markets and the others have continued with design protection to spare parts.
The lack of harmonised rules is burdensome for companies, especially for SMEs. Independent part manufacturers remain squeezed out of the market for visible replacement parts in many Member States. Their share in this € 10 billion EU market probably does not exceed 12-15 %. In addition, Internal Market barriers remain: parts manufacturers can sell their products legally in some Member States but cannot in others.
To remedy this, the Commission's proposal would introduce into Directive 98/71 a 'repairs clause', so that visible car parts can be freely reproduced by independent parts manufacturers and marketed throughout the EU for repair purposes and to restore the original appearance of the product.

Design protection only covers the appearance of products. The proposal would not affect the safety or quality of spare parts. Safety standards are governed by other EU and national laws. They set objective minimum standards for all spare parts. All producers would continue to have to respect these.

Under the proposal, car manufacturers would retain exclusive rights covering the use of designs for the production and sale of new vehicles. That is sufficient to reward their investment in design and to maintain a strong incentive to innovate. Manufacturers will continue to produce the best-looking vehicles they can, as car buyers are influenced by appearance in making purchasing decisions.

Further information at:
http://www.europa.eu.int/comm/internal_market/en/indprop/design/index.htm

Resümee

Mehr Wettbewerb auf dem Autoersatzteilmarkt

Die Kommission möchte dafür sorgen, dass Verbraucher mehr Auswahl und ein besseres Preis-Leistungs-Verhältnis beim Kauf von „sichtbaren" Autoersatzteilen wie Motorhauben, Stoßstangen, Türen, Scheinwerfern, Heckschutzelementen, Windschutzscheiben und Kotflügeln erhalten. Sie hat daher eine Änderung der Richtlinie 98/71 über den Schutz von Mustern und Modellen (Geschmacksmusterrichtlinie) vorgeschlagen, die dazu führen würde, dass die Mitgliedstaaten den Geschmacksmusterschutz für Autoersatzteile nicht mehr aufrechterhalten können.

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L'adhésion de la CE au Protocole de Madrid

Marques internationales

Summary

EC joins international trademark treaty

The European Community has acceded to the Madrid Protocol on the international registration of trademarks. It is the first time that the EC as such accedes to a World Intellectual Property Organization (WIPO) treaty. This link will allow businesses to benefit from the advantages of the Community Trademark through the Madrid Protocol system and vice-versa, which will simplify procedures, reduce the costs for international protection and make administration easier.

L'adhésion de la Communauté européenne au Protocole de Madrid le 1er octobre 2004 marque un jalon dans l'évolution du système international des marques. Cet important événement crée un lien entre les opérations internationales des marques de l'Organisation mondiale de la propriété intellectuelle (OMPI) et celles du système de la marque communautaire, ce qui permet aux propriétaires de marques de disposer d'une plus grande souplesse d'action pour l'obtention d'une protection internationale des marques.

Le système de Madrid concernant l'enregistrement international des marques permet aux entreprises de faire reconnaître et protéger leurs marques dans l'ensemble des pays participant au système de façon simple, abordable et efficace. Il en résulte que les propriétaires de marques des pays parties au protocole de Madrid peuvent désigner la Communauté européenne dans leurs demandes d'enregistrement international de marques.

Le protocole de Madrid est un instrument essentiel de la protection des marques au niveau mondial. Il s'agit d'un système d'enregistrement international administré par l'OMPI. Ce système offre au titulaire d'une marque la possibilité d'obtenir la protection de sa marque dans plusieurs pays en déposant une seule demande rédigée en une seule langue auprès d'un seul Office et en payant une seule série de taxes en une seule monnaie (le franc suisse). Il met à la disposition des propriétaires de marques un moyen efficace et avantageux d'obtenir une protection dans de nombreux pays moyennant le dépôt d'une seule demande. Un enregistrement international produit les mêmes effets qu'une demande d'enregistrement de marque présentée directement dans chacun des pays désignés par le déposant. Si la protection n'est pas refusée par l'office des marques d'un pays désigné, la protection de la marque est la même que si cette marque avait été enregistrée directement par cet office.

C'est la première fois que la Communauté européenne signe un traité administré par l'OMPI et c'est aussi la première adhésion d'une organisation intergouvernementale, en tant que bloc de pays, à un traité de l'Organisation. Cela permet de créer un lien entre le système du protocole de Madrid et le système de la marque communautaire, lequel constituera une autre façon d'obtenir une marque communautaire ou d'obtenir une marque nationale fondée sur une marque communautaire. La Communauté européenne est le 77e membre du système de Madrid.

Événement majeur

Les États membres de l'OMPI ont approuvé en septembre 2003 une série de mesures visant à garantir l'interaction efficace et harmonieuse du protocole de Madrid et du système de la marque communautaire. Ces mesures, qui offrent aux propriétaires de marques un maximum de souplesse, ont pris effet en avril 2004. En vertu du système de la marque communautaire, les propriétaires de marques qui sont titulaires dans un ou plusieurs États membres de la Communauté européenne de droits antérieurs à l'institution du système communautaire ont la possibilité d'englober ces droits antérieurs dans un enregistrement communautaire. Avec l'adhésion de la CE au protocole de Madrid, ces droits peuvent aussi être compris dans les enregistrements internationaux désignant la Communauté européenne.

Au sein de la Communauté européenne, les systèmes nationaux d'enregistrement des marques existent parallèlement au système de la marque communautaire. Il s'ensuit qu'un propriétaire de marque peut choisir de faire enregistrer directement celle-ci auprès de l'office national des marques intéressé ou auprès de l'OHMI. Avec l'adhésion de la Communauté européenne au protocole de Madrid, les deux solutions pourront aussi être retenues dans le cadre du système de Madrid. En outre, dans l'hypothèse où l'OHMI refuserait d'accorder la protection à une marque faisant l'objet d'une demande d'enregistrement international désignant la Communauté européenne dans le cadre du protocole de Madrid, la désignation en question pourra être transformée en désignations des divers États membres de la Communauté européenne qui sont aussi membres du système de Madrid.

Réf.: http://www.wipo.int/madrid/fr/

Resümee

EG tritt internationalem Markenvertrag bei

Die Europäische Gemeinschaft hat bei der Weltorganisation für Geistiges Eigentum (WIPO) in Genf ihre Beitrittsakte zum Madrider Protokoll über die internationale Registrierung von Marken hintergelegt. Zum ersten Mal tritt die EG als solche einem WIPO-Vertrag bei. Dadurch können Unternehmen über das System des Madrider Protokolls von den Vorteilen der Gemeinschaftsmarke profitieren und umgekehrt, d. h. die Verfahren werden einfacher, die Verwaltung leichter, und die Kosten für die internationalen Schutzrechte sinken.

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Football accounting challenged in Italy

Salva-calcio

Europe's favourite sport has come under fresh scrutiny. The Commission has decided to formally ask Italy to change its 'Salva-Calcio' law on financial reporting by professional sports clubs, including Serie A football clubs.
The Commission believes that the legislation breaches EU accounting laws in that the balance sheets of a number of sports clubs fail to provide a true and fair view.

The Commission's request takes the form of a *reasoned opinion*, the second stage of EC Treaty infringement procedures. Unless a satisfactory response is received within two months, the Commission may refer the case to the European Court of Justice. The effect of the February 2003 'Salva-Calcio' Act is that some professional sports clubs, especially major football clubs for which players' contracts are the biggest item of expenditure, may be able to submit accounts which underestimate their true costs in a given year, hide real losses and give a misleading picture to investors.
The Commission believes that the 'Salva-Calcio' Act breaches the EU Accounting Directives by allowing a number of athletes' contracts to be written off over a longer period than their useful economic life and by allowing sports clubs not to make value adjustments in respect of their contractual rights over professional athletes, even if those athletes have ceased to perform at the level expected from them, for example through injury.
Financial statements presented in such a manner cannot show a true and fair view and so depart from the prudence principle of the 4th Accounting Directive. Though the Italian authorities have underlined that the 'Salva-Calcio' Act was conceived as a 'one off' measure, the Commission notes that it continues to affect the accounts of the sports clubs in question and that no measure has been up to now taken by the Italian authorities to put an end to these effects. In these circumstances, the Act is still in breach of the EU Accounting Directives.

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INFRINGEMENT PROCEDURES

If the Commission obtains or receives convincing evidence from a complainant that an infringement of EU law is taking place, it first sends the Member States concerned a **letter of formal notice**.
If the Member State does not reply with information allowing the case to be closed, the Commission sends a **reasoned opinion**, the second step of the infringement proceedings under Article 226 of the EC Treaty. If there is no satisfactory response within two months, the Commission may then decide to **refer the case to the European Court of Justice** in Luxembourg.

Greece referred to Court over obstacles to electronic games

The Commission has referred Greece to the European Court of Justice over its ban on the installation and operation of electrical, electromechanical and electronic games, including computer games, in all public and private places – including premises providing Internet services (cyber cafés).

The Commission considers that the Greek law in question (29 July 2002) is incompatible with the provisions of the EC Treaty on the free movement of goods and services and the freedom of establishment. Despite promising to amend its legislation in response to the Commission's *reasoned opinion* sent in April 2004, Greece has yet to introduce any change.

The Commission believes that the Greek legislation is disproportionate, insofar as it applies not only to equipment (slot machines) and games of chance which might give rise to social concerns but also to games of an entirely different nature which are not, in themselves, a source of particular disquiet with regard to public order or consumer protection.

By banning the games themselves, the Greek law has prevented games lawfully produced or marketed in other Member States from being imported and marketed in Greece, in contravention of the principle of the free movement of goods laid down in Article 28 of the EC Treaty.

By prohibiting service activities related to electronic games – such as their maintenance – the ban stops businesses which provide such services legitimately in other Member States from providing the same services in Greece.

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Sweden taken to European Court over ban on private alcohol imports

The Commission has decided to bring Sweden before the European Court of Justice for not permitting Swedish consumers to ask independent intermediaries to import alcoholic drinks for their private use into Sweden from other Member States. The Commission believes that the ban represents a disproportionate obstacle to the free movement of goods in contravention of EC Treaty rules.

Private individuals are indeed allowed to bring alcoholic beverages into Sweden for their own use, if they themselves travel and bring the goods physically with them. If, however, they do not physically transport the alcoholic beverages into Sweden themselves, their only option is to request Systembolaget, the Swedish alcohol retail monopoly, to bring them in on their behalf, which is time consuming and expensive.
Consumers are prohibited from requesting other intermediaries to carry out the import on their behalf, even if they are prepared to pay the Swedish excise duties due.

The Commission sent a *reasoned opinion* in October 2003 requesting Sweden formally to lift the ban. In its reply, Sweden maintains that the ban on private imports of alcoholic beverages is in compliance with European law since it is an integral and non-discriminatory part of the Swedish state's retail monopoly for alcoholic beverages and since it is necessary for the protection of public health.

The Commission does not accept the Swedish position and continues to take the view that the ban breaches the EC Treaty rules on the free movement of goods, since it imposes a disproportionate barrier to intra-EU trade, having regard to the public health objective that it is supposed to achieve.
In a separate action, the Commission has decided to refer Sweden to the Court over its tax discrimination against wine in comparison to beer. The Swedish tax system affords undue protection to beer, mainly produced domestically, in comparison to wine, which comes from other Member States.

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Italy – helicopter purchasing procedures questioned

The Commission has sent Italy a *reasoned opinion* on the procedures followed by the Italian Government in connection with the purchase of helicopters for civilian use. The Italian Government has for a long time followed a practice of awarding directly to an Italian manufacturer (Agusta) without any kind of competition, contracts for helicopters to be used by certain public services, and especially by the forestry department (Corpo Forestale dello Stato), financial police (Guardia di Finanza), fire services (Vigili del Fuoco), police and security forces (Polizia di Stato and Carabinieri), coastguard (Guardia Costiera) and the civil defence department (Dipartimento della Protezione Civile). The Commission feels that this practice is contrary to the Directive on public supply contracts (93/36/EEC), since none of the strict conditions governing the possibility of using a negotiated procedure without prior publication of a contract notice is met.
It also feels that Italy has in no way shown that the practice in question is justified on the basis of Article 2 of Directive 93/36/EEC, which states that the Directive does not apply to 'contracts which are declared secret or the execution of which must be accompanied by special security measures in accordance with the laws, regulations or administrative provisions in force in the Member States concerned or when the protection of the basic interests of the Member State's security so requires'.

The Commission has already referred Italy to the Court of Justice in connection with a government order authorising one of the services mentioned – Corpo Forestale dello Stato – to purchase helicopters without any form of competition. The case in question, on the other hand, concerns the general practice followed by the Italian Government for the purchase of all helicopters for civilian use by the services concerned.

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Four Member States queried about computer tenders

The Commission has sent letters of formal notice to France, the Netherlands, Finland and Sweden asking why some of their invitations to tender for computer equipment have specified Intel microprocessors or microprocessors using a specific clock rate.

Reference to a specific brand would, in the Commission's view, constitute a violation of Directive 93/36/EEC on public supply contracts, while merely specifying a clock rate – which is insufficient for assessing the performance of a computer – would be contrary to Article 28 of the EC Treaty, which prohibits any barriers to intra-Community trade.

Under European law on public procurement, a brand may be specified only if it is otherwise impossible to describe the product sufficiently precisely and intelligibly.

In France, the tenders concerned have been launched by local authorities or public bodies. In the Netherlands the tenders were issued by the Municipality of Amsterdam and by the IGEA group (a consortium of contracting authorities). In Finland, the bodies involved are the Universities of Jyväskylä and Tampere and Häme Polytechnic, and in Sweden, the Municipality of Filipstad, Chalmers University of Technology, the national police authority (Rikspolisstyrelsen) and the Uppsala regional authority.
The Member States in question will have two months to reply. If the Commission is not satisfied with the replies and finds that European law has indeed been infringed, it may formally ask these Member States to rectify the irregularities in the award of these contracts. If the Member States fail to bring these contracts into line, the Commission may bring the cases before the Court of Justice.
The Commission sent letters of formal notice on similar cases to Italy and Germany at the beginning of this year.

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Commission moves against four Member States over medical infringements

Belgium: sterile medical equipment

Belgium has been sent a *reasoned opinion* from the Commission concerning Belgian legislation requiring the distributors of certain medical devices to obtain authorisation and compelling doctors, psychologists, ancillary medical staff and social workers to obtain sterile equipment from pharmacists, retail or wholesale distributors, importers or manufacturers who have been approved by the Belgian authorities. The Commission considers that the Belgian regulation constitutes an unjustified barrier to the free movement of goods in that the authorisation procedure makes access to sterile equipment from other Member States more difficult.

Germany: the supply of medicines to hospitals

Following a *reasoned opinion* sent in December 2003, the Commission has decided to ask the Court of Justice to rule that certain provisions of German regulations on the supply of medicines to hospitals are incompatible with the Treaty. In Germany, the supply of medicines to a hospital by a pharmacy is only possible if the pharmacy and the hospital are in the same or neighbouring districts. Moreover, the supply of medicines to hospitals is conditional on a pharmacist established in the same or neighbouring district performing an inspection and advisory role. Germany argues that this regulation is necessary in order to ensure the safety of the pharmaceutical products and human health. The Commission doubts that a local pharmacist needs to be recruited for those purposes.

Ireland: reimbursement of the cost of medical appliances

The Commission has sent Ireland a *reasoned opinion* regarding the refusal of the Irish authorities to allow the direct reimbursement of costs incurred by individuals who purchase medical appliances in other Member States. The Commission considers these restrictions are not necessary for, or proportionate to, the safeguarding of the proper functioning and financial solvency of the Irish social security system.

Austria: reimbursement for parallel imports

The Commission has decided to send a *reasoned opinion* to Austria in which it states that it considers Austrian rules on the reimbursement of the cost of medicines by social security funds to be unjustified. In Austria, social security funds only refund the cost of medicines listed in a directory. In order to appear in the directory, medicines must meet certain pharmacological, therapeutic and economic criteria. With regard to the economic criteria, a decree stipulates that medicines imported in parallel only have a satisfactory price/quality ratio if their ex-works or ex-depot selling price is at least 10% below that of medicines imported directly or manufactured in Austria. The Commission considers this a clear case of discrimination against parallel imports of products from another Member State of the European Union.

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Nine Member States requested to implement a series of EU laws

Nine Member States have been formally requested to implement correctly various Internal Market laws agreed by the European Parliament and the Council in a total of 15 infringement cases. The cases cover public lending right and rental rights, copyright, insurance solvency margins and on collateral for financial transactions.

Public lending right

Spain, France, Italy, Ireland, Luxembourg and Portugal have been sent a *reasoned opinion* regarding the non-implementation at national level of the public lending right – and, in the case of Portugal, regarding rental rights – as harmonised by Directive 92/100/EEC on rental rights, lending rights and on certain rights related to copyright. This Directive should have been implemented as far back as 1994, but the Commission has found that Spain, Italy, Ireland and Portugal are incorrectly applying this text by exempting all lending institutions from the obligation to pay the rightholders. Luxembourg has still not transposed the lending right. Nor has France, despite having undertaken to do so by the end of 2003.

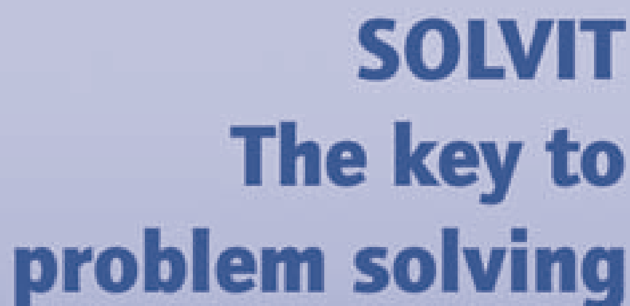
Solvency margins

Greece has not written into national law the 2002 Directives on solvency margins for life assurance and insurance companies (Directives 2002/12/EC and 2002/13/EC) and following two *reasoned opinions* from the Commission, has been referred to the European Court. These measures were to have been transposed by 20 September 2003 at the latest. These two Directives comprise a series of measures ("Solvency I") which considerably improve the existing arrangements and, together, significantly strengthen the protection that policyholders enjoy.

Financial collateral

Belgium, Greece, France, Italy, Luxembourg and Sweden have not implemented the 2002 Directive on collateral for financial transactions and have received *reasoned opinions* from the Commission. This Directive (2002/47/EC) creates a uniform EU legal framework to limit credit risk in financial transactions through the provision of securities and cash as collateral. The Directive is a priority measure under the Financial Services Action Plan and the deadline for implementation was December 2003.

For the latest information on proceedings concerning all Member States, consult the following site:
http://europa.eu.int/comm/secretariat_general/sgb/droit_com/index_en.htm



SOLVIT

If you have a problem due to the misapplication of Internal Market rules, contact your local SOLVIT Centre on europa.eu.int/solvit or call Europe Direct 00800 67891011 and ask for SOLVIT.

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Das neue Format und die neuen Abonnements werden mit SMN 37, dessen Veröffentlichung für April 2005 vorgesehen ist, zum ersten Mal angewandt. SMN 36 (Dezember 2004/Januar 2005) wird in der bisherigen mehrsprachigen Form erscheinen und die existierenden Adressenlisten werden benutzt.
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