

Regulatory approximation incapital movements and establishment

L.Ken Lennan

Deputy Head of Unit, DG MARKT F1

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Today's presentation:

1. Capital freedom:
 - a foundation stone of the Internal Market;
 - the liberalisation process;
 - EU experience of the process.
2. Applicable rules within the EU.
3. The freedom to invest/establish:
 - the conditions for direct investment;
 - how can investment be attracted;
 - Implications for authorisation procedures.

Capital freedom: the IM foundation stone

The capital liberalisation Directive of 1988 refers to EC Treaty Art. 14:

- *The internal market shall comprise an area without internal frontiers in which the free movement of goods services and **capital** is ensured, in accordance with the provisions of this Treaty.*

The relevant provisions of the Treaty are:

- *all restrictions on the movement of capital ...shall be prohibited.*

Why was capital liberalisation the first step?

- **Essential for financial service liberalisation.**
- **Facilitated the adoption of other IM measures.**

Exchange control abolition relatively recent!

- They survived until 1990 in a number of MS.
- ES, IE, PT & GR had until end-1992, with an extension possible for PT and GR.
- Only GR sought extension. It abolished all controls in May 1993.

What was the EU experience?

- Outflows did not materialise;
- Inflows, in some instances, a problem;
- Financial liberalisation in some countries.

Liberalisation: Any lessons?

- Important that other policies are right;
- Difficult to draw long/short-term line;
- Liberalisation almost impossible to reverse.

Benefits of liberalisation

- Requirement for IM and EMU.
- Resource allocation.
- Significant administrative cost savings.
- But did mean the loss of possibility of an independent macro and monetary policy.

Applicable rules in the EU

- All restrictions are prohibited intra and extra EU (Art. 56).
- Residual restrictions of MS on some operations with 3rd countries can be maintained (Art. 57.1).
- Community restrictions in the same limited areas can be adopted, but tightening requires unanimity (Art. 57.2).
- Usual exceptions (public security/order) (Art. 58).
- Temporary EMU safeguards/3rd countries (Art. 59).
- Financial sanctions/3rd countries (Art. 60).
 - + Balance of payments safeguard for non-euro MS.

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- Treaty articles quite stark.
- European Court of Justice (ECJ) is the only instance which can interpret definitively but Commission can take position and test it in ECJ.
- Body of case law has been built up.
- Example - 'golden shares'. 1997 Commission Communication. A number of cases taken to ECJ. Position vindicated in rulings.
- An important point: authorisation = restriction.

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ECJ: **authorisation procedures** and other measures liable to hinder or make less attractive the exercise of fundamental Treaty freedoms **must fulfil 4 conditions:**

- applied in a **non-discriminatory** manner;
- justified by imperative requirements in the **general interest**;
- **suitable** for obtaining the objective pursued;
- not going beyond what is **necessary** in order to obtain that objective.

= proportionality

Direct investment freedom

Conventional wisdom – first operation to liberalise.

Nobody has a problem with **greenfield** investment.

Many countries wish to attract.

Legal and political environment important.

Plus repatriation and liquidation possibilities.

But also local market and adjacent markets.

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But investment also = **acquisition** of existing firms.
Here inward investment is **not so popular!**
'National champions' not within IM logic.

Need for instances to enforce & interpret laws:

EU – Commission & ECJ.

EEA – EFTA Surveillance Auth. & EFTA Court.

Conclusions

- IM is predicated on capital freedom. Instances are required to enforce & interpret the rules.
- Investment also covers acquisition. A favourable climate for investment covers many areas, e.g. clear rules, a transparent judicial/administrative system, but also a market.
- Finally what is the most sensitive area?

Contact:

L. Ken Lennan

Deputy Head of Unit DG MARKT F1
European Commission

http://ec.europa.eu/comm/internal_market/capital/index_en.htm

Tel. 02/299.34.22 – Fax 02/298.08.02

kenneth.lennan@ec.europa.eu