HOGAN & HARTSON

# EU Accession Guide

*"This fifth enlargement brings the European Union closer to its natural and historic boundaries. It creates a large continental market where the economies of scale, as well as the cultural diversities, can be converted into a great many sources of progress and well-being for the citizens of the wider Europe. It also heralds a potential robust economic and political actor on the world scene."*

**Ambassador Hugo Paemen**
**Senior Adviser, Hogan & Hartson**
*former European Commission Deputy Director-General for External Relations (1987-1995) & EU Ambassador to the United States (1995-1999)*

# Introduction

The expansion of the EU in 2004 will create the world's largest single market - home to around 450 million people in 25 countries. This change presents big and exciting opportunities for companies and governments in new member states, as well as for businesses based within or outside the EU.

And with the opportunities will come new risks. EU membership requires knowledge of a rapidly evolving and complex legal system. All new member states will have to comply with what is known as the Community *acquis*, a vast body of law and regulation that includes the principles of the European Community Treaty, the compendium of EC legislation, as well as the jurisprudence of the European Court of First Instance and the European Court of Justice.[1]

Existing EC laws and standards in areas ranging from competition and trade to employment and food safety will be imposed on new members immediately, with few exemptions or allowances made. It will be up to new member state governments and business to understand and comply with the new legal and regulatory environment and adjust standards where necessary, to ensure compliance by May 1st, 2004.

Although entrepreneurs may be aware that new legislative requirements will have to be complied with, they may be less aware of what exactly is needed. They may require expert help in navigating their way through the new laws and regulations. They may also require advice on how best to take advantage of opportunities offered by accession. Hogan & Hartson is exceptionally well placed to serve that role of advising industry and governments dealing with the new member states on issues arising from EU enlargement. We can help ensure that businesses do not fall foul of new laws and we also provide strategic advice that can help businesses gain a competitive advantage in those local markets.

## About this guide

**As a first step, we have assembled this Guide to EU enlargement. This practical guide is intended as a brief summary of some of the main issues arising out of the Community *acquis*, to help you understand the kinds of challenges your organisation will face. It is by no means comprehensive. Governments and businesses that are serious about preparing for EU enlargement will need proper commercial relationships with recognised experts to help them face the challenges and prosper in the new conditions. Hogan & Hartson looks forward to working with you to achieve that aim.**

*[1]The use of the abbreviation "EC" (European Community) throughout our guide is used when reference is made to the body of law promulgated by the EU Institutions*

*Strictly speaking, Community law consists of the founding Treaties (primary legislation) and the provisions of instruments enacted by the Community Institutions by virtue of them (secondary legislation). In a broader sense, Community law encompasses all the rules of the Community legal order, including general principles of law, the case law of the Court of Justice, law flowing from the Community's external relations and supplementary law contained in conventions and similar agreements concluded between the Member States to give effect to Treaty provisions. All these rules of law form part of what is know as the Community acquis. By acceptance of those rules and by adapting their national laws, EU member states surrender certain significant competencies in favour of common policies.*

*The EU Institutions dispose of a number of legal instruments to carry out their tasks under the EC Treaty. This secondary legislation comprises:*

***Regulations:** these are binding in their entirety and directly applicable in all Member States; EC regulations prevail over national laws and do not need to be transposed into national legislation;*
***Directives:** these bind Member States as to the results to be achieved; they have to be transposed into the national legal framework and thus leave a margin for manoeuvre as to the form and means of implementation; In the process of harmonization of their laws with the EU legal environment, new member states have already adopted a considerable portion of these EC directives in certain areas, while lagging behind in others;*
***Decision:** these are fully binding on those to whom they are addressed;*
***Recommendations and opinions:** these are non-binding, declaratory instruments*

# Introduction

*Hogan & Hartson is uniquely placed to advise you on important legal and regulatory challenges and exciting business opportunities resulting from the EU enlargement process.*

## A leading international law firm with close to 1,000 lawyers and regulatory advisers worldwide

### Specialist expertise in EC law

- *Our Brussels office specialises in EC law*
- *We offer extensive experience in advising both European and non-European clients on competition and trade matters and on the impact of EU policy and regulation in a number of key areas*

### Local market knowledge in new EU member states

- *We have well-established and fully integrated local offices in the Czech Republic, Hungary and Poland with experienced lawyers advising on local and international law, and a network of lawyers we work with in most of the other new member states*
- *We understand the special challenges faced by businesses operating in the new member states, whether they are located in these countries, within the EU or outside the EU*

### A strong team that can assist you in taking full advantage of the new EU environment

- *An experienced team of multi-lingual lawyers and regulatory affairs advisers that has a thorough understanding of EU and local decision-making procedures and good relations with governmental bodies and entities that play a key role in the enlargement process*
- *Experience in representing clients before the European Commission, the European Parliament and the Council in developing, supporting, opposing and modifying legislation*


**Proven experience in key areas such as competition and trade and in highly regulated sectors including food safety and consumer protection, life sciences, energy, communications and pharmaceuticals**

- *Understanding of the EU regulations in your industry*
- *A team acting for major players across these sectors, recognised for its knowledge and expertise, and recommended in key legal directories*

**An integrated European network**

**Hogan & Hartson is a leading full-service international law firm with 19 offices worldwide. Further information on our range of services and international network is available at www.hhlaw.com**

*Enlargement is one of the most important challenges for the European Union at the beginning of the 21st century. Eight former Eastern bloc countries – the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia, as well as Malta and Cyprus – are scheduled to join the EU on May 1st, 2004. Meanwhile Romania and Bulgaria are expected to join the EU in 2007. Turkey has been granted a conditional December 2004 start date for accession negotiations.*

# COMPETITION

The aim of EC competition law is to ensure that business is conducted in accordance with the principle of an open market economy, with free competition between players. New EU member states will have to ensure that all companies doing business fully comply with the law. There are four main areas:

*Strict legislation to maintain and enhance a free market*

- Antitrust & Cartels: laws designed to eliminate agreements which restrict competition (e.g. price-fixing agreements between competitors, exclusive distribution agreements which prevent all sales in or out of a given territory, certain long term exclusive purchase or supply agreements between players with high market shares) and prevent abuses by firms that hold a dominant position in the market.

- Merger control: laws to prevent mergers between firms which could result in them dominating the market and reducing competition.

- Liberalisation: new laws designed to introduce competition in economic sectors which tend to operate in a monopolistic way (e.g. telecommunications).

- State aid control: laws controlling aid given to companies by their national governments to ensure that such measures do not distort competition. For example, state aid regulations would prohibit a state grant designed to keep in business a loss-making firm that had no prospect of recovery.

The European Commission has the right to impose sanctions if EC competition law is infringed. For instance, in 2003 the Commission imposed fines totalling Euro 855 million on eight companies for participating in secret market-sharing and price-fixing cartels affecting vitamin products. In addition, agreements contravening competition law are null and void.

## Will new member states' merger control regulations continue to apply when they join the EU?

*Specific measures to control mergers and state aid*

The new member states will have to make sure that their merger control rules are in line with the principles of the EC Merger Control Regulation. The national rules will continue to apply to transactions that are below certain thresholds set out by the Regulation. But for those proposed transactions that are over the thresholds - for example, if the parties have a combined world-wide turnover in excess of Euro 5 billion and at least two have an EU-wide turnover in excess of Euro 250 million each – the companies involved have to notify the European Commission. The European Commission will have jurisdiction over whether the merger can go ahead and under what conditions. The Commission has recently put forward a number of changes to the Merger Control Regulation and those changes are expected to come into force in May 2004.

## Will EU membership affect companies that are owned by the government? Will they be privatised?

European competition policy does not apply just to the private sector, but also to state-owned enterprises. State-owned companies with a dominant position in the market are not allowed to behave in ways that distort competition – for example if they fix unreasonably high prices in order to make it harder for smaller players to enter the market.

EU rules do not require state-owned companies to be privatised, although privatisation is encouraged. Market liberalisation is considered necessary, which does mean opening up state-owned companies to competition. Over the years, the EU has agreed on liberalising a number of areas where operators were traditionally owned by governments – including telecommunications, air transport and most recently electricity and postal services. In these areas, state-owned companies must now compete at least for much of the services they offer and can no longer maintain a monopoly.

## Is state aid allowed under EC law?

In principle, any form of selective aid conferring advantages on a particular company provided through state resources and which distorts or threatens to distort competition is illegal if it amounts to more than Euro 100,000 over a three-year period. However, some types of aid are automatically exempted from this prohibition

(e.g. social aid), while the European Commission has set up frameworks for sectoral, regional and horizontal aid, which are also exempted under certain conditions. For example, state aid is permitted within certain limits where it is intended for the development of essential services – for example – transport, water and electricity – at reasonable prices.

If the European Commission decides that aid has been granted to a company unlawfully, it can require the member state concerned to recover the aid – and it is increasingly using this power. So companies in new member states that receive state aid will urgently need to assess whether those subsidies or other indirect aid are compatible with EC competition rules.

### Do the state aid rules affect small and medium-sized enterprises (SMEs)?

The European Commission has adopted a Regulation that exempts certain aid to SMEs from the relevant rules in order to encourage the growth of SMEs. The aid allowed under this Regulation can be very high. Such aid often consists of incentive schemes launched by Governments to promote business and investment. These schemes can have a value of up to 15% of the investment costs in the case of small businesses and 7.5% in the case of medium-sized enterprises. And if the investment takes place in areas that qualify for EU regional aid, the level of permissible aid can be as high

as 65% of the costs of the project.

### Can state aid be linked to export performance?

No, export aid such as subsidies are prohibited both under EC law and WTO rules.

### I have an exclusive agreement to distribute a certain brand of product in an accession country. Will this agreement become illegal when that country joins the EU?

No. Exclusive distribution agreements are legal under EC law provided that certain conditions are met – for example the absence of provisions such as price fixing. Minor agreements which fall below certain thresholds are automatically exempted from some of the competition rules. If an agreement does not qualify for automatic exemption in this way, an in-depth analysis of its impact on competition needs to be carried out, as a result of which certain provisions of the agreement may have to be amended or removed in order to bring it into line with the law.

### Will my exclusive distributor be allowed to engage in 'parallel imports' into EU countries after accession?

In principle, EC competition law requires that exclusive distributors should be allowed to make so-called 'passive sales' into other territories. For example, a distributor which is appointed as exclusive distributor for

the territory of the Czech Republic, should be allowed to respond to unsolicited requests for products from customers located in Germany, Austria, Slovakia or any other EU Member State. Similarly, save in certain specific types of distribution arrangements, those distributors should be free to sell to customers in their territory who may resell the goods to customers in other countries.

### Can I conclude a price-fixing agreement with my rivals or with my distributors?

No. Price–fixing between competitors is absolutely forbidden under EC Competition law. It is an infringement of Article 81 of the EC Treaty and can never benefit from any exemptions. In addition, the European Court of Justice has ruled that this also applies to informal price-fixing agreements. A manufacturer can impose certain constraints on his distributor's pricing, but he can not set the re-sale price for the distributor.

# TRADE

With regard to trade issues, EC law makes a distinction between the rules of its internal market, which govern trade between member states, and the common commercial policy, which governs trade between member states and non-EU countries.

*Full access to an expanded EU market of 25 countries*

Free movement of goods is one of the cornerstones of the EU's internal market. It requires a common regulatory framework to ensure products can move freely from one EU member state to another, just as they would within one country. This means that basic technical standards, product certification and definitions are governed by rules established at European level. The guiding principle is that if a product can be legally sold on the market of one country in the EU, then it can be sold in the rest of the EU too.

The EC Treaty also prohibits member states from imposing quantitative limits on imports and exports of all goods from other member states - with a few specific exceptions, for example on the grounds of human health.

The common commercial policy, on the other hand, deals with the external trading relations of the EU and provides for trade protection and promotion. The policy covers international trading arrangements for specific types of goods and services including transport, particularly civil aviation, financial services and audio-visual and telecommunications services. The trade *acquis* includes customs legislation dealing with the conditions under

which goods enter into and exit from the EU.

The EU's trade remedies legislation and procedures are in line with WTO (World Trade Organisation) and other international agreements on unfair trading practices, including anti-dumping, anti-subsidy and safeguard measures. When a company believes that exporting producers in non-EU countries are using unfair practices, it can lodge a complaint with the European Commission. The EU has also proposed reforms that would strengthen the WTO's Anti-Dumping Agreement.

*No customs duties within the expanded EU Market*

I am an importer. Will customs procedures change when a new member state joins the EU?

Yes – depending where you are importing from. If you import from an EU country, all customs procedures will be removed. This applies to all EU goods, as well as to non-EU goods that are already in free circulation in the EU. The EU territory is a customs union and this means there can be no internal customs checks, procedures or duties between one EU country and another.

On the other hand, if you import from a non-EU country, customs procedures will remain in place. One single EU Customs Code sets out the basic rules concerning imports of goods from non-EU countries.

Will VAT be charged at the border when a product enters the new member state from another EU member state?

No. VAT will no longer be charged at the point of entry but will have to be charged at later stages, culminating in final collection at the point of sale to the ultimate customer. This means that importers will no longer need to pay VAT on their supplies when they arrive in the country, and customs authorities will no longer have a role in collecting any tax on goods entering from another EU country.

### What about customs duties on imports from a non-EU country into the new member states? Will the rates of import tariffs change?

New member states will adopt the Common EU External Tariff – a customs duty or import tariff – on all imports from non-EU countries. It is the same common rate in all EU countries and in general is quite low.

The precise level of tariff depends on the type of product and also on the country from which it is imported. The EU has concluded trade agreements with more than one hundred countries worldwide. In most cases, these agreements envisage lower trade tariffs than are currently applied in the new member states. However, there are also products – for instance agricultural products – where the import duty might increase once the Common EU External Tariff is applied. In these cases, importers may need to consider sourcing imports from the EU or from other non-EU countries subject to lower tariffs.

Complete information on customs and other duties are available from the EU's TARIC (Integrated Tariff of the European Communities) database. It provides updated and integrated information on tariffs and any special measures – such as anti-dumping or countervailing duties, import licenses and quotas – applicable on a product-by-product basis, according to the country of origin.

### What is dumping and what is the EU doing about it?

Dumping is the most common unfair trade practice. It occurs where non-EU companies export products to the EU at prices lower than the sales price on the manufacturer's domestic market or below its normal value.

The EU has adopted anti-dumping measures to stop this practice. Based on the relevant WTO Agreements, EU anti-dumping legislation applies to goods but not services.

EU companies can complain about dumping to the European Commission, but the complaint must:

- represent a major portion of the EU industry in question;
- show that the sales price of the imported product on the EU market is either lower than the sales price on

the manufacturer's domestic market or is below its constructed normal value, and show that they have suffered or may suffer material injury as a result of dumping.

### What other measures are available under EC legislation to companies who believe they are the victims of unfair trading practices?

There are also EC anti-subsidy measures. For instance, if a foreign government is unfairly subsidising a company which is then exporting to the EU and damaging the market for an EU industry's products, the EU companies involved can complain and get countervailing measures introduced in order to offset the distortive effects on the EU market.

In addition, the Trade Barriers Regulation enables the Community authorities to respond to "obstacles to trade" - trade barriers put up by non-EU governments which unfairly restrict EU companies' access to their markets or which adversely affect the EU market. Under this Regulation, which covers trade in both goods and services, an EU industry can complain to the European Commission when they believe this is happening and the Commission can take action to remedy it.

# Trade

# ENVIRONMENT

*A fast-changing area of European law*

Environmental standards are one of the areas where the new member states will need to do most to catch up with the rest of the EU. EU standards must be respected not just by national authorities but also by industry which is affected by this legislation. And they will need to move fast – EU environmental rules and standards will apply to the new members in the same way as they do to current EU members. There will be no lowering of standards, although the EU has accepted certain transitional periods for Central and Eastern European countries facing particular difficult environmental issues inherited from the past.

The environmental *acquis* covers a wide range of measures, mostly in the form of directives. In broad terms EC environmental legislation covers environmental quality protection, polluting and other activities, production processes, procedures and procedural rights as well as products. Apart from broader "horizontal" issues such as environmental impact assessments, access to information on environment, and combating climate change, there are also specific quality standards for air, waste management, water, nature protection, industrial pollution control, chemicals, genetically modified organisms, noise, nuclear safety and radiation protection.

The environmental *acquis* is still developing significantly. For example, in addition to existing legislation, the EU is currently undertaking a review of its chemical legislation,

as well as working on a draft Directive on environment liability, which will require polluters to pay for damage they cause to water, land and wildlife. It is also working to establish a greenhouse emissions trading system in order to fulfil its obligations under the Kyoto Protocol.

*Tough new standards affecting many industries*

### What are the EU's principles of waste management?

1. "Prevention principle": waste production should be minimised and avoided as much as possible.
2. "Polluter pays principle": those who contaminate the environment should be fined for their actions.
3. "Precautionary principle": prevent potential waste problems.
4. "Proximity principle": waste should be disposed of as close as possible to where it is produced.

### What are the EU requirements regarding packaging and packaging waste?

EC law imposes targets for the recovery and recycling of packaging and packaging waste: 50-65% of all packaging waste by weight must recovered, while 25-45% of packaging waste must be recycled. Apart from this, a minimum of 15% of each packaging material also has to be recycled. Furthermore, the EU is planning to introduce new and more stringent recovery and recycling targets by 2006. Packaging manufacturers, packers/fillers, retailers, waste collectors, recyclers and other businesses specialising in waste management will

be affected by this new proposal. Depending on national legislation, packaging manufacturers, packers/fillers and/or retailers would have to make financial contributions to recycling systems.

### What about the recovery of electrical and electronic equipment?

*A lot of catching up to do for new member states*

Batteries contain heavy metals such as cadmium, mercury and lead, which are harmful if not disposed of properly. The EU has decided that, from 2007 onwards, restrictions will apply to the use of these and certain other hazardous substances in electrical and electronic equipment. The EU is also seeking to improve recycling and other forms of recovery of electrical and electronic waste by introducing collection and handling systems, as well as by imposing penalties in cases where the rules are broken.

### Are there any special European rules on chemicals?

Yes. Certain dangerous substances and preparations can be traded only when packaged and labelled in accordance with specific EC legislation. Relevant legislation also deals with pesticides, worker protection and prevention of chemical accidents. In addition, work is progressing on endocrine-disrupting chemicals and dioxins.

A major revision of EU chemicals legislation is currently

under way which will significantly change the regulatory framework and increase industry's responsibilities regarding human health and environmental protection.

### Do European rules regulate recycling and recovery of vehicles?

Yes. A directive adopted in September 2000 is intended to make vehicle dismantling and recycling more environmentally friendly. It sets clear targets for re-use, recovery and recycling of vehicles and their components, and pushes producers to manufacture new vehicles with a view to their recyclability.

### What is the European Eco-label?

The European Eco-labelling scheme is a voluntary scheme for industry to encourage the production of environment-friendly products. The main criteria for the Eco-label are the impact of a product or service on the environment throughout its life-cycle, starting from raw material extraction, through production, distribution and disposal of the product or service. It can be awarded for various product groups. Manufacturers, importers or first-time marketing companies who feel that their product qualifies as environment-friendly can apply to the national authorities of the country where they market their products for the Eco-label.


# EMPLOYMENT

*Major new obligations for employers in new member states*

Employment issues and worker protection are a priority for the EU, and there have been a large number of directives addressing them which new member states will have to enforce. All employers in new member states will have to spend more time and resources on systems, training and organisation to meet these obligations. The EU also requires member states to introduce penalties for employers who breach the rules.

EU employment law aims first of all to eliminate various forms of discrimination. There are directives aimed at eliminating discrimination on the grounds of race or ethnic origin, and several addressing sex discrimination. A recently agreed directive will extend anti-discrimination law to prevent discrimination on grounds of religion or belief, disability, age or sexual orientation.

Another major emphasis is the right for employees to be consulted on key issues affecting their employment, sometimes through works councils.

The law also provides various protections for vulnerable groups of workers including young, part-time and fixed-term employees. In addition, a large number of directives address health and safety protection.

Finally, EC law aims to allow free movement of workers within the EU, and so arrangements for workers to be able to move around between existing and new member states – for example co-ordinating different national

social security schemes – will also be a requirement of EU membership.

*A fast-moving area of European law*

### What obligations will employers in new member states face regarding discrimination in the workplace?

The overall impact of EC law on workplace discrimination is that employers will have to provide equal pay and working conditions as well as equal access to training and promotion. In order to prepare for the impact of anti-discrimination laws, employers will need to review their payment systems to ensure that men and women are paid equally for like work and to consider funding maternity and paternity leave. This will undoubtedly involve appropriate training for managerial staff.

Ending and preventing sex discrimination is a particular priority. A directive requires member states to place the burden of proof on the employer in cases where a worker is claiming sex discrimination, so that it is up to the employer to prove that they have not practiced discrimination. In addition, pregnant workers have considerable protection, and parental leave is mandatory.

### What requirements does EC law place on employers to consult with their employees?

EU directives require employers to consult their workforce if they are disposing of parts of their business

in circumstances other than a share sale, or if they plan significant redundancies.

*Free movement of workers within the EU*

In addition, there is a requirement to consult with works councils where a business operates in several EU countries. This is being extended to require each country to introduce national laws obliging all employers over a certain size to provide information, and to consult with employee representatives on key issues affecting their business, even where they operate only within one member state.

COMPANY LAW

The EC Business Law *acquis* covers a number of very different legislative fields including:

*Harmonisation of company laws across the EU through the implementation of European Company Law and other directives*

- company law in the strict sense, including directives on the formation, functioning and auditing of corporate entities, and public disclosure requirements with respect to financial statements and directors and officers laws relating to the public raising of capital and offering of shares and other financial instruments by listed limited liability companies

- accounting law and accounting standards

## What are the requirements for setting up a company?

For both listed and private companies with limited liability, requirements include:

- substantial disclosure requirements for setting up public and private limited liability companies, to ensure that information about the new company such as its registered office, types of shares, subscribed capital, etc. is available to the general public

- preventive control when a company is formed, so that those formed in contravention of the law can be ordered to be wound up.

In addition, listed and private limited liability companies must:

- be established with a minimum amount of authorised issued and paid-in capital as security for creditors and as a counterpart to the limited liability of the shareholders
- take into account in their instrument of incorporation certain minimum content requirements.

*New requirements for corporate transparency*

Currently the European Commission is considering amending the relevant directives to establish a system of company registers at European level, providing easier access to company information throughout the EU. This is intended to improve legal protection and make it easier for corporations to establish branches in other member states.

### How does the law affect company restructuring?

Various directives are intended to give shareholders and third parties such as creditors the same guarantees during national mergers and demergers of public limited liability companies, throughout the EU.

In addition, a new proposal for a directive on takeover bids is currently under discussion. Its aim is to provide equivalent protection throughout the EU for minority shareholders of companies listed on the stock exchange

in the event of a change in control. It would provide minimum guidelines for takeover bids, particularly regarding transparency of the procedure.

### What guarantees does EC law make about companies' financial situation?

After a certain period, the issued capital required to set up a public limited liability company may no longer provide creditors adequate security. EC law therefore aims at ensuring that sufficient capital remains available throughout a company's existence.

To ensure that information provided in accounting documents is equivalent in all member states, the law also requires all company accounts to give a true and fair view of the company's assets, liabilities, financial position and profit or loss situation.

*New opportunities to simplify and unify legal requirements on companies*

### What about cross-border mergers?

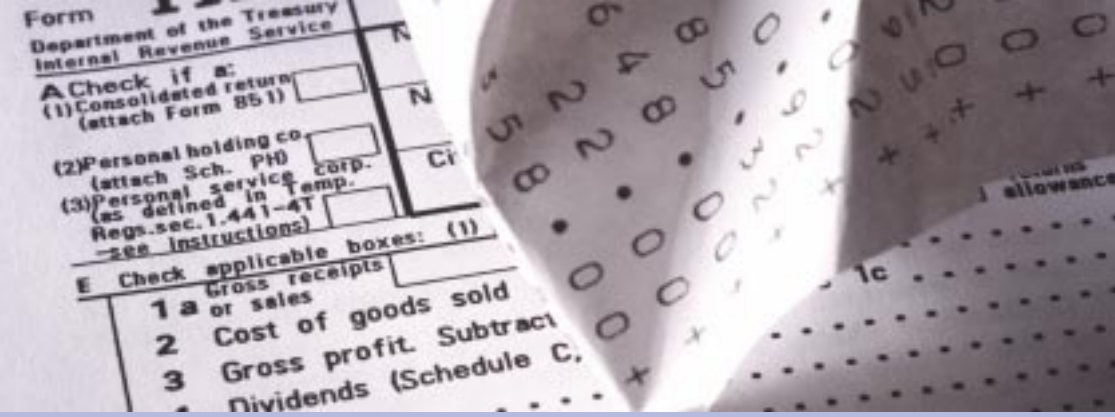
In order to facilitate the growth of EU-wide companies, there is a proposal for a new directive that will make cross-border mergers of public (listed) limited liability companies easier. At present, such mergers are practically very difficult. This directive would need to be supplemented by appropriate regulatory initiatives to ensure a uniform system of taxation applicable to mergers across the EU.

### What are the requirements if my company wants to open a branch in another member state?

The law requires certain types of companies opening branches in another member state to make certain company information publicly available there, even though the company is headquartered elsewhere.

### What is the European Company?

From October 2004, the European Company Statute will give companies operating in more than one EU member state the option of establishing themselves in the EU as a single, supranational, corporate entity under EC law. Such a company will be known officially as a "Societas Europea" (SE – i.e. "European Company"). This will give them the option of being subject to just one set of EU legislation and not several sets of national legislation as at present, as well as operating a unified management and reporting system. EC legislation includes special provisions with regard to employee participation in the administration of SEs.


Form
Department of the Treasury
Internal Revenue Service
A Check if a:
(1) Consolidated return
(attach Form 851)
(2) Personal holding co.
(attach Sch. PH)
(3) Personal service corp.
(as defined in Temp.
Regs. sec. 1.441-4T
—see instructions)
E Check applicable boxes: (1)
1a Gross receipts or sales
2 Cost of goods sold
3 Gross profit. Subtract
Dividends (Schedule C,
allowance
1c

TAX

EC law concerns both direct and indirect taxation. New member states will in principle have to comply with EC taxation laws as soon as they join. However, all new member states have requested special transitional measures, mostly regarding VAT and excise duties.

On direct taxation the Community *acquis* is limited to legislation on specific aspects of corporate taxation and capital duties. The measures in the field of corporate taxation aim to facilitate administrative co-operation between national tax authorities and to remove obstacles to cross-border activities between enterprises.

In December 1997, the Council adopted a legislative package aimed at tackling harmful tax competition, including a Code of Conduct for business taxation. This represents a political commitment by member states to eliminate potentially harmful tax measures. Harmonisation of taxation of savings income accruing in one member state to nationals of another member state is also under way.

The legal framework for indirect taxation consists primarily of harmonised legislation on value added tax (VAT) and excise duties. VAT is a non-cumulative general tax on consumption which is levied at all stages in the production and distribution of goods and services. It requires equal tax treatment of all domestic and import transactions. EC law has introduced a uniform basis of assessment and established transitional VAT

*Simpler excise duties*

arrangements in order to simplify the VAT system. VAT rates have been harmonised to some degree: member states apply a standard rate of VAT of at least 15% and have the option of applying one or two reduced rates on certain goods or services of a cultural or social nature – for example books.

In the field of excise duties, EC law and practice comprises harmonised tax structures and minimum rates of duty together with common rules on the holding and movement of excisable goods (in particular, the use of tax warehouses). Rules on excise duties apply to alcoholic beverages, manufactured tobacco and mineral oils, and allow goods to be moved between member states without checks or excise duty. Excise duty is paid when the product is released for home use and at the rate in force in the member state where purchased.

My company receives dividends from its wholly owned subsidiary in France. What will be the tax treatment of those payments in the source country?

Whereas prior to accession such dividends may have already benefited from a reduced withholding tax by virtue of a bilateral tax treaty between your country and France, they will now in principle be exempt from French withholding tax, subject to a minimum shareholding of 25%.

If the company of which I am a shareholder merges with

a company in another EU Member State, what capital gains tax will I pay when I exchange my old shares for shares in the acquiring company?

First there are some technical requirements – for example, the acquiring company must remunerate the shareholders of the acquired company entirely by issuing new shares, although a 10% cash payment is allowed. Then, capital gains realised on your old shares at the occasion of the merger will be tax exempt. Your country however retains the right to tax any capital gains you realise on the subsequent sale of your shares in the acquiring company.

### What is the VAT treatment of goods which my company will import from and export to another EC Member State?

Acquisitions or deliveries of goods from or to other member states will no longer be treated as imports or exports. If your company qualifies as a VAT taxpayer, your "intra-community acquisitions" of goods (i.e. goods acquired from another EU member state) will be subject to VAT in your country. Your "intra-community deliveries" (i.e. goods you deliver to another EU member state) will be exempt from VAT in your country. When you are a full VAT tax payer, you can fully deduct all your input VAT (i.e. VAT you pay on your imports, intra-community acquisitions and on goods and services delivered to you) from your output VAT (i.e. the VAT you charge out to your clients for the goods and services you deliver to them).

You must pay any positive balance to your country's Treasury, but you can claim back any negative balance.

### I produce goods liable to excise duty. What are my excise tax obligations?

Production of excisable goods must always take place in an excise tax warehouse. You will need to pay excise duties on your goods upon their release for consumption from your warehouse. As an excise tax warehouse keeper, you may also send and receive excise goods under excise tax suspension to and from your warehouse. You must keep detailed stock records, file excise tax returns, and allow the excise tax authorities to control your facilities. You must also provide sufficient financial security to the tax authorities to cover the excise duties which may become due for goods you hold, send or receive under duty suspension.

# INDUSTRY FOCUS

*Tough new regulations for food producers?*

Food safety is an important issue for the EU, especially following events such as the BSE crisis. EC law strictly regulates the production, packaging and labelling of foodstuffs. New member states will be required to apply food safety rules and have the appropriate control mechanisms in place to maintain current EU-wide standards of food safety. This should improve overall levels of safety across new and old member states, but will also put more pressure on producers to ensure that they comply with new food safety requirements. The new members will also need to bring their consumer protection legislation into line with EC law.

## What are the main points of EU food safety regulation?

At the manufacturing level, the EU imposes strict requirements relating to food quality and hygiene. EC law covers foodstuffs in general but also additives, vitamins, and mineral salts, as well as substances that come into contact with food (e.g. packaging). For instance, food with high residues of pesticides can be ruled a risk to human health.

Special quality standards rules apply in certain areas ranging from beef, wine and cheese to fruit and vegetables. In all cases, the primary concern is that the quality of the food conforms to the highest standards, in the interest of consumers.

Specific EC labelling legislation ensures that products

have appropriate labelling at the point of sale, in order for consumers to be able to make an informed choice.

*Tough regulation on GMOs*

### What does EC law say on food packaging?

Since packaging can have an impact on the quality of the food and on the choice made by consumers, the EU has a number of standards to ensure maximum safety - for example, by providing proper consumer information on labels. For instance, quick–frozen food must be pre-packaged to protect it against external contamination and drying. It must also include information that must be specifically adjusted according to the intended recipient, whether a restaurant, a hospital or consumers in general.

### How does EC food safety law affect beverages?

Water is classed as a foodstuff, and so drinking water and juices need to be labelled in the same way as other foodstuffs. Alcoholic beverages containing more than 1.2% by volume of alcohol must be labelled to say so. There are also special requirements regarding the marketing of wine and natural mineral waters in the EU.

### Does the EU have rules on Genetically Modified Organisms (GMOs)?

The EU has laws on GMOs, the use of GMOs in seeds, and the marketing of GM food and feed. Foodstuffs containing GMOs must be clearly labelled to show this. If

food accidentally contains GMOs it must also be labelled if the proportion of GM material is greater than 1%. Any company that wants to put a GM product on the market must first seek authorisation and undertake a full risk assessment that takes into account the long-term effects on human health.

In addition, the EU is currently discussing two new proposals in the area of GMOs. One would give greater importance to the traceability of food products in general and of GMO products in particular. The other concerns the authorisation and labelling of GM food and feed.

### What does the EU do in the event of a food safety crisis?

*Stricter consumer protection rules*

In such cases the EU has the power to stop the sale and movement of products or animals in order to, for example, prevent a disease from spreading. To this end, a Rapid Alert System between member states has been established. The European Food Safety Authority (EFSA) is intended to act as an independent risk assessment body. It is responsible for providing opinions to the European Commission on scientific questions relating to the food sector. It will also assist the Commission in risk communication.

### I sell products that do not bear the manufacturer's name. Can I market these in the new member states?

EU product liability rules allow consumers to sue

producers of defective products which have caused them injury or loss. In principle, the manufacturer bears the ultimate responsibility for a product when it is placed on sale in the European market. However, where the manufacturer is not based in the EU, details of the importer or agent in the EU must be provided on the product label. The aim is to ensure that where a problem occurs, the wholesaler or importer can be traced and held liable, where necessary. The manufacturer may also appoint an authorised representative established in the EU to act on their behalf.

### What is the "CE" mark? Is it required on goods marketed in the new member states?

The CE mark is a label that certifies that the product has been manufactured according to EU standards. It is required only for certain products – including, for example, low voltage equipment, toys, construction products, machinery, gas appliances, hot water boilers and medical devices. If a CE mark is required in respect of a particular product, sales in new member states or elsewhere in the EU of such products is only allowed when they are properly marked. Any products needing a CE mark but not carrying one could risk being withdrawn from the market.

*New marketing authorisation procedures*

EU member states have gradually harmonised the rules governing medicinal products, with the aim of achieving a single EU-wide market for pharmaceuticals. New member states' pharmaceutical industries will have to comply with relevant EC law in order to be able to market their products in other member states. Most new member states have already introduced legislation incorporating EC laws relating to the packaging, labelling and advertising of pharmaceuticals, to pharmacovigilance inspections, good manufacturing practice, good clinical practice, transparency and authorisation procedures.

But a "single market" in pharmaceuticals is far from complete, and the European Commission has been asked to bring forward concrete proposals in view of the reform of EC pharmaceuticals legislation. The pharmaceutical market differs considerably from that of other products, since it is structured on the basis of procedures carried out under public medical supervision. In terms of marketing authorisation, centralised procedures co-exist with decentralised procedures based on mutual recognition. And pricing and reimbursement procedures, both essential parts of the marketing of pharmaceutical products, are carried out in accordance with national rules, which vary considerably. In practical terms it means that the price of pharmaceutical products is not subject to purely economic considerations and their producer is not completely free to act on the basis of market supply and demand.

*New controls on parallel imports*

### What is the centralised authorisation procedure? Which products are subject to it?

There is a centralised procedure which is compulsory for medicinal products manufactured using biotechnological processes, but which may also be used on a voluntary basis for other innovative products such as high-technology medicines. Applications for new products in this category must be made directly to the European Agency for the Evaluation of Medicinal Products (EMEA). If the product is approved for use by the EMEA, subsequent European market authorisation is normally granted by the European Commission. This procedure allows applicants to obtain a marketing authorisation valid throughout the EU.

### What is the decentralised, "mutual recognition" authorisation procedure? Who carries it out?

The mutual recognition procedure is compulsory for all medicinal products to be marketed in member states other than the one in which they were first authorised. A company seeking authorisation for a new medicinal product applies to the member state of their choice to get it authorised; following authorisation for that national market, other member states must also grant the product mutual recognition. This is the procedure for the majority of conventional medicinal products. If any member state refuses to recognise the original national authorisation, the EMEA is called upon to prepare a binding arbitration.

Purely national authorisations are still available for medicinal products to be marketed solely in the member state of application.

### What are the implications of EU membership for parallel importing of pharmaceutical products (which are protected by a patent or a supplementary protection certificate (SPC))?

The draft Accession Treaty introduces a specific mechanism dealing with parallel imports of pharmaceuticals. This mechanism is aimed at protecting the intellectual property rights of holders of patents or SPCs which were in place at a time when such protection could not be obtained in the relevant new member state.

### What about intellectual property rights?

The key principle is that intellectual property standards and their enforcement in the new member states must be compatible with the obligations of the EU in relation to the WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs). The TRIPs Agreement covers copyright, patents, trademarks, geographical names used to identify products, industrial designs, integrated circuit layout-designs and undisclosed information such as trade secrets. It stipulates how basic principles of the trading system and other international intellectual property agreements should be applied; how to give adequate protection to

intellectual property rights; how countries should enforce those rights; and how to settle disputes on intellectual property between members of the WTO.

### What about marketing authorisations for existing products on the markets of new member states?

In order to ensure that all medicines on the market in the enlarged EU meet the highest international standards of quality, safety and efficacy, the Accession Treaty says that new member states must either ensure that marketing authorisations/dossiers for existing products on their markets comply with EC law at the time of accession, or withdraw them from the market. However, some transitional periods have been granted: for Cyprus – until December 31, 2005, for Malta and Lithuania - until December 31, 2006, for Slovenia - until December 31, 2007, and for Poland - until December 31, 2008.

*Energy market liberalisation – a huge challenge*

The EU is dependent on external sources of energy and will continue to be after enlargement. The key objectives of EU energy policy are to secure energy supply and manage external dependency; to integrate EU energy markets; and to coordinate energy and environmental objectives. Plans are well advanced for the liberalisation of energy markets to create a single internal EU energy market. New member states will have to comply with EC energy law and market liberalisation as soon as they join.

They will need to develop an overall energy policy, with clear timetables for restructuring the sector. This will have profound social, regional and environmental consequences. It will also lead to greater use of renewable energies, and improve the safety of nuclear power plants and handling of nuclear waste.

The European Commission has also proposed additional legislation designed to liberalise the market still further. This would fix a deadline for member states to permit all customers, both industrial and domestic, to purchase electricity and gas from the supplier of their choice anywhere in the EU.

New member states will also need to make preparations to deal with crisis situations, for which the EU mandates each member state to hold 90 days' oil stocks.

*Major changes for monopoly or near-monopoly providers*

### What is the timetable for liberalisation of the EU energy markets?

Proposed changes to the relevant EC law provide for liberalisation of electricity and gas markets for non-household users by July 2004 and a complete liberalisation for all users by July 2007.

### How will market liberalisation affect transmission and distribution of energy in the EU?

The proposed amendments to the law state that for both electricity and gas, transmission and distribution system operators should be independent from activities not relating to those processes, in terms of their legal form as well as corporate organisation and decision making. This means that energy companies would have to "unbundle" transmission and distribution from other parts of the business, such as generation. However, member states will be able to postpone this unbundling process until July 2007. Derogations may be also granted to distribution system operators serving less than 100,000 connected customers or small isolated networks. Furthermore, member states will be able to request exemption from unbundling regulations if they can prove that they can achieve total and non-discriminatory access to the distribution networks without this legal separation.

In order to help member states unbundle energy

provision in this way, the proposed changes to the law also give them right of access to the accounts of electricity and gas companies, while preserving the confidentiality of commercially sensitive information. Companies will have to keep separate accounts in their internal accounting systems for transport and distribution activities.

### In a liberalised EU market, what will be the rules affecting cross-border exchanges of energy?

Current energy legislation does not include specific rules for cross-border transactions. The European Commission believes that the issue cannot be solved by relying exclusively on national measures, and so it has proposed regulations on conditions for access to the network for cross-border exchanges. This includes provisions for harmonisation of charges for access to national systems, principles regarding the allocation of available interconnection capacity, as well as provisions for compensation payments to be received by transmission system operators that host transit flows of electricity on their network.

### Is state aid allowed in the EU energy sector?

Yes, in certain areas. Energy companies are, for example, eligible for state aid where projects are aimed at increasing the use of renewable energy sources. In addition, regulation on state aid to the coal industry

proposes a continuous, albeit limited, subsidisation of the coal industry aimed at gradually transferring aid from coal towards renewable energy sources.

### What about energy taxation in the EU?

At present, only excise duties charged on mineral oils are governed by a Community system of minimum taxation. In 1997, the European Commission put forward a proposal for a directive creating a framework for taxation of energy products, paying greater respect to the environment and removing trade distortions. The Directive would introduce a binding minimum tax rate for each energy product. This approach is intended to lead to a closer approximation of national rates in three two-year stages. This Directive is expected to come into force in January 2004.

*Market liberalisation- a huge challenge*

In the last decade the EU has made "information society" issues one of its highest priorities, stressing the importance of the sector in the EU's goal of making itself the fastest-growing knowledge-based economy in the world. Due to the rapid development of telecommunications technology, the EU legal environment in this field has been changing very fast. In January 2003, the EU published the final elements of a comprehensive framework for what is now called electronic communications, which should be implemented by member states by July 2003.

Upon accession, new member states will also have to comply with these regulations. Directly applicable rules set out in EC law will apply immediately to businesses in the new member states, regardless of how much of their legal framework has yet been harmonized with EC law. Other parts of EC legislation will have to be implemented within a set time, and a member state could be subject to an infringement procedure if it does not do so. In the electronic communications sector both the EU authorities and competitors have been very active in following up such rules by initiating procedures.

Many new member states are still lagging behind with the implementation of the laws needed to meet the EU goal of liberalising their electronic communications markets.

*A long way still to go for most new member states*

This means that new member states' domestic telecommunications law will have to be changed rapidly in the next few years. This will influence the situation of both the incumbent operators and their competitors – and indeed is already doing so.

### Will there be changes to local telecommunications access when a new member state joins the EU?

Yes. "Local loop unbundling" – opening up competition in provision of local telephone services – is one of the crucial requirements of EC electronic communications law. In most of the candidate countries it will become legally compulsory in 2003, and in some of them not until 2005. So substantial changes will be needed.

### Will there be changes to the conditions of interconnection?

Yes. Regulation of interconnection rules is crucial to the success of market liberalization. Yet even in June 2002, the national law in most of the accession countries still did not define "significant market power" (SMP) status, a basic definition for any discussions on liberalisation. Imposition of cost orientation for interconnection charges on likely SMP operators was foreseen in only three of the accession countries (the Czech Republic, Hungary, Slovenia). And in only six of the accession countries (the Czech Republic, Estonia, Slovenia, Hungary, Malta and Poland) did the incumbent fixed line operator have a Reference Interconnection Offer.

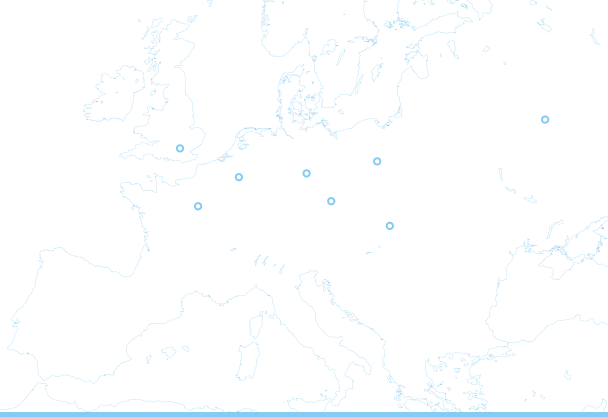
*Major changes for monopoly or near-monopoly providers*

### Will carrier selection be compulsory?

Yes, although, as yet, only the Czech Republic, Estonia, Hungary, Poland and Slovenia have made progress on carrier selection or pre-selection. Operators in most of the new member states will have to make changes in order to comply with this criterion.

### Will licensing regimes change?

Existing member states are in the midst of changing their laws and regulations on the licensing of electronic communications networks and services. There is uncertainty on the best approach to implement the new EU rules and public consultations in some countries are still underway. New member states would also need to change existing practices and follow the new EU rules on how to authorise operators of networks, in particular those that use radio spectrum for wireless services. Operators as well will be affected, as they work to understand and comply with the new rules.



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