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I. Estonia

Significant legislative developments during the year 2001 included in particular (1) adoption of the Law on Obligations Act and the completion of civil law reform, (2) adoption of the Penal Code, (3) reform of administrative law, and (4) civil enforcement reform.

A. Private Law

The main activity in the year 2001 was the completion of the reform of civil law. After two years of proceedings Parliament adopted the Law on Obligations Act on September 26, 2001. The Law on Obligations Act entered into force on July 1, 2002.

The Law on Obligations Act stipulates freedom of contract, disposition, good faith and reasonability as the basic principles of the Estonian Contract Law. Its passage should secure transparency in all legal relations, balance between rights and obligations in contractual relations and, consequently, a reduction of court pleadings while defending the weaker party in contractual relations (consumer, tenant, client of a bank, insured, etc.). The Law on Obligations Act presents one of the most contemporary acts in Europe. The Act will in the future become a part of the Estonian Civil Code, which will assemble the Acts currently in force as separate legal acts, including the General Principles of Civil Code Act, the Law on Obligations Act, the Law of Property Act, the Family Act, and the Inheritance Act.

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Additionally, that Act harmonizes twenty-two European Union (EU) directives, one regulation, and two recommendations—mainly in the fields of consumer protection, insurance, banking, organization of packet journeys, and the activity of agents.

During 2001, Estonia also acceeded to several conventions:

- European Convention on Recognition and Enforcement of Decision Concerning Custody of Children and on Restoration of Custody of Children (Luxembourg, 20.V.1980)—ratified by the Estonian Parliament on February 14, 2001.
- Convention on the Civil Aspects of International Child Abduction (The Hague, 5.X.1980)—ratified by the Estonian Parliament on February 21, 2001.
- International Institute for the Unification of Private Law (UNIDROIT), acceded to in November 2001.

B. Civil Enforcement

In the field of civil enforcement, implementation of the Bailiffs Act brought about considerable changes. Adopted on January 17, 2001, and entered into force on March 1, 2001, the Act replaces the system of bailiffs as public officials with a system of freelance bailiffs. Freelance bailiffs have sole authority to enforce court decisions, rulings and other monetary claims. The legal standing of the bailiff can be compared to that of the notaries—they are private individuals performing a public function; the actual work of the bailiffs is similar to a trustee in a bankruptcy case. The bailiff holds office independently in his or her own name and is liable for damages and breach of official duties. The state supervises the work of the bailiffs through court chairmen and the Minister of Justice.

C. Criminal Law

Estonia's main achievements in the area of criminal law have been the completed reformation of criminal, imprisonment, and criminal procedure law. With regard to criminal matters, the Parliament has adopted the Penal Code and Forensic Examination Act. The landmark achievement is adoption of the Penal Code on June 6, 2001 (entering into force on March 1, 2002). The Penal Code is based on a scientific ground, meets the requirements of modern European tradition of criminal law, and codifies all crimes. The general part of the Penal Code applies also to misdemeanors. However, unlike the present situation, misdemeanors will not be codified like crimes, but introduced into specific laws.

The Penal Code also introduces criminal liability of legal persons and officials of foreign countries and international organizations for passive corruption and corruption crimes in the private sector, such as the criminalization of obtaining non-material benefits or accepting promises by public officials in favour of a third party, such as a political party.

The Code provides for the formal definition and classification of an offence. Its second chapter, "Offences" defines an offence as being based on three components: (1) the necessary elements of a criminal offence, (2) the circumstances precluding unlawfulness, and (3) guilt. The third chapter, "Types and Terms of Punishments" proscribes the basic punishment and collateral sanctions imposed on natural as well as legal persons, general conditions for imposing a punishment, communication of the punishment, freeing from punishment, limitation of punishment, as well as alternative methods imposed on minors and persons in need of psychiatric treatment. The Special Part of the Code provides the punishments imposed for offences against humanity and international security; offences against

the person, offences against political and civil rights; offences against the family and minors; and offences against property, intellectual property, and the state.

The Forensic Examination Act was adopted by the Parliament on May 31, 2001, and entered into force on January 1, 2002. It provides the legal status of forensic experts, state forensic institutions and officially certified experts, and bases for the creation of the rights and obligations of experts in criminal proceedings, civil and administrative proceedings, and proceedings in administrative offence matters.

In criminal matters, Estonia has acceeded to the following international conventions:

- European Convention on the International Validity of Criminal Judgments (The Hague, 28.V.1970)—ratified by the Estonian Parliament on February 21, 2001.
- Council of Europe Criminal Law Convention on Corruption (Strasbourg, 27.I.1999)—ratified by the Estonian Parliament on October 17, 2001.
- International Criminal Court Rome Statute (Rome, 17.VII.1998)—ratified by the Estonian Parliament on December 5, 2001.

D. Public Law

The principal aim in public law reform has been to create the general part of administrative law, and to update constitutional acts and the legal base of judicial administration. In furtherance of these goals, Estonia adopted the Administrative Procedure Act, State Liability Act, and the Subsitutive Enforcement and Penalty Payment Act during 2001.

On June 6, 2001 the Parliament adopted the Administrative Procedure Act, which entered into force on January 1, 2002. The principal aim of the Administrative Procedure Act is to secure a simple and modern procedure that takes into consideration individuals' rights on issuing administrative acts and on carrying out administrative measures. Until now, the administrative procedure was regulated by several special administrative acts in which regulation was mostly deficient, out-dated, and cumbersome. The Act aims at returning to the essence of justice, and handles justice as the public organizer, a movable phenomenon, rather than a pure, technical subject. According to the Act, essentially unimportant errors in procedure and form do not necessitate the annulment of an administrative act. What is important is the principal of allowing individuals to be heard and unambiguous interpretation of a person's right to get explanations.

In addition to the Administrative Procedure Act, the Substitutive Enforcement and Penalty Payment Act was adopted on May 9, 2001, and entered into force on January 1, 2002. These two acts form separate parts of the same procedure—the Administrative Procedure Act deals with issuing administrative acts, while the aim of the Substitutive Enforcement and Penalty Payment Act is to secure the enforcement of the acts. The Substitutive Enforcement and Penalty Payment Act makes it possible for administrative organs to implement two coercive measures (substitutive enforcement and penalty payment) as supplementary measures to administrative punishments to force persons to fulfill the requirements stipulated in legal or administrative acts. Implementation of substitutive enforcement and penalty payment means that the administrative body may coerce an obliged person to perform the obligations, if necessary. According to the Substitutive Enforcement and Penalty Payment Act, the coercive measures shall be applied if the administrative act or precept issued by the administrative body is not complied with, and if the aim of the precept was to secure the execution of an action provided by the precept, or to refrain from an action provided in the precept. The main purpose of the administrative body, while applying either

substitutive enforcement or penalty payment is not to punish a person, but to secure the performance of obligation.

On May 2, 2001, the State Liability Act was adopted and entered into force on January 1, 2002. The aim of the State Liability Act is to provide grounds for compensation of the damage caused to a person by the state, the local government, or any other state agency that has violated a person's rights, without laying excess burden to the public resources. The Act empowers a person to demand that an administrative act be issued, or a measure be performed or refrained from being performed, and thereafter claim compensation. The aim of the State Liability Act is to concentrate on the so-called primary claims, and on the necessity to eliminate violation of rights by issuing administrative acts.

1. *Legal Aid*

On March 21, 2001, the Parliament adopted the new Bar Association Act, which entered into force on April 19, 2001. According to the Bar Association Act lawyers from the EU Member States can apply for permission to render their services in Estonia. The right to act as an associate member of the Bar Association is granted on the basis of an application. Applicants must be a citizen of a EU member state and have the right to act as an advocate on a permanent basis in a EU member state.

E. Social Legislation

In social matters, the Parliament adopted the State Pension Insurance Act and Funded Pensions Act, which constitute the legal basis of the pension reform. The State Pension Insurance Act was adopted on December 5, 2001, and entered into force on January 1, 2002. It regulates the state pension insurance, which is mainly funded by the pension insurance part (20 percent) of social tax. The Act's primary aim is to ensure basic income for all pensioners. The Funded Pensions Act was adopted on September 12, 2001, and entered into force on October 1, 2001. It introduces savings pension comprised of statutory payments by employers into the individual accounts of employees and supplementary private pension.

The Unemployment Insurance Act was adopted on June 13, 2001, and entered into force on January 1, 2002. It regulates the payment, order, and conditions for eligibility to unemployment benefits in the case of collectively terminated employment contracts or employer insolvency. In addition, the Act establishes the organization of unemployment insurance. With the Unemployment Insurance Act, a new institution in public law—the Unemployment Office (Töötukassa)—was set up.

F. Customs Law

On October 17, 2001, the Parliament adopted the Customs Code, which will enter into force on July 1, 2002. The Code provides the entire customs organization with a qualitatively new legal base grounded on taxation. With the Customs Code, the legal base now conforms to the requirements of EU law.

G. Miscellaneous

With regard to access to official documents, new opportunities have been created with the Amendment Act of Riigi Teataja Act and Databases Act (adopted on January 24, 2001),

which legitimated electronically published Riigi Teataja (the official publication of the Republic of Estonia). The Riigi Teataja shall be published on paper as printed matter and electronically on the Internet. Beginning with June 2002, legislation, notices and other documents published in the Riigi Teataja, whether on paper or in electronic form, have equal legal force.

II. Germany

A. Corporate Regulation

Recognizing the growing importance of electronic commerce, the bill on Legal Framework Conditions for Electronic Commerce implements the EU directive on e-commerce. The bill creates legal regulations for e-commerce, facilitates cross-border e-commerce, and provides legal clarity and security for suppliers and consumers.

These regulations establish the conflict of law and venue rules for litigation involving e-commerce suppliers and their consumers. They also establish that the country of the consumer is the venue for e-commerce/supplier litigation. Conversely, the law to be applied in the litigation is that of the e-commerce supplier's country of origin, which is the country where the e-commerce business is established. Thus, in litigation involving German consumers and foreign suppliers, German courts will apply the law of the foreign supplier's country. In cases involving foreign consumers, foreign courts will apply German law in cases of litigation with German suppliers.

B. Social Legislation

For the first time, Germany has granted homosexual couples similar legal status to married heterosexuals. With the legal challenges to its constitutionality struck down by Germany's Constitutional Court on July 18, 2001, the Act on Registered Partnerships now allows same-sex partners to obtain legal recognition of their relationship by forming registered civil partnerships, effective August 1, 2000. Under the Act, each Länder (Germany's sixteen federal states) will have the authority to create the registered partnerships.

The rights and obligations that accompany a registered partnership are significant. Those who elect to register their partnerships will have mutual obligations of support or maintenance, the right to inherit from each other, the right to be included in the health and nursing care insurance of their partner, the right to take their partner's name and the right to refuse to give evidence against their partner. Foreign partners are given the right to join their German partners in Germany and to be naturalized as German citizens. The Act also recognizes limited parental rights for partners, entitling them to be involved in decisions on matters of the daily life of the child brought into the partnership by the other partner.

Registered partners who wish to legally dissolve their partnership may petition the Family Court for dissolution. In appropriate circumstances, partners may be awarded support or maintenance from the other partner when the partnership is dissolved.

C. Agriculture

Germany responded to the EU Directive for the protection of laying hens kept in battery cages by approving the Ordinance on Hen Husbandry. The Ordinance is the work of Federal Minister of Consumer Protection, Food and Agriculture, Renate Künast, and was

designed to reflect "the central role played by animal welfare in the new agricultural policy."[1] As such, the Ordinance goes beyond the minimum standards laid down in the EU Directive. The regulations require that new hen housing systems be designed so that hens can feed, drink, rest and dust-bathe as well as move to their nests for egg laying in a species-specific way. The houses must be at least two meters high so that the animals have sufficient space to range freely. The transitional period for existing conventional cages applies until December 31, 2006, five years shorter than required by EU regulations.

D. Citizenship, Naturalization and Immigration

Germany was not included in the 2000 review. However, Germany's new citizenship and nationality law, in effect since January 1, 2000, was one of the great changes in German law and is included in this review. Under the new law, German citizenship can be acquired, with certain restrictions, by simply being born in Germany (*jus soli*), as is the case in most other European countries. Previously, German citizenship was primarily granted by the principle of descent (*jus sanguinis*).

Children of foreign nationals who are born in Germany will now receive German citizenship if one of the child's parents has resided lawfully in Germany for at least eight years and holds entitlement to residence or has had an unlimited residence permit for at least three years. In most cases, they will also acquire their parents' citizenship under the principle of descent (depending upon the other country's laws). Children born with citizenship in Germany and a foreign country must elect German or their foreign citizenship before their twenty-third birthday. Those who declare foreign citizenship and those who fail to elect citizenship before their twenty-third birthday lose their German citizenship. Those electing to keep German citizenship must demonstrate that they have renounced their foreign citizenship prior to their twenty-third birthday, unless renouncement of foreign citizenship is not possible or would be unreasonable.

Adult foreign nationals also benefit under the new legislation because they may now be naturalized as German citizens after lawfully residing in Germany for eight years instead of fifteen. Applicants for naturalization must fulfill certain obligations including learning German and professing loyalty to the Basic Law, Germany's Constitution. Applicants must not have been involved in any activities that are hostile to the constitution, must be in possession of a residence permit or the right of unlimited residence, be self-supporting without the help of welfare benefits or unemployment assistance, have renounced or lost any foreign citizenship, not possess a criminal record, and have an adequate command of the German language. The self-supporting requirement is waived for those under twenty-three. The receipt of unemployment assistance or welfare benefits does not have a detrimental effect on applicants who are not responsible for their situation.

The new law also contains hardship provisions to protect older applicants, applicants who are politically persecuted or recognized refugees, and those who find difficulty in renouncing their foreign citizenship. Renunciation of citizenship is considered difficult when it involves unreasonably high fees, when the foreign state's conditions for releasing its nationals are demeaning, or when being released from one's foreign nationality would entail substantial disadvantages, especially economic or property disadvantages.

1. Press Release, German Federal Ministry of Consumer Protection, Food and Agriculture, Künast: One Giant Leap for Animal Welfare (Oct. 19, 2001), *available at* http://www.verbraucherministerium.de/englisch/press-statement-laying-hens.htm (last visited July 3, 2002).

E. Airport Security

In response to the attacks of September 11, 2001 in the United States, the German Federal Government issued a new federal decree requiring that all civilians working in, or hired for sensitive airport security areas pass a reliability test. Those currently working in these positions must pass the reliability test within one year. The reliability test will be administered annually to all employees in sensitive positions. Prior to the decree, security checks were conducted at the discretion of aviation authorities pursuant to Article 29d, paragraph 2 of the Air Traffic Act.

The reliability checks require the applicant to provide information on all domiciles for the last ten years. The decree also broadens the scope of the aviation authorities inquiry in conducting the reliability test. Authorities were previously limited to reviewing personal data on an employee from the records of the police and constitutional bodies. Under the new decree, authorities are entitled to review personal data on an employee from the Military Counterintelligence Service, the Federal Intelligence Service, criminal prosecution authorities, the Central Aliens Register, and the Stasi Records Coordinator.

III. Greece

A. Revision of the Constitution

The most important legislative development in Greece for the year 2001 was the Revision of the 1975 Constitution previously revised in 1986. The revisionary process is completed in two stages: the Parliament decides on the need for revision and the articles to be revised and the next Parliament (named Revisionary) discusses and decides on the revision. In April 2001, the current Seventh Revisionary Parliament issued a resolution including the amendment of provisions in parts II, III, and IV of the Constitution.[2]

1. *Individual and Social Rights*

Amendment to the constitutional provisions concerning civil and social rights covers current needs in the protection of persons and establishes an indisputable duty of the State to adopt the measures for their implementation. Freedom in the development of personality is enhanced by establishing a right to the protection of health and genetic identity and requiring legislative initiatives to protect each person from biomedical interventions. Furthermore, a right to information and participation in the Information Society is established, and it is the States' duty to facilitate access and production of electronic information (art. 5). Legislation and the independent authority assure protection from the collection and use of personal data (art. 9A). The administration's obligation to respond to requests for information was previously established, but the revised article stipulates that this must take place within sixty days. Retraction in cases of inaccurate publications includes the right to answer and the obligation of the media to broadcast or publish it. Concentration of ownership of more than one medium of the same or different kind is prohibited (art. 14). Finally, in relation to the protection of the natural environment, the State is obliged to complete the listing of real property ownership rights *in rem* (and not *in personam* as was the case until now) and of forest areas, the lack of which has caused uncertainty and encroachments.

2. Resolution of the 7th Revisionary Parliament of the Hellenes, Gov. Gazette (FEK) A84/17.04.01 (Greece).

2. *Organization and Functions of the State Parliament*

The revision represents an effort to assure autonomous and transparent political procedure through the introduction of further guarantees and the clarification of those that had caused interpretation problems. The amendments include the explicit requirement for transparency in the financial management of political parties, especially in relation to their funding, and legislatively mandated maximum expenses for election campaigns (art. 29). The electoral system and the elective districts are specified by law, which comes into force in the second following elections (art. 54). Members of independent regulatory authorities that are recognized by the Constitution are not eligible to stand for election nor be elected to Parliament in any election district they served for eighteen months prior to the election (art. 56, para. 1). The amended Article 57 specifies the enterprises where acting in the capaciy of an owner, shareholder, director, manager, or their alternates, is incompatible with duties of MPs. It includes enterprises owning or managing radio stations, television channels, and newspapers with nationwide circulation.

3. *The Judiciary*

The Constitutional revisions increase the guarantees of an unbiased judiciary, specifically in areas concerning the remuneration and dismissal of judicial functionaries (art. 88), and the organization of the Supreme Judicial Council, which decides on judicial promotions, assignments, transfers, and detachments (art. 90). While specific and thorough reasoning of court decisions was always required of the courts, the modified Article 93 requires legislative definition of the consequences and sanctions for non-compliance.

Article 94 stipulates that court decisions are enforceable against all public agencies and entities. Prior to the revision the public sector benefited from a clause in Act 2095/1952 that excluded it from the execution of court orders for financial debts, causing tremendous inefficiencies. Recently the Plenary of the Supreme Civil and Criminal Court (Areios Pagos) judged that this exclusion is contrary not only to the revised article of the Constitution, but also to the existing Article 20 (stipulating that every person is entitled to receive legal protection), Article 6 of the European Convention on Human Rights (ratified since 1974), and the International Convention on Civil and Political Rights (ratified in 1997).[3]

4. *Organization of Administration*

Articles 101 and 102 enhance the principle of decentralized administration by limiting the supervision of central administration and by establishing a presumption of jurisdiction of local government agencies over local affairs (arts. 101, 102). In particular, the central government examines the actions of local authorities only in terms of their conformity with the law; the agencies are guaranteed not only administrative but also economic autonomy.

The lack of a specific provision in the Constitution establishing the rights and powers of independent authorities raised concerns about their compatibility with the Constitution, the political accountability of their members, and their rulemaking and adjudicative powers. Newly created Article 101A recognizes the establishment and operation of independent authorities, whose members are abided by personal and operational independence, and provides for parliamentary control of their actions. The Constitution also includes specific provisions further clarifying the status of existing authorities (such as the Greek Ombuds-

3. Dataforms ABEE v. Municipality of Piraeus, Decision No 21/2001 (Plenary of Areios Pagos) (Greece).

man, the Data Protection Authority, the National Board of Radio and Television), and establishing new authorities.

B. Reform of Ordinary Proceedings in Civil Courts

Act 2915/2001 modifies provisions in the Code of Civil Procedure and introduces a simpler procedure in an effort to provide a faster and more efficient award of justice. The fundamental idea is to gather all the proof and evidence material, as well as all allegations of the parties, before discussion of the case, and to fully use the time preceding the day of the trial. The Articles introduce time limits of thirty days for service of the action after the deposition of the action, and fifteen days prior to the trial date for deposition of allegations (arts. 229, 237). The Court issues a final decision after the first and only discussion of the case; preliminary decisions are no longer issued (art. 270). The only possibility of another discussion is when lack of clarity prohibits the court from awarding a final decision. This was an option under the old system, but the new article further requires the second hearing to be held by the same judge and that the unclear points be specifically determined in any decision ordering a second hearing. The new system involves direct application of the principles of oral and direct procedure through the examination of at least one witness per side (art. 270, para. 3). Other measures include the limitation of the right to clear the costs of the trial (art. 178), the limitation of adjournments of the discussion and the award of costs to the requesting party (art. 241, paras. 1, 2), the issue of a judgment by default if the parties are not present (they are tried as if present, art. 270). Furthermore, if the reporting judge in a Review case considers it inadmissible or unfounded, a judiciary council can decide the dismissal of the action (art. 571). As a result of the amendments the trial takes place in one stage, and the ruling covers matters of law and fact. However, it has been noted that the award of a final judgment in a sole hearing presupposes the activation of other provisions concerning the procedure prior to the trial, provisions that can contribute to the concentration of the material and the determination of omitted and unclear points in the allegations of the parties (arts. 67, 227, 232).

C. Legislative Initiatives Against Organized Crime

Act 2928/2001 modifies provisions in the Penal Code and Code of Criminal Procedure to enhance protection from criminal organizations and to combat terrorism. The amendments came into force in June 2001 and include the introduction of a specified provision (art. 187) in the Penal Code for criminal organizations aiming to commit felonies such as counterfeiting; forgery; arson; disturbance of rail, ship, and aircraft safety; causing an explosion; injury; and homicide. Penalties have been raised for members and those harbouring their actions. Measures of leniency are adopted to encourage revelation of criminal actions or intents, and cooperation with the authorities, as well as protective measures for witnesses and authorities dealing with the case. The Judiciary Council can order a DNA analysis of the suspect (art. 5), and the Court has increased powers of investigation: inquisitive penetration and monitoring and use of personal data (art. 6). These inquisitive actions are allowed only if there is serious evidence related to criminal organizations as defined above. Additionally, this category of crimes is removed from the jurisdiction of the Ordinary Courts and is brought under the Special Jurisdiction of the Court of Appeals (art. 4).

D. Transport Law

Act 2932/2001 comes into force in November 2002, and establishes freedom to provide services to maritime transport from a ship owner of a State member of the EU, the EEA, or the EFTA from mainland Greece to islands and vice versa as well as between islands. This is an important legislative development since it opens up a profitable and high-demand market to foreign competition and promises to increase quality of service while lowering prices. The Act is based on Directive 3577/1992 on maritime cabotage. It also provides for the creation of a Regulatory Authority for Maritime Transport, which shall monitor the function of the market to protect competition and deter collusion in cooperation with the Competition Authority. PD 341/2001 implements Directive 99/35 EC and lays down a system of mandatory surveys, which provide assurance of safe operation of regular ro-ro ferries and high-speed passenger craft services to or from Greece. Prior to the beginning of the operation an initial specific survey is conducted and initial verifications are required. Afterward, regular services are carried out and verifications are required. The authority can prevent the operation when it cannot confirm compliance with the requirements.

Council Directive 96/26/EC on the admission to the occupation of road haulage operator and road passenger transport operator, and the mutual recognition of diplomas, certificates, and other evidence of formal qualifications, implemented by Presidential Decree 346/2001 should facilitate the right to freedom of establishment in national and international transport operations for these operators.

E. Electronic Signature

Presidential Decree 150/2001 implements Directive 99/93/EC on a Community Framework for electronic signatures.

F. Codifications

A Code for the Expropriation of Real Property[4] has been produced after a lengthy committee effort that began in 1982. The Code applies to expropriations, following its entry into force, and to the pending part of incomplete expropriations initiated after February 1971.

The National Code for Customs consolidates numerous legislative provisions dating as far back as 1918, and came into force in January 2002.[5] The Code applies to all commercial transactions with third countries, to products subject to special taxation, and to merchandise under specific customary observation. All duties, taxes and relevant claims are calculated according to the community customs code.

IV. Italy

A. Constitutional Reform – A Shift Toward Federalism

Constitutional Law No. 3 of October 18, 2001[6] has significantly modified the Italian legislative system by either amending or abrogating several articles contained in Title V,

4. A Code for the Expropriation of Real Property, Act 2882/2001.

5. National Code for Customs, Act 2960/2001 (2002) (Greece).

6. *See* Constitutional Law, Gazz. Uff. No. 3/2001 (Oct. 18 2001), in Gazz. Uff. No. 248/2001 (Oct. 24 2001), *available at* http://www.comune.jesi.an.it (last visited July 3, 2002).

Part II, of the Italian Constitution.[7] By assigning to the State only essential law-making powers, and by establishing financial autonomy for regions and other local authorities, Constitutional Law No. 3/2001 aims at enhancing the federalist structure of the Italian State. Three major reforms can be distinguished: (1) Reallocation of legislative competences between state and regions (art. 117 Constitution, as amended), (2) Recognition of financial autonomy to regions and other local authorities (art. 119 Constitution, as amended), (3) Changes in the system of controls over the acts of local authorities (art. 130 Constitution abrogated).

More specifically, the reformed Article 117 contains, respectively, a definitive list of areas where the state has exclusive legislative competence (such as foreign policy, national defence, competition policy, and protection of the environment) and a definitive list of areas where the state and the regions have competing law-making powers (such as safety of workplaces, production, transportation and national distribution of energy, and coordination of public finance and tax system). The latter regime establishes that the state must lay down the fundamental principles, while regions have a duty to enact specific laws. Residual law-making powers have been conferred on regions. It is worth noting that by creating a residual category of exclusive competence of regions, the decentralized law-making power results considerably increased. In this rule, therefore, one can envision a turning point for the establishment of federalism.

The law has not set up transitory rules. Therefore, the status of laws enacted prior to the coming into force of Constitutional Law No. 3/2001, and in contrast with the introduced criteria reallocating law-making powers, is unclear. Another problem is that such criteria are based on the definition of an area of law. However, the 'area-criterion,' also adopted in the previous constitutional text, has proven highly unsatisfactory as, in most cases, rigid classifications fail to capture the complex dimension of reality. It is, thus, very likely that the application of such criteria will prompt conflicts of competences.

B. Criminal Law – Procedural and Substantive

The recent developments in the Italian penal legal system might threaten the conquests made in the fight against criminality and seem in contrast with the spirit of European law.[8] Law No. 367, October 5, 2001,[9] which ratifies the Accord on judicial co-operation between Italy and Switzerland done in Rome on September 1998, amends several articles of the Italian penal and penal procedural code. Under the combination of Articles 696 and 729 of the penal procedural code, as amended by Law No. 367/2001, it seems that any evidence not acquired or transmitted according to the European Convention on Mutual Assistance in Criminal Matters of April 20, 1959, and to other international conventions in force in Italy, cannot be used in the Italian courts. A textual interpretation advanced by some lawyers would lead to a paralysis in the acquisition of evidences, potentially undermining an entire proceeding. For example, Article 3 of the 1959 Convention provides that the copies of

7. *See* Italy Const. title V, part II (Regions, Provinces, Municipalities).

8. *See* Treaty on European Union, Feb. 71, 1992 O.J. (C191) 1; the conclusions of the Tampere European Council of October 1999; Treaty of Nice, Feb. 26, 2001 (enshrining the creation of Eurojust), *available at* http://www.lawtel.com (last visited July 3, 2002).

9. *See* Law, Gazz. Uff. No. 367/2001 (Oct. 5 2001), in Gazz. Uff. No. 234/2001 (Oct. 8, 2001), *available at* http://www.comune.jesi.an.it (last visited July 3, 2002).

documents transmitted should be certified, a praxis never adopted by Switzerland. However, a rigorous interpretation of the text, which refers also to rules of public international law, should allow the admissibility of such evidence.[10] In contrast with the general rule *tempus regit actum*, under Article 18, the new law also applies to proceedings under way. A recent Order of the Criminal Court of Rome accepted a claim against the constitutionality of the law and has therefore transmitted the acts to the Constitutional Court. The latter decided for the inadmissibility of the claim against constitutionality of the law.[11]

Law No. 366/2001, establishing the general principles for the reform of company law and delegating the government to implement it within a year (see section C on company law), has modified the discipline of the criminal offence of false accounting.[12] The law provides that for non-listed companies the crime can be prosecuted only when damaged parties file a complaint, which, for reasons that should be obvious to lawyers, is unlikely to happen.[13] Both for non-listed and for listed companies sanctions have been lowered, which is quite relevant in respect to the extinction of the criminal offence due to the applicable statute of limitation.[14] Moreover, the conduct of false accounting has been redefined in a restrictive and, to some extent, unclear way. Given the average duration of trials coupled with statutes of limitations and the burdensome conditions imposed by the newly introduced principles it seems that, in most instances, there will be a sort of *de facto* decriminalization of false accounting.

Finally, in the aftermath of the New York tragedy on September 11, 2001, Italy has passed a law to fight international terrorism, which introduced a new *ad hoc* criminal offence—organization for international terrorism—and granted more powers to public prosecutors and judiciary police.[15] However, Law No. 409/2001,[16] containing urgent rules for the introduction of the Euro, facilitates the entrance in Italy of exported capitals in a way that makes it very difficult to detect illicit capitals so that, once more, it will likely weaken the fight against criminality.

C. Company and Commercial Law

In fall 2001 Law No. 366[17] was approved. It empowers the government to enact the reform of Italian Company Law. The law set up guidelines the government must follow. The underlining principle is enhancement of the individual's freedom to choose the model of company they prefer without any mandatory rule imposing the adoption of one model on the basis of the size of the enterprise. As to stock companies, the shareholder's freedom

10. *See* Vienna Convention on the Law of Treaties Between States and International Organizations or Between International Organizations, March 21, 1986, 25 I.L.M. 543, art. 31, *available at* http://www.fletcher.tufts.edu/multi/texts/BH883.txt (last visited July 3, 2002).

11. Order of the Constitutional Court No. 315/2002 deposited to Chancellery on the 4th of July 2002, *available at* http://www.giurcost.org/decisioni/2002/0315o-02.html.

12. In fact, this is one of the major amendments brought to the project of Mironi Commission.

13. In this context it is worth mentioning that in Italy important companies such as Fininvest are non-listed.

14. Articles 157–160 of the Penal Code regulate the statute of limitation in Italian criminal law.

15. *See* Legislative Decree, Gazz. Uff. No. 374/2001 (Oct. 18, 2001), in Gazz. Uff. No. 244/2001 (Oct. 19, 2001), *available at* http://www.comune.jesi.an.it (last visited July 3, 2002).

16. *See* Law, Gazz. Uff. No. 409/2001 (Nov. 23, 2001), in Gazz. Uff. No. 274/2001 (Nov. 24, 2001) (containing urgent rules for the introduction of the Euro), *available at* http://www.comune.jesi.an.it (last visited July 3, 2002).

17. Law, Gazz. Uff. No. 366/2001 (Oct. 3, 2001), in Gazz. Uff. No. 234/2001 (Oct. 8, 2001), *available at* http://www.comune.jesi.an.it (last visited July 3, 2002).

is also established in relation to the organizational rules of the internal control of the directors. Three possibilities will be opened for stock companies: (1) The existing system of a three-auditor committee whose principal function is to review and certify the accounts; (2) A committee of control that will differ from the existing one (under (1) above), since it will have the control over the management of the company, the right to remove the directors, and the right to exercise the action for the directors' liability; and (3) The presence in the board of independent directors empowered with adequate right to inspection and to gather information. The second and third alternatives are taken from the German model and the English model, respectively. Also notable is the extension to stock companies of the opportunity for one single shareholder to create the company. Another important pillar of the reform is the simplification of the company law. This end has been already partially realized by Law No. 340,[18] which reduced the judicial control over relevant acts of the life of companies. In general, Law No. 366 reflects the draft law elaborated by the Mironi Commmission.[19] There are, however, some changes as to the provisions regarding sanctions for false information given by the directors in the balance sheets (see section B on criminal law) and as to the provisions regarding companies with an end of mutuality. These provisions are highly controversial. In the latter case, Law No. 366 restricts the scope of the definition of companies with an end of mutuality, excluding from tax benefits those companies producing goods or services not only for shareholders but also for third parties or that employ not only shareholder but also third parties. It has been claimed that in such a way the creation of companies with an end of mutuality is highly discouraged. This provision has been strongly opposed in Parliament by left-wing parties. Finally, Law No. 366 opens the way to the legitimization of leveraged buy-outs without any criteria of distinction between the different possible transactions. This provision has also been criticized on the basis of the risks for creditors if indiscriminate leverage buy-outs are admitted.

D. Administrative Liability of Companies

Legislative Decree No. 231[20] established the liability of companies and associations for certain crimes committed by directors or officers. This is a very innovative piece of legislation since it was an established principle that companies and other juridical persons could not be condemned for criminal offences. Indeed, the legislator chose not to apply criminal sanctions but only administrative sanctions. For the first time, a company may be held liable for the criminal offences committed by its directors or officers. The legislative choice of bringing to light the responsibility of companies where certain misbehaviors of individuals are generated inside the company and are functional to the company is based on the idea that such a liability may be deterrent for the misbehaviors. However, such a design is not consistently followed by our legislator; in the case of fraud by financial intermediaries under Legislative Decree No. 58[21] the role of the individual is enhanced and the liability of the

18. Law, Gazz. Uff. No. 340/2001 (Nov. 24, 2000), in Gazz. Uff. No. 275/2001 (Nov. 24, 2001), *available at* http://www.comune.jesi.an.it (last visited July 3, 2002).

19. A Ministerial Commission set up by the preceding government guided by the left-wing coalition.

20. Legislative Decree, Gazz. Uff. No. 231/2001 (June 8, 2001), in Gazz. Uff. No. 140/2001 (June 19, 2001), *available at* http://www.comune.jesi.an.it (last visited July 3, 2002).

21. Legislative Decree, Gazz. Uff. No. 58/2001 (Feb. 24, 1998), in Gazz. Uff. No. 71/2001 (Mar. 26, 1998), *available at* http://www.comune.jesi.an.it (last visited July 3, 2002).

company seems to be denied. The crimes considered by Decree No. 231 are corruption, bribery, fraud of the state, and fraud for obtaining public financing. The ascertainment of the company's administrative liability is entrusted to the same criminal court that will judge the criminal offence of the relevant officer or director. This solution blurs the confines between criminal and administrative sanctions. Furthermore, it may create a further delay in the criminal proceedings, which are typically not quick in Italy. As a final comment, it should be noted that Decree No. 231 aims to reach its deterrent effect not only by severe sanctions, which may be inflicted on companies, but also by providing for exemption of the liability where it is demonstrated that appropriate compliance programs were in place in the relevant company. However, criticism has arisen concerning the provision of reducted sanctions where the compliance programs are put in place after the crime is committed, or even after decision has been issued.

E. Payment Systems and Securities Settlement System

The EC Directive[22] on settlement finality in Payment and Securities Settlement Systems has been finally implemented in Italy.[23] The EC Directive aims at contributing to the efficient and cost-effective operation of cross-border payment and securities settlement arrangements in the Community, by minimizing the disruption to a system caused by insolvency proceedings against a participant in that system. The intention is to reduce the systemic risk inherent in payment systems that operate on the basis of several legal types of payment netting – in particular multilateral netting. The EC Directive also deals with the risk associated with participation in securities settlement systems, considering the close connection existing between such systems and payment systems. Accordingly, the principal provisions of the Directive establishes that transfer orders entered into a system and netting shall be legally enforceable and shall be binding even in the event of insolvency proceedings against a participant, provided that transfer orders were entered into a system before the opening moment of such insolvency proceedings.

The Legislative Decree No. 210 (the "Decree") implementing the EC Directive has imported relevant changes into the Italian legal system. The Decree provides for the finality of the transfer orders and netting, and it establishes that the finality of payments may not be affected by the subsequent insolvency of a participant. This provision therefore derogates to the principles of Italian insolvency law, which establishes the retroactive effects of insolvency proceedings starting from the time and date the bankruptcy petition is filed. As to the participants of securities settlement system, the Decree extends the effects of the provisions on the finality of payments as set out in the EC Directive. In particular, the Decree provides that in the case of insolvency of a financial intermediary transmitting orders to a participant in the system the contract between the financial intermediary and the participant will not be terminated because of the insolvency of the financial intermediary. With express derogation of the applicable law, the participant may satisfy itself on the cash

22. Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems published in the Official Journal, L 166, 11/06/1998 P. 0045–0050, *available at* http://www.europa.eu.int. (last visited July 3, 2002).

23. Legislative Decree, Gazz. Uff. No. 210/2001 (Apr. 12, 2001), in Gazz. Uff. No. 130/2001 (July 6, 2001), *available at* http://www.comune.jesi.an.it (last visited July 3, 2002). The Legislative Decree has been adopted on the basis of the delegating Law No. 526 of 21 December 2001.

or securities received as consideration for the orders transmitted into the system if the insolvent financial intermediary does not perform its obligation. Moreover the Decree, expanding on the provisions of the EC Directive, sets out new principles regarding conflicts of laws as to property rights in dematerialized securities. The Decree, therefore, solves the controversial issue of determining the *lex rei sitae* with respect to dematerialized securities. In the case of securities (including any property rights in securities) legally recorded on a register, account, or centralized deposit system located in a member state, the transfer of the property, and the creation of any security rights in such securities, shall be governed exclusively by the law of the jurisdiction where the register, account, or centralized deposit system is located and where they have directly registered the rights of the holder of the securities (so called *PRIMA Approach*). This means that it will prevail the law of the jurisdiction of the first registration down in the chain of registrations. In conclusion, the implementation of the EC Directive has resulted in the enactment of a new national law expanding the rules established at the EC level. It represents an important advancement of the Italian legal system towards the creation of a legal framework in line with modern financial systems.

F. Safety, Health and Environmental Law

A framework law on the protection from exposure to electric, magnetic, and electromagnetic fields was adopted in February 2001 (Law No. 36/2001).[24] The scope of the law is particularly broad: it applies to all types of plants and systems (civil and military) that can expose the population to electric, magnetic, and electromagnetic fields with frequencies between 0 Hz and 300 GHz. The law establishes general limits of exposures and delegates to governmental decrees its implementation as well as a detailed definition of different standards. Violations of the rules are backed by administrative sanctions.

V. Latvia

During 2001 more than 200 laws were adopted by *Saeima* (Latvian Parliament). Such high legislative activity characterises a period of social and economic transition, and Latvia's approaching membership in the EU. Based on the commitments under the Association agreement, before Latvia joins the EU its present and future legislation has to be approximated to that of the EU. Therefore, many of the most important laws passed are based on the EC directives. Analysing the legal developments during 2001, the most important acts can be found in the areas of company law, competition law, administrative law, as well as in the social legislation, labour law and health and safety at work in particular.

A. Company Law

The new Commercial Law had already been adopted by the Parliament on April 13, 2000. However, its entry into force was postponed several times (Parliament passed legal amendments to that respect in December 2000, March 2001, and June 2001) until it finally entered into force on January 1, 2000.

24. Law, Gazz. Uff. No. 36/2001 (Feb. 22, 2001), in Gazz. Uff. No. 55/2001 (Mar. 7, 2001), *available at* http://www.comune.jesi.an.it (last visited July 3, 2002).

The controversy that arose during the parliamentary discussions related mainly to two factors. First, discussions on the new terminology this law introduces into the Latvian language,[25] and second, reform in forms of entrepreneurial activity, with the ensuing demand for re-registration of around 84,000 companies, and the subsequent administrative costs.

This law regulates forms of entrepreneurial activity, forming, functioning, and liquidating companies, as well as the status and functions of a commercial register. It implements the EC directives in the area of company law. In regulating private law matters, it supplements the Civil Law, which was adopted in 1937, and renewed into force after regaining independence in the early 1990s.

B. Competition Law

The new Competition Law was adopted on October 4, 2001. The previous Competition Law was in force for two years, and within that period numerous fine-tuning needs were noted.

The rules of merger control were made stricter in order to protect the market access for small- and medium-size enterprises. The division of competencies between decision-making and executive institutions—Competition Council and Competition Bureau—were clarified. Penalties for the breach of the Competition Law, previously found in the Administrative Penalties Code, were transferred to the Competition Law itself.

C. Administrative Procedure Law

On October 25, 2001, *Saeima* adopted a new Administrative Procedure Law. This law states the general principles of the administrative procedure, regulates procedure in state and municipal institutions and in courts, and provides rules for enforcement of administrative acts or court decisions in an administrative case. The control of court is extended to any action in the area of administrative law. The proceedings in court are not based on a normal inter-parties procedure, but on the need to establish the objective truth.

It is expected that the entry into force of this law will lead to a qualitative improvement in the interaction between the private persons and the state institutions. The law will enter into force on July 1, 2003. Before this takes place a new corpus of administrative judges must be established and judges and civil servants trained.

D. Labour Law

On June 20, 2001, a new Labour Law was adopted, it is due to enter into force on June 1, 2002. Until the entry into force of the new law, labour relations are regulated by the Labour Code 1972, which, though substantially amended, cannot be considered in conformity with the present socio-economic situation in Latvia. The new law puts emphasis on settling of working conditions and related disputes within the framework of the collective agreements. It implements minimum standards set by EU directives and ILO conventions.

On labour protection, this law entered into force on January 1, 2002, replacing the 1993 law, which in many respects had become outdated. The law systematises the rights, duties,

25. There have already been amendments to the law in March 2001, before its actual entry into force.

and responsibilities of employers, employees, and the state. The law puts emphasis on preventive measures; by creating modern labour protection systems at workplaces, it aims at improving the health and safety situation of workers. The law transposes into Latvian legislation Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work. Implementation of the law is supervised by the State Labour Inspection.

Before adopting this law on December 13, 2001, the State Labour Inspection functioned on the basis of a law adopted in 1939 and amended in 1993. The new law will ensure conformity of the legal basis to the EC law, in particular, the above-mentioned Directive 89/391/EEC. The law precisely defines the functions of the inspection and the mechanisms for carrying out these functions, thus ensuring that both the employers and employees can effectively protect their rights. Decisions of the Inspection can be appealed in court.

Adoption of a special law in the area of information and consultation with the employees ensures the information exchange and consultations between employees and employers, where the enterprises are located in at least two EU countries. This information exchange covers the questions of financial state, potential collective lay off, and investments. The law implements Directive 94/45/EC on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees. The law came into force on the same date as the Commercial Law; however, due to its EU law specificity it will become fully functional after the accession to the EU.

Directive 80/987/EEC n the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer provides for the protection of employees in the case of an employer's insolvency. It conforms to the requirements of ILO Convention No. 173, concerning the protection of workers' claims in the event of the insolvency of their employer. It introduces a guarantee system (as opposed to granting the status of a privileged creditor) for protecting employees.

Amendments to the law on State pensions provides for the gradual abolishment of restrictions to pay pensions to the working pensioners as well as the gradual abolishment of early retirement schemes. The law also breaks the previously existing link between the minimal wage level and pension. Altogether, these amendments are aimed at improving the social situation of pensioners and gradually raising the income level of elderly people.

The Social Charter of the Council of Europe and its additional protocol was previously signed by Latvia on May 29, 1997. By ratification of the Charter on December 6, 2001, its norms on rights to work, form unions, conclude collective agreements, protection of working women, and family rights to social, legal, and economic protection became internationally binding for Latvia. Undoubtedly, similar guarantees also exist in the national law, especially with the November 6, 1998 amendments to *Satversme* (Constitution), which added a new chapter on human rights. For the time being Latvia has ratified Articles 1, 5, 6, 8, 9, 11, 13, 14, 16 and 17 of the Charter. With positive development of the economic and social situation, remaining articles can be ratified as well.

E. Data Protection

The Council of Europe Convention for the protection of individuals with regard to automatic processing of personal data was ratified on April 5, 2001. This followed an earlier (March 23, 2000) adoption of the data protection law implementing the EC Directive 95/46 on the protection of individuals with regard to processing of personal data and on free

movement of such data. Implementing authority, the Data State Inspection, was created and began functioning as of January 1, 2001. In 2002, further legislative amendments are envisaged to extend the data protection requirements to the area of police investigations.

VI. Spain

A. The New Spanish Trademark Act

The Spanish Trademark Act 17/2001 was enacted on December 7, 2001. The Act will come into force on July 31, 2002, except for some provisions mainly concerning the trademark right and remedies available to trademark owners.[26]

As stated in its preamble, the new Trademark Act has three main goals, which have resulted in a number of significant changes to trademark law:

- To implement Constitutional Court Decision[27] giving the regional Spanish Governments *("Comunidades Autónomas")* some powers with regard to industrial property law (trademark law in particular);
- To comply with international and EC commitments regarding trademark law (first Directive 89/104/EEC on Trademark Law, Council Regulation No. 40/94 on the Community Trademark, Protocol relating to the Madrid Agreement on the international registration of trademarks, the TRIPs Agreement and the Trademark Law Treaty); and
- To include new rules addressing issues that had arisen in the application of the former trademark law, as well as other rules better suited to the information society.

Under the new law, only two types of distinctive signs may be protected by registration: trademarks and trade names. It has been decided to end the protection of establishment names *("rótulo de establecimiento")*, as this kind of sign can be better protected through unfair competition rules.

The new law also considers the possible cyber use of trademarks—on the Internet specifically, or in other networks generally—as the scope of protection expressly includes the use of trademarks as domain names.

From the point of view of legal definitions, the Spanish law sets out a clear distinction between what should be considered a "well-known trademark" *("marcas notoriamente conocidas")* and "trademarks which have a reputation" *("marcas renombradas")*. According to this distinction, a well-known trademark is known by the relevant sector of the public that is familiar with the products and services for which it is used; whereas, a trademark has a reputation when the general public (not only the sector of the public to which the product or services are addressed) has knowledge of the trademark. The new law strengthens protection of these trademarks in the event the trademark's reputation is harmed, as it may reach products, services or activities, which are not similar to those for which the trademark is registered.

Regarding registration proceedings, the Trademark Law Treaty foresees the possibility of a single registration for goods and/or services of several classes (adoption of the multiclass system). Plus, the new law eliminates the obligation to submit to the Spanish Patent and Trademark Office a declaration of use of the trademark upon renewal of the trademark's

26. These provisions were applicable from the day following publication in the Official Journal (i.e., Dec. 9, 2001).

27. Spanish Constitutional Court Decision 103/1999, June 3, 1999.

registration. The law also eliminates the possibility of the Spanish Patent and Trademark Office acting on its own motion to reject a trademark application on the basis of previous conflicting trademarks or trade names; rejection on these grounds requires the motion of the concerned party.

Finally, trademark owners have more protection in the event their trademarks are violated. Among other measures, the law provides that even when no evidence of the damage is available, trademark owners are entitled to one percent of the turnover made with the infringing products.

Concerning trade names, it is now possible to transfer trade names independently of the undertaking.

B. Tax Law

In 2002, as usual, major modifications have been made to the General State Budget Act 23/2001, and the Tax, Administrative and Social Measures Act 24/2001. Additionally, a new inter-territorial financing system for the Spanish regional governments (*"Comunidades Autónomas"*) is under discussion, which has led to several modifications to the acts governing the financing system.

These new measures should perpetuate the internationalization stimulus started in 2001, and provide an interesting tax framework to encourage investment and savings in both individuals and companies.

1. Corporate Income Tax

The system of goodwill depreciation has been reduced to equate the maximum depreciation period as foreseen in the commercial legislation with the tax limit—fixed at an annual maximum of 5 percent.

Another relevant modification to the rules for determining taxable income concerns the time that must elapse before accounting for a bad debts provision; the provision reduced the time from one year to six months, computed from the maturity date.

Following the measures focused on internationalization, the financial goodwill is considered depreciable, with an annual limit of 5 percent, whenever the difference arises as a consequent to the acquisition of a stake in non-resident entities qualifying for the exemption regime. For this depreciation to be applicable, a minimum 5 percent holding is required in the non-resident entity for a minimum one-year holding period, and the income and taxation of the subsidiaries must be of an active nature. The loss carry-forward period has been extended to fifteen years, replacing the previous ten-year period.

To encourage entrepreneurial investment, several new deductions from final tax liability have been introduced, as follows:

- Ten percent additional allowance computed on investment in fixed assets exclusively devoted to research and development (R&D) activities;
- Increase in the base deduction derived from the acquisition of know-how and industrial property to 500,000;
- New 17 percent allowance for reinvestment of certain capital gains;
- New 10 percent deduction on investments devoted to exploiting renewable resources; and
- New 10 percent deduction of contributions made by entrepreneurs to their employees' pension schemes.

In addition, all of these deductions, together with the existing ones, have been provided with an increase in the carry-forward period, which has been fixed at ten years (fifteen years in those deriving from R&D and innovation activities).

The above-mentioned deduction, deriving from reinvestment, results in a corporate income tax rate of almost 18 percent for those capital gains where the selling price is reinvested. This decreased rate has caused a concordant modification to the internal double-tax relief rules, so as to adapt the actual tax that has been borne with the percentage of double-tax relief.

One of the widest modifications refers to the Special Consolidated Tax regime, which, among other modifications, has extended its application to companies in which the participation is at least 75 percent (previously, a minimum 90 percent was required).

As of January 1, 2001, several modifications to the special tax-free regime for corporate reorganizations have been established. The most relevant changes are the adaptation of the depreciation period of goodwill arising from a merger (which is generally limited to 5 percent annually) and the limitation of the depreciation of goodwill in cases of shares acquired from individuals; and also, the contemplation, for tax purposes, of the increases of value in assets obtained consequent to mergers, and the extension of the special tax-free regime to contributions in kind made by individuals, provided several requirements are met.

Among other modifications, additional measures ease the taxation of companies that have reduced in size, by increasing the amount of turnover under which a company is considered to be a small-sized company to 5,000,000.

2. *Personal Income Tax*

The tax scale in force for fiscal years 2000 and 2001 has been maintained for fiscal year 2002, except for its conversion into Euros. The same applies to the general limit under which a person is not obliged to file a personal income tax return (21,035.42), although minor changes have been introduced.

The previous 25 percent limit on taxable income for applying the reductions derived from contributions to pension schemes has been eliminated. Also, with regard to taxation of married couples, an internal set-off system has been created to handle situations in which one spouse is subject to personal income tax and the other is entitled to a refund.

3. *Non-Resident Income Tax*

The most relevant change in the Non-Resident Income Tax affects the tax rate applicable to employment income obtained by seasonal foreign workers—fixed at a flat rate of 2 percent.

C. Stock Market Regulation

1. *Take-Over Bids*

Royal Decree 1443/2001, of December 21 (which came into force on February 7, 2002), develops certain aspects of administrative control on concentrations regulated by the Spanish Competition Act of 1989.

Among other important measures, Royal Decree 1443/2001 sets out new rules concerning the authorization of concentration operations carried out through take-over bids. The new rule established in Article 4.5 of the Royal Decree increases the role of the relevant competition supervisors in take-over bids. According to this new regulation, once the

CNMV (National Stock Markets Commission, the Spanish equivalent to the SEC) has authorized the take-over bid, the first public announcement will not be published until the *Servicio de Defensa de la Competencia* (Competition Defense Service) expressly or tacitly authorizes the operation; this may delay the starting date of the acceptance period for the take-over bid.

2. *Investment Services in Securities*

Royal Decree 867/2001, of July 20, implements European Directive 93/22/CEE, which regulates the "European passport" for investment firms, as well as the legal rules for firms providing investment services. This Decree also establishes new regulations for administering and operating investment firms, such as *Agencias de Valores* (Securities Agencies), *Sociedades de Valores* (Securities Companies), *Sociedades Gestoras de Carteras* (firms that provide securities portfolio management), and *Entidades de Crédito* (Credit Institutions), which, if permitted by their by-laws, legal regime, and relevant administrative authorization, may also provide investment services. Royal Decree 867/2001 revokes Royal Decree 276/1989, of March 22, and Title IV of Royal Decree 1393/1990, of November 2.

The Royal Decree particularly eases the minimum share capital requirements for investment firms, as follows:

- *Sociedades de Valores*: 2,000,000 (previous legislation required a minimum share capital of 4,507,590.78);
- *Agencias de Valores:* 500,000 if they are members of a secondary stock market, or participants in clearance and settlement systems, or their activities program enables temporary and instrumental indebtedness with the agency's clients, or 300,000 if none of these requirements are met (previous legislation established a single category of *Agencia de Valores* and required a minimum share capital of 901,518.16); and
- *Sociedades Gestoras de Cartera:* 100,000 (previous legislation required a minimum share capital of 300,506.05).

Royal Decree 91/2001, of February 2, amends Royal Decree 1393/1990, of November 2, which develops the Spanish Act on Collective Investment Schemes. The most significant amendments introduced by Royal Decree 91/2001 are the regulation of new types of collective investment schemes and the establishment of new legal conditions for incorporating and operating these entities. Such measures will permit the Spanish market to gain flexibility, so it will be in a better position to deal with the Sector's increasing competitiveness.

Royal Decree 948/2001, of August 3, develops some aspects of the Spanish Stock Markets Act of 1988, as amended, and other stock market regulations concerning the *Fondo de Garantía de Inversiones* (Investment Guarantee Fund). Participation in this fund is mandatory for all investment firms, since Royal Decree 948/2001 intends to protect small investors in the event of insolvency of an investment company.

D. Competition Law

As stated above, Royal Decree 1443/2001 has introduced several new aspects to the Spanish merger-control procedure, reflecting the general practices that the Spanish authorities formerly applied to these kinds of procedures. Therefore, when evaluating the total turnover of a group of companies, the Royal Decree foresees that the global turnover of all the companies integrated within the group must be taken into account, in contrast to the previous regime, which established that the turnover information taken into account

was restricted to the turnover related to the companies involved in the same economic activity.

On the other hand, as stated above regarding take-over bids, the Royal Decree introduces the duty on the bidding company to make its offer conditional on the corresponding approval by the competition authorities. Therefore, any announcement related to such a bid may not be published and the acceptance period may not begin unless the Spanish authorities have granted the corresponding authorization.

VII. United Kingdom

B. Competition Law

The Office of Fair Trading asserted its authority last year in two decisions: the General Insurance Standards Council (May 11, 2001) and Napp Pharmaceutical Holdings Limited (April 5, 2001). In the latter case the OFT imposed fines of £3.21 million for price fixing.

In *General Insurance*, the OFT investigated the rules of an independent trade regulation body, which made participation contingent upon paying membership fees payable by one class of regulated entity at a different rate to other classes, mandated that certain classes of regulated entities segregate monies they received from clients, and gave the regulator the unilateral and unqualified right to waive the rules. The OFT made a decision clearing the regulator. A competing body (IIB) then asked the OFT to vary or alter its decision. The OFT held that none of the complaints could be justified as much of what was done was not in the nature of an economic activity as such, and that the rules impose no competitive disadvantage.

Napp (affirmed on appeal), the first decision of the OFT under Chapter II of the Competition Act of 1998, imposed penalties of £3.2 million for abuse of a dominant position. Napp supplied sustained-release morphine formulations in the UK. The OFT found that Napp charged GPs excessively high prices while offering the same product to hospitals at 90 percent or greater discounts. Hospital competition was effectively eliminated. In one case a competitor was forced to cease trading in that product. Napp was effectively able to retain the GP market because prescribing practices of GPs followed hospital purchasing practice. OFT directions regulating Napp's conduct includied a reduction in prices and limitations on the discount levels offered. It appears that despite public protestations to the contrary the OFT is not afraid to engage in certain forms of price regulation when it deems such action necessary.

In the government White Paper "Productivity and Enterprise: A World Class Competition Regime" (Cm 5233, 2001), the UK government set out its agenda on competition policy. This policy included the provision of a strong competition authority, the removal of ministers from the decision-making process on mergers, greater powers in sectoral enquiries, increased deterrence, and the introduction of effective third-party rights. In relation to deterrence the government has decided to introduce criminal sanctions to those involved in hard-core cartels that engage in price-fixing, market sharing, and bid-rigging.

B. Criminal Law

May 2001 saw the reelection of the Labour government. Politicians usually see an election as a manifesto of their ideas, and this year was no different. The Labour Manifesto

articulated its commitment to eliminating a defendant's ability to decide between a bench or jury trial, as well as creating seven-day-a-week courts in high-crime areas.[28] The other much-talked-about proposal for criminal law reform was the Labour's adoption of a recommendation to do away with the double jeopardy rule for murder cases.[29] However, these proposals remained election rhetoric and have not come to fruition.

More than the elections, the events of September 11 influenced new legislation. Queen Elizabeth II gave her assent to passage of the Anti-Terrorism, Crime and Security Act 2001, on December 14, 2001. The Act, an update of former terrorism legislation and passage, was delayed by a "marathon wrangle" in the House of Lords when the Home Secretary David Blunkett tried, unsuccessfully, to insert a provision against inciting religious hatred.[30] The Home Secretary did gain the following:

- Foreign nationals, specifically those who if deported would face the death penalty, torture, or degrading treatment, can be detained indefinitely without trial.
- Police and social services can request information of hospitals, schools and the Internal Revenue regarding criminal offenses.
- Fingerprints no longer must be destroyed after the resolution of an asylum matter.
- Hoaxes of notorious substances such as anthrax, are punishable.
- Law enforcement can freeze the assets of a suspected terrorist at the start of an investigation.
- Aiding or abetting a foreign plan to use chemical, biological or nuclear weapons is an offence. Causing a nuclear explosion is now a crime.
- Law agencies can request and obtain information concerning passengers and freight from airlines.
- Police can require the removal of face and hand coverings or other disguises.
- Banks and other financial institutions are required to report cases in which they suspect terrorism financing.

The Act is controversial and lawyers project the first challenges will come from detainees claiming the Act violates the European Convention on Human Rights.[31]

The other major piece of criminal legislation was the Criminal Justice and Police Act 2001, passed in May. This legislation gave police the right to fine on the spot, rather than arrest, underage drinkers and people drinking in public places. The bill further expanded harassment to include any form of unwanted telecommunications messages.

More recently, drug laws commencing February 1, 2002, declared thirty-six Ecstasy-type substances illegal and without medicinal purposes. This legislation also declassified cannabis resin from a Class B drug to a Class C drug. It is still unlawful to possess marijuana for recreational purposes in the United Kingdom, "although the maximum sentences for its misuse will be lower than at present."[32]

28. Tim Austin & Tim Hames, THE TIMES GUIDE TO THE HOUSE OF COMMONS 340 (2001).

29. *Id.* at 341.

30. Phillip Webster, *Blunkett Turns on 'Hypocrites' Over Terror Laws*, THE TIMES (London), Dec. 15, 2001, at 14. When the original legislation was drawn up after September 11 it did not include a clause outlawing religious hatred; David Blunkett added that later. To secure passage, Blunkett dropped his religious hatred clause and was forced to grant a review of the law after two years. *Id.*

31. Frances Gibb, *Civil Liberties Lawyers to Challenge Detentions*, THE TIMES (London), Dec. 20, 2001, at 4.

32. Leonard Jason-Lloyd, *New Laws Try To Stop Growth Of Drug Culture*, THE TIMES (London), Feb. 5, 2002, at 8. The present penalty for marijuana use can merely be a fine in some parts of London.