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19th MEETING OF THE ASSOCIATES
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ITEM 4 OF THE AGENDA: LOBBYING IN BRUSSELS

At the meeting, Mr. Stephen FISHER, the FBE Adviser will report on the background to the EU institutions and Mrs. Burçak INEL will continue with the tentative description of the lobbying in Brussels and the importance of the Lamfalussy process.

The relevant PowerPoint presentations will be available from the FBE MemberNet shortly after the meeting.

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Background to the EU institutions

Introduction

The European Union is more than just a confederation of countries, but it is not a federal State. It is, in fact, something entirely new and historically unique. Its political system has been constantly evolving over the past 50 years and it is founded on a series of treaties - from those signed in Paris and Rome in the 1950s to the treaties of Maastricht, Amsterdam and Nice, agreed in the 1990s.

Under these treaties, the Member States of the Union delegate some of their national sovereignty to institutions they share and that represent not only their national interests but also their collective interest.

The treaties constitute what is known as 'primary' legislation. From them is derived a large body of 'secondary' legislation that has a direct impact on the daily lives of European Union citizens. It consists mainly of regulations, directives and recommendations.

These laws, along with EU policies in general, are the result of decisions taken by three main institutions:

- the Council of the European Union (representing the member states),
- the European Parliament (representing the citizens) and
- the European Commission (a politically independent body that upholds the collective European interest).

This institutional triangle can function only if the three institutions work closely together and trust one another. "In order to carry out their task and in accordance with the provisions of this Treaty, the European Parliament acting jointly with the Council and the Commission shall make regulations and issue directives, take decisions, make recommendations or deliver opinions". (Article 249 of the Treaty of Maastricht).

The Institutions

There are nine EU institutions, each playing a specific role:

1. The European Parliament

The European Parliament (EP) is the democratic voice of the peoples of Europe. Directly elected every five years, the members of the European Parliament (MEPs) sit not in national blocs but in seven political groups. Each group reflects the political ideology of the national parties to which its members belong. Some MEPs are not attached to any political group. In the European election of June 1999, nearly 30 % of the MEPs elected were women.

Until the 2004 elections there are 626 MEPs. Thereafter, enlargements of the EU will increase that number. The number of MEPs from each country is as follows (in alphabetical order according to the country's name in its own language):

| | 1999-2004 | 2004-2007 | 2007-2009 |
|-----------------------|------------------|------------------|------------------|
| Bulgaria | -- | -- | 18 |
| Belgium | 25 | 24 | 24 |
| Czech Republic | -- | 24 | 24 |
| Denmark | 16 | 14 | 14 |
| Germany | 99 | 99 | 99 |
| Estonia | -- | 6 | 6 |
| Greece | 25 | 24 | 24 |
| Spain | 64 | 54 | 54 |
| France | 87 | 78 | 78 |
| Ireland | 15 | 13 | 13 |
| Italy | 87 | 78 | 78 |
| Cyprus | -- | 6 | 6 |
| Latvia | -- | 9 | 9 |
| Lithuania | -- | 13 | 13 |

| | | | |
|-----------------------|------------|------------|------------|
| Luxembourg | 6 | 6 | 6 |
| Hungary | -- | 24 | 24 |
| Malta | -- | 5 | 5 |
| Netherlands | 31 | 27 | 27 |
| Austria | 21 | 18 | 18 |
| Poland | -- | 54 | 54 |
| Portugal | 25 | 24 | 24 |
| Romania | -- | -- | 36 |
| Slovenia | -- | 7 | 7 |
| Slovakia | -- | 14 | 14 |
| Finland | 16 | 14 | 14 |
| Sweden | 22 | 19 | 19 |
| United Kingdom | 87 | 78 | 78 |
| Total (max) | 626 | 732 | 786 |

Parliament normally holds its plenary session in Strasbourg and any additional sessions in Brussels. It has 17 committees that do the preparatory work for its plenary sessions, and a number of political groups that mostly meet in Brussels. The Secretariat-General is based in Luxembourg.

Parliament and the Council share legislative power and they do so using three different procedures (in addition to simple consultation):

- First, there is the "cooperation procedure", introduced by the Single European Act in 1986. Under this procedure, Parliament gives its opinion on draft directives and regulations proposed by the European Commission, which can amend its proposal to take account of Parliament's opinion.
- Second, there is the "assent procedure", also introduced in 1986. Under this procedure, Parliament must give its assent to international agreements negotiated by the Commission, to any proposed enlargement of the European Union and to a number of other matters including any changes in election rules.
- Third, there is the "co-decision procedure", introduced by the Treaty of Maastricht (1992). This puts the Parliament on an equal footing with the Council when legislating on a whole series of important issues including the free movement of workers, the internal market, education, research, the environment, Trans-European Networks, health, culture and consumer protection. Parliament has the power to throw out proposed legislation in these fields if an absolute majority of MEPs vote against the Council's "common position". However, the matter can be put before a conciliation committee.

The Treaty of Amsterdam added another 23 and the Treaty of Nice a further seven to the number of fields in which the co-decision procedure applies.

Parliament and the Council also share equal responsibility for adopting the EU budget. The European Commission proposes a draft budget, which is then debated by Parliament and the Council. Parliament can reject the proposed budget, and it has already done so on several occasions. When this happens, the entire budget procedure has to be re-started. Parliament has made full use of its budgetary powers to influence EU policymaking. However, most of the EU's spending on agriculture is beyond Parliament's control.

Parliament is a driving force in European politics. It is the EU's primary debating chamber, a place where the political and national viewpoints of all the member states meet and mix. So Parliament quite naturally gives birth to a good many policy initiatives.

Parliamentary debates are dominated by the political groups. The largest of these are: the European People's Party (Christian Democrats) and European Democrats (EPP-ED); the Party of European Socialists (PES) and the European Liberal Democrats (ELDR).

Parliament played a key role in drawing up the EU Charter of Fundamental Rights (proclaimed in December 2000) and in setting up the European Convention following the Laeken European Council in December 2001.

Last but not least, Parliament is the body that exercises democratic control over the Union. It has the power to dismiss the Commission by adopting a motion of censure. (This requires a two thirds majority). It checks that EU policies are being properly managed and implemented - for example by examining the reports it receives from the Court of Auditors and by putting oral and written questions to the Commission and Council. The current President of the European Council also reports to Parliament on the decisions taken by the EU's political leaders.

2. The Council of the European Union

The Council of the European Union - formerly known as the Council of Ministers -is the main legislative and decision-making body in the EU. It brings together the representatives of the all the Member State governments, which you elect at national level. It is the forum in which the representatives of your governments can assert their interests and reach compromises. They meet regularly at the level of working groups, ambassadors, ministers or - when they decide the major policy guidelines - at the level of presidents and prime ministers, i.e. as the European Council.

Each EU country in turn presides over the Council for a six-month period. Every Council meeting is attended by one minister from each of the member states. Which ministers attend a meeting depends on which topic is on the agenda. If foreign policy, it will be the Foreign Affairs Minister from each country. If agriculture, it will be the Minister for Agriculture. And so on. There are nine different Council "configurations", covering all the different policy areas including industry, transport, the environment, etc. The Council's work as a whole is planned and coordinated by the General Affairs and External Relations Council.

The preparatory work for Council meetings is done by the Permanent Representatives Committee (Coreper), made up of the member states' ambassadors to the EU, assisted by officials from the national ministries. The Council's administrative work is handled by its General Secretariat, based in Brussels.

The Council and European Parliament share legislative power as well as responsibility for the budget. The Council also concludes international agreements that have been negotiated by the Commission. According to the treaties, the Council has to take its decisions either unanimously or by a majority or "qualified majority" vote.

On important questions such as amending the treaties, launching a new common policy or allowing a new country to join the Union, the Council has to agree unanimously.

In most other cases, qualified majority voting is required - in other words, a decision cannot be taken unless a specified minimum number of votes is cast in its favour. The number of votes each EU country can cast roughly reflects the size of its population. Until 1 May 2004, the numbers were as follows:

- Germany, France, Italy, the UK: 10
 - Spain: 8
 - Belgium, Greece, the Netherlands, Portugal: 5
 - Austria, Sweden: 4
 - Denmark, Ireland, Finland: 3
 - Luxembourg: 2
- TOTAL: 87

The minimum number of votes required to reach a qualified majority was 62 out of the total of 87 (i.e. 71.3%)

For six months from 1 May 2004, when new member states join the EU, transitional arrangements apply. From 1 November 2004, the number of votes each country can cast is as follows:

- Germany, France, Italy and the United Kingdom: 29
 - Spain and Poland: 27
 - Netherlands: 13
 - Belgium, Czech Republic, Greece, Hungary and Portugal: 12
 - Austria and Sweden: 10
 - Denmark, Ireland, Lithuania, Slovakia and Finland: 7
 - Cyprus, Estonia, Latvia, Luxembourg and Slovenia: 4
 - Malta: 3
- TOTAL: 321

A minimum of 232 votes (72.3%) will be required to reach a qualified majority. In addition,

- a majority of member states (in some cases two thirds) must approve the decision, and
- any member state can ask for confirmation that the votes cast in favour represent at least 62% of the EU's total population.

3. The European Commission

The European Commission does a lot of the day-to-day work in the European Union.

It drafts proposals for new European laws, which it presents to the European Parliament and the Council. The Commission makes sure that EU decisions are properly implemented and supervises the way EU funds are spent. It also keeps an eye out to see that everyone abides by the European treaties and European law.

The Commission is one of the EU's key institutions. Until 1 May 2004 it had 20 members (two each from France, Germany, Italy, Spain and the United Kingdom, one from each of the other

countries), appointed for a five year period by agreement between the Member States, subject to approval by Parliament.

On 1 May 2004, when 10 new Member States joined the EU, the number of Commissioners also increased by 10. From 1 November 2004, the new Commission has only 25 members - one per country

The Commission acts with complete political independence. Its job is to uphold the interest of the EU as a whole, so it must not take instructions from any member state government. As "Guardian of the Treaties", it has to ensure that the regulations and directives adopted by the Council and Parliament are being put into effect. If they are not, the Commission can take the offending party to the Court of Justice to oblige it to comply with EU law.

The Commission is also the only institution that has the right to propose new EU legislation, and it can take action at any stage to help bring about agreement both within the Council and between the Council and Parliament.

As the EU's executive arm, the Commission carries out the decisions taken by the Council - in relation to the Common Agricultural Policy, for example. The Commission is largely responsible for managing the EU's common policies, such as research, development aid, regional policy etc. It also manages the budget for these policies.

The Commission is answerable to Parliament, and the entire Commission has to resign if Parliament passes a motion of censure against it. It was when faced with just such a motion of censure that President Jacques Santer tendered the collective resignation of his Commission on 16 March 1999. Romano Prodi became President of the Commission for the period 1999-2004.

The Commission is assisted by a civil service made up of 36 "Directorates-General" (DGs) and services, based mainly in Brussels and Luxembourg. Unlike the secretariats of traditional international organisations, the Commission has its own financial resources and can thus act quite independently.

4. Court of Justice

When common rules are decided in the EU, it is of course vital that they are also followed in practice - and that they are understood in the same way everywhere. This is what the Court of Justice of the European Communities ensures. It settles disputes over how the EU treaties and legislation are interpreted. If national courts are in doubt about how to apply EU rules they must ask the Court of Justice. Individual persons can also bring proceedings against EU institutions before the Court. It consists of one independent judge from each EU country and is located in Luxembourg.

5. European Court of Auditors

The funds available to the EU must be used legally, economically and for the intended purpose. The Court of Auditors, an independent EU institution located in Luxembourg, is the body that checks how EU money is spent. In effect, these auditors help European taxpayers to get better value for the money that has been channeled into the EU.

6. The European Central Bank

The European Central Bank is in charge of the single currency, the euro. The Bank independently manages European monetary policy - deciding, for example, how high interest rates should be. The Bank's main objective is to ensure price stability, so that the European economy will not be damaged by inflation. But the monetary policy also supports other political objectives decided in the EU. The European Central Bank is based in Frankfurt in

Germany. It is managed by a president and an executive board in close cooperation with the national central banks of the EU countries.

7. European Investment Bank

The Bank lends money for investment projects of European interest, in particular projects that benefit less well-off regions. It finances, for example, rail links, motorways, airports, environmental schemes, and (via partner banks) investment by small businesses (SMEs) that helps create jobs and growth. Loans also support the Union's enlargement process and its development aid policy. The Bank is based in Luxembourg and raises its funds on the capital markets. As a non-profit organisation it is able to lend on favourable terms.

8. The Economic and Social Committee

Ranging from employers to trade unions and from consumers to ecologists, the 222 members (more in 2004) of the Economic and Social Committee represent all of the most important interest groups in the EU. It is an advisory body and has to give its opinion on important aspects of new EU initiatives. This is part of the common European tradition of involving civil society in political life.

9. The Committee of the Regions

Many decisions taken in the EU have direct implications at the local and regional level. Through the Committee of the Regions, local and regional authorities are consulted before the EU takes decisions in fields such as education, health, employment or transport. The Committee's 222 members (more in 2004) are often leaders of regions or mayors of cities.

Improvements in Lamfalussy process

This briefing highlights the developments that have occurred since 2001 which have shaped the current institutional and procedural characteristics of the Lamfalussy Process. In most (but not all) cases, these changes were brought about by pressure from the industry, including the FBE.

1. Main developments in the evolution of the Lamfalussy process

General

The Inter-institutional Monitoring Group (IIMG) was established in October 2002 to monitor the progress made in implementing the Lamfalussy process. The Group is composed of six independent experts (two nominated by each EU institution) and has been asked to report twice a year on its findings. The first report in spring 2003 concentrated on issues concerning the existing Lamfalussy process in the securities market. The second report was issued in December 2003. The third report is expected in October 2004. In each case, the IIMG conducted a consultation with the industry before and after its report; the FBE participated in all three.

The most important conclusions reached by the IIMG so far are as summarized below:

First report:

- Urging for a satisfactory solution to the Comitology issues stemming from Article 202 of the EC Treaty
- Questioning the degree of detail in Level 1 legislation, raising the question whether enough delegation has taken place to allow implementing rules to be adopted at Level 2.

- Asking for a more frequent use of the “fast track facility” for the adoption of a Level 1 measure (adoption on the basis of a single reading in the European Parliament).
- Urging for adequate resources to be made available to Committee of European Securities Regulators (CESR) and the Commission to fulfill their respective obligations related to consistent implementation and enforcement of European securities market legislation. In its own interest, the private sector, too, must make available sufficient resources to play its full role.

Second Report:

- Recommending the Commission to issue provisional mandates for level 2 technical advice only on subject matters already acceptable to the EP, the Council and the Commission after the first Parliamentary Reading. Provisional mandates should not be granted where issues remain controversial.
- Urging the Commission to keep level 2 measures as lean as possible while supporting level 2 measures to contain unambiguous rules in order to ensure consistent implementation in the Member States.
- Asking for CESR to be given twelve months for completing pieces of technical advice, as a general rule.
- Asking for CESR to allocate if possible three months to market consultation for each given mandate.
- Urging the Commission and CESR to consult intensively, especially for input on overall need for market regulation, specific rules as well as expected costs and benefits of legislative and regulatory action;
- Recommending the Commission and CESR to hold more than one round of consultation, provided that there are clear indications of benefits from additional input and market participants and end-users make available all relevant information at each first round of consultation and avoid duplication of information provided.
- Recommending the Commission and CESR to ensure extensive *ex post* transparency, including convincing feedback statements or other forms of explanation, not least in order to reduce the perceived need for second rounds of consultation.

While the above recommendations may seem like ‘obvious best practice’, the specific rules of thumb recommended by the IIMG to achieve the stated objectives have not always been followed by the Commission or CESR.

Two examples:

- The provisional mandate prepared by the Commission for CESR to start work technical advice for implementing measures for the Markets in Financial Instruments Directive (MiFID) in January 2004 covered a subject (best execution, Article 21) on which there was no agreement among the Commission, Parliament and the Council at the end of the First Reading.
- The second mandate - containing arguably the most complex subjects- from the Commission to CESR on the same Directive issued in June 2004 was based on a timetable that left CESR only 10 months (instead of 12) to finish its work.

This demonstrates the need for the industry to support the IIMG in its efforts to improve the Process until the recommendations of the IIMG become established as a systematic part of the Lamfalussy process.

2. European Commission

- The ISD, the first 'true Lamfalussy Directive' from conception, was subject to extensive consultation at the pre-legislative stage. While its complexity made it somewhat unique, the comprehensive consultation with several rounds, which progressively limited the number of issues that remained open, set a useful precedent for the future subjects that will be tackled by the Lamfalussy Process.
- At Level 2, the Commission started submitting draft implementing measures to public comment on its website before submitting them to the European Securities Committee (ESC). This happened for the first time with the Market Abuse Level 2 measures. The public, including the industry, has about a month to react to the Commission's draft measures before these become formally adopted as a proposal and submitted to the ESC. The industry can react within the formal (3-month) period of review at the ESC as well, but it is a useful opportunity for the industry to have a say on the draft measures before they go to the ESC.

3. Committee of European Securities Regulators (CESR)

- CESR finalized its "Consultation Practices Statement" in December 2001, committing itself to a satisfactory level of consultation in its role at Levels 2 and 3 of the Lamfalussy framework. Commendably, CESR also consulted on this document before adopting it.
- CESR established a high-level experts group, "Market Participants Consultative Panel", which started operations in October 2002. (An FBE member sits on this panel in a personal capacity.)
- CESR also established, for each of the subjects it works on, a Consultative Expert Group to aid it in its initial work. (An FMC member sits on the Group established for the Market Abuse Directive implementing measures in a personal capacity.)

4. European Securities Committee (ESC)

- ESC started publishing its minutes. These are posted with a delay of about one month, and there is usually no posted agenda for the next meeting, but the publication of the minutes is a good first step in achieving greater transparency at the ESC.

5. Key FBE actions towards improving the Lamfalussy process

- The FBE has been a proponent of the Lamfalussy process from the start. The FBE welcomed the inter-institutional agreement on the Process with a press release on 7 February 2002.
- At the same time, the FBE has sought to identify areas where the Process can be improved.
- The FBE submitted a response to the Commission-wide consultation "White Paper on European Governance" in April 2002, making a link between the Lamfalussy principles and the issues highlighted in the Paper as preparation for the upcoming European Convention and urging for transparency at all levels of policymaking.
- The FBE submitted written and oral testimony on the Lamfalussy Process to each one of the three IIMG reports.

- The FBE urged for better consultation practices by CESR and the Commission on the Level 2 legislation on the first two Directives (Market Abuse and Prospectus Directive) which became a precedent for the Lamfalussy Process.
- The FBE has participated in each of the informal comment processes set up by the Commission to react to draft implementing measures before submission to the ESC.
- The FBE has recently launched a plea, supported by other banking sector associations, to allocate greater time to the preparation and the implementation of the MiFID Level 2 measures.

ACCESS TO REFERENCE DOCUMENTS:

The Inter-institutional Monitoring Group:

http://europa.eu.int/comm/internal_market/securities/monitoring/index_en.htm

FBE Positions

June 2004 (CESR Level 3): http://www.fbe.be/pdf/fbe_CSER_level3.pdf

February 2004: http://www.fbe.be/pdf/FBE_Response_IIMG_Dec04Consultation.pdf

August 2003: http://www.fbe.be/pdf/fbe_response_%20iimg_consultation.pdf
