

**The EU-Japan Business Dialogue Round Table**  
**Working Group 1**

**CREATING AN OPEN ENVIRONMENT  
FOR TRADE AND INVESTMENT IN EUROPE**

**Reviewing Progress in the EU and  
Further Recommendations**

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## **1. Societas Europaea (SE)**

### **Summary of Tokyo Recommendation:**

- Deliberations on the draft Statute of SE in the EU Council began again in 1997 and were voted on in 1998. However, despite the support of 14 EU Member States, this directive was rejected due to opposition from one country, Spain.
- Persuade Spain to accept the proposal, and promptly adopt this draft Statute as soon as possible. If necessary, an opt-out clause for Spain should be considered.

### **Summary of EC Progress Report of February 2001:**

#### **Action Taken and State of Play:**

- On December 20, 2000, political agreement was reached between all the Member States on the Regulation governing the company law aspects of the European Company and on the Directive concerning workers involvement in such European Companies.

#### **Prospects for Implementation:**

- As for the next steps, the European Parliament will now be consulted on the texts agreed. These two texts should then be formally adopted in 2001 and enter into force 3 years after (by 2004).

#### **Assessment:**

- We appreciate the political agreement on the Regulation and the Directive concerning the Company Statute reached among the EU Member States.
- We would like to keep on watching the progress of the Regulation and the Directive.

#### **Questions:**

- Will the consultation with the European Parliament be smoothly carried out?
- Will the Council smoothly adopt the texts within this year?
- Why will it take three years until the texts enter into force?
- As for the Directive, isn't it each Member State that enacts legislation? If so, how long will it take?
- Do the above-mentioned texts include the clauses of, for instance, offset of profits and losses with subsidiaries located in other EU Member States, uniform company registration, and others that will be of benefit to the companies operating throughout the EU?

#### **Further recommendation and request:**

- Early adoption and enforcement of the texts.

### **Summary of Mid-Term Meeting of March 2001:**

#### **Response by Mr. David White, Director Unit A, DG Enterprise:**

- European Company Statute will coexist along with national statute and company will have a choice to choose either one of them.
- It is not predicted any major problems for consultation by the European Congress and we expect the smooth adoption of the texts.
- European Company Statute will have to be incorporated into national laws and that will take three years.
- As for the SE, taxation will be regulated by the law of the country in which the SE has its head office.
- Tax harmonisation was not at the top of the political agenda at the Nice Council Meeting and will not go to the top for the foreseeable future.

#### **Comments by Mr. Viscount Davignon, Co-Chairman:**

- No European company is going to use the European Company Statute, as long as it does not know what the tax situation is.
- Significant questions are firstly what the tax situation will be and secondly offset of losses and profits. Finance Ministers have no excuse not to deal with these issues, since there are the questions of double payment of taxes.
- This is a very lively issue today and it will continue to be discussed.

**Summary of EC Progress Report of 18 June 2001 (additional part) :**

- The following time-table is foreseen for the adoption of the proposed texts:
    - Parliament opinion : 4 July
    - Internal market Council: end of September
    - Adoption by the Council: in October 2001
- The texts should then enter into force 3 years after their adoption (by 2004).

**New recommendations:**

- We expect the early adoption and enforcement of the European Company Regulation and Directive.
- In the case of establishing the SE through mergers, the 1990 Merger Directive applies. In this case, those that can participate in the establishment of the SE are limited to public companies. We would like to know the reasons behind this limit and we propose that limited liability companies can also participate in the establishment of the SE, since most Japanese companies operating in Europe are limited liability companies.
- The current European Company Statute excludes tax issues. Without tax merits, the meaning of setting up the SE will be dramatically reduced. In particular, we would like to require the early adoption and enforcement of the draft directive of 1991 that allows offset of losses incurred by branches and/or subsidiaries in other Member States with profits of the parent company in another Member State, as well as the draft directive of harmonization with regard to loss carryover.
- We would like to know whether or not the Commission has any intention to introduce other tax measures to support the SE.

## **2. Merger Directive**

### **Summary of Tokyo Recommendation:**

- The scope of the merger directive should be expanded in order to make the “qualifying reorganization” more flexible to include such intra-group reorganization as changing local corporation structure to branch structure under a European headquarters that many Japanese subsidiaries carry out in Europe.
- Work towards the harmonisation of the tax system in such areas as the treatment of capital gains is required.

### **Summary of EC Progress Report of February 2001:**

#### **Action Taken and State of Play:**

- In general, the Commission services are not satisfied with the limited scope and the concrete implementation of the merger directive on cross-border mergers.
- This point will be examined in the study on company taxation that the Commission is currently preparing for the Council. The study should be ready mid-2001.
- Concerning the restructuring operation that has been identified as problematic, however, the situation is more complex, involving general transfer taxes and capital gains taxation on the transfer of assets.
- An underlying problem is that EU company law currently does not allow for cross-border mergers within the EU, thus effectively reducing the application of the merger directive to transfer of assets and exchanges of shares.
- The recent agreement of principle on the European Company Statute will help to tackle this problem.

#### **Prospects for Implementation:**

- Subject to a further analysis of the implications of the European Company Statute, the implementation of the recommendation might not make it necessary to change the rules applicable to taxation.
- With regard to the rules applicable to taxation, the future strategy of the Commission will be determined on the basis of the company tax study.

#### **Assessment:**

- There has been no concrete progress.
- As the European Commission is also unsatisfied with the details of the merger directive, these points are under examination by the study on company taxation. The report should be ready by mid 2001.

#### **Questions:**

- Please update us on the progress of the above-mentioned study.
- Will the issues resolve when the European Company Statute becomes effective?

#### **Further recommendations and requests:**

- As mentioned in the Tokyo Recommendation of July 2000, the scope of the merger directive should be expanded in order to make the “qualifying reorganization” more flexible to include intra-group reorganizations.
- To promote the harmonisation of taxation including capital gain taxes.

### **Summary of Mid-Term Meeting of March 2001:**

- No particular response or discussion.

### **Summary of EC Progress Report of 18 June 2001 (additional part) :**

- The study (on company taxation) is due to be released before September 2001.
- The current review in the EU can be obtained in Commission Communication on "Tax policy in the European Union- priorities for the years ahead" (COM(2001)260 final).

**New recommendations:**

- Same as the above-mentioned recommendations and requests.
- We would like to know the contents, purpose and aim of the above-mentioned “study on company taxation”.

### **3. Double Payment of Pension Costs**

#### **Summary of Tokyo Recommendation:**

- The Japanese and French Governments are requested to speed up negotiations and promptly come to an agreement on social security in order to solve double payment of pension costs that causes heavy burdens to foreign companies.
- The Governments of Japan and the remaining 12 EU Member States (other than the UK, Germany and France) are requested to enter negotiations as soon as possible.
- It is hoped that in light of the single European market, a common EU social security system will be established in the future.

#### **Summary of EC Progress Report of February 2001:**

##### **Action Taken and State of Play:**

- Community provisions in the field of social security, in particular Regulation (EEC) 1408/71, coordinate but do not harmonise national security systems.
- Therefore, Member States are free to determine the details of their own social security systems, as long as they adhere to the basic principle of equality of treatment and non-discrimination as laid down in the Regulation.

##### **Prospects for Implementation:**

- The Community provisions referred to above currently applies only to nationals of Member States of the European Union or of the European Economic Area.
- The Commission has therefore proposed a Council Regulation amending Regulation 1408/71 as regard its extension to nationals of third countries, who legally reside and pay social security contributions under the legislation of a Member State, which would extend the application of this Regulation also to Japanese nationals (OJ C 006 of 10.01.98, p. 15). The proposal is currently being examined by the Council.

##### **Assessment:**

- It can be highly esteemed that Germany and UK have already established social security agreement with Japan, and that preliminary consultations were held for the conclusion of a social security agreement between Japan and France in June 2000. These movements will stimulate the negotiation between Japan and other member states.
- It can be also esteemed that Regulation 1408/71 is going to be extended to third country nationals. However, this will not solve the problem of double payment of pension costs.

##### **Questions:**

- What merit do third country nationals enjoy by the expansion of Regulation 1408/71?

##### **Further recommendation and request:**

- It is expected that the Commission not only take steps for the extension of Regulation 1408/71 to nationals of third countries, but induce the other member states to establish social security agreement with Japan in order to solve the double payment of pension costs.

#### **Summary of Mid-Term Meeting of March 2001:**

- No particular response or discussion.

#### **Summary of EC Progress Report of 18 June 2001 (additional part) :**

- The Commission has presented a Communication on “The elimination of tax obstacles to the cross-border provision of occupational pensions”(COM(2001)214final) on 19 April 2001.

**New recommendations:**

- Same as the above-mentioned recommendations and requests.
- We also would like to request the Commission to take steps to harmonise social security systems within the EU, thereby securing the portability of pensions across borders.
- Please explain the contents of COM(2001)214final.

## **4. Visas and Work Permits**

### **Summary of Tokyo Recommendation:**

- On the whole, time consuming and complicated procedures to obtain visas and/or work permits are problems in many countries of the EU.
- In particular, the following problems should be promptly solved:
  - 1) Germany: Since the spring of 1998, only single-entry visas have been issued. Multi-entry visas should also be issued.
  - 2) Greece: Companies operating in Greece are legally required to maintain a certain ratio between the numbers of EU and non-EU employees. This kind of discriminatory treatment should be removed.
  - 3) Italy: The laws and/or regulations surrounding visas and work permits are complicated and frequently changed. This situation should be improved.

### **Summary of EC Progress Report of February 2001:**

#### **Action Taken and State of Play:**

- As regards EU nationals, Directive 64/221/EEC provides that a decision to grant or to refuse a first residence permit shall be taken no later than six months from the date of application.
- Directive 68/360/EEC requires that the formalities for obtaining a residence permit shall not hinder the immediate beginning of employment under a contract concluded by the applicants.

#### **Prospects for Implementation:**

- As regards third country nationals, it is currently and for the foreseeable future for Member States to decide upon rules and conditions of entry, residence and employment.

#### **Assessment:**

- Regarding acquisition of visas and working permits for third country nationals namely Japanese, there seems to have been no progress.

#### **Further recommendation and request:**

- Pursuant to the joint recommendation adopted at the 2<sup>nd</sup> EJBDR Tokyo meeting of last year, it is requested that the Commission advise the member states to improve their visas and working permits acquisition procedures as soon as possible.

### **Summary of Mid-Term Meeting of March 2001 :**

- No particular response or discussion.

### **Summary of EC Progress Report of 18 June 2001 (additional part):**

- None

#### **New recommendations:**

- Same as the above-mentioned recommendations and requests. (However, there has been progress in Germany on this issue with the resumption of the issuing of multi-entry visas.)

## **5. Tariffs**

### **Summary of Tokyo Recommendation:**

- Tariffs on manufactured goods, particularly those on consumer electronics products (14%) and passenger vehicles(10%) should be lowered.
- Tariff rate classifications should not be intentionally or arbitrarily changed.

### **Summary of EC Progress Report of February 2001:**

#### **Action Taken and State of Play:**

- The EU has an open market for imports of non-agricultural products with a simple average bound tariff of 4%. EU tariffs on consumer electronics and passenger vehicles reflect the sensitivity of those sectors. Japan also has significant tariff peaks in sectors of export interest to the EU such as beverages, textiles and clothing, footwear, certain chemical and scientific equipment.
- Classification is made in accordance with the HS rules. EU fully respects the WCO classification rules and does implement all its decisions.

#### **Prospects for Implementation:**

- The launch of multilateral market access negotiations for non-agricultural products within the new Round will provide an opportunity for both the EU and Japan to reduce overall tariff levels as well as to seek harmonised and simpler tariff structures for all WTO Members.
- The evolution of technology and the convergence of industries have led to challenges in the classification of many products. Perhaps a modernization of the HS nomenclature is required. Certainly, the EU is in favour of including chapters 84, 85 and 90(which covers the bulk of digital products) in the current HS review cycle(HS2007)

#### **Assessment:**

- There has been no progress for both tariff rates and tariff classifications.

#### **Further recommendations and requests:**

- Tariffs on consumer electronics products and passenger vehicles are very high in the EU compared to other advanced nations. Tariff rates should be lowered.
- It is very difficult to distinguish the consumer electronics products and IT related products. In this situation, high tariffs on consumer electronics products (14% for the EU) causes intentional tariffs classification.
- In the current HS review cycle (HS2007), it is needed to clarify the tariffs classification rules between consumer electronics products and IT related products.
- Tariff classifications differs from each EU countries in its enforcement. The unified classification rule as the whole EU is required.
- “Nomenclature Committee” of the EU that clarifies the tariff classification takes a long time to finalize it and lacks in transparency in the procedures. This situation should be improved.

### **Summary of Mid-Term Meeting of March 2001:**

#### **Response by Mr. Alistair Stewart, Head of Unit E/3, DG Trade:**

- Tariff is a relatively old issue and we should not place too much importance on it, given very low average tariff rates both in Japan and in the EU.
- Tariff rates are high for sensitive areas both in Japan and the EU. Japan too has high tariff rates for beverages, textiles, clothing, leather, foodstuffs and so on.
- We need to decide in a multilateral way how best tariff rates can be lowered.

#### **Comment by Dr. Tadahiro Sekimoto, Co-Chairman:**

- The average rate of Japan’s tariffs is as low as the level of 2 %. The issue of the leather comes from cultural issues.
- Tariffs should be lowered step by step and in so doing target for tariff reduction should be set up.
- In Japan, tariff rates on high-tech products are basically 0 % except one or two.

**Summary of EC Progress Report of 18 June 2001 (additional part) :**

- None

**New recommendations:**

- Same as the above-mentioned recommendations and requests.
- We would like to know the reasons why tariff rates on consumer electronics products and passenger vehicles are so high.

## **6. Merger Regulation**

### **Current Status:**

- The EU places a third company, other than the companies to file merger application, under obligation to provide information based on the Article 11-5 of the EU Merger Regulation (Council Regulation 4064/89).
- There are some cases that the deadline for replies is placed as short as three days.
- Questionnaire is sometime sent to a third company that does not compete with merging companies.
- To be sure, the Japan Fair Trade Commission requires information, but this kind of request is made only to the competitors. They are not obliged to reply and they can also reject to reply.

### **Recommendations:**

- The deadline for replies should be extended.
- Any reply like “not related” should also be accepted.
- The obligation clause to provide information should be reviewed.