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# EU Law News

A bi-monthly review of EU legal developments

affecting business in Europe

- Google: in search of a data solution
- EU-Switzerland Competition Law Agreement
- Latvian Presidency
- German renewable energy aid by and large approved; aid by Austria and Poland challenged
- Competition Law: Truck producers

Newsletter November/December 2014

## Google: in search of a data solution

Several fundamental issues have placed Google in the spotlight during 2014. In the summer the “right to be forgotten” topped the news. Google responded rather fast by adopting new options for consumers asking for such a right. However, in late November 2014 the European Parliament passed a resolution advocating Google’s break-up.

Only days later another battlefront was opened when German ministers said that the Commission should propose laws to make Google’s search engine a “neutral platform”. These ministers argue for far-reaching legislation to regulate internet platforms so “positions of economic power remain open to competition”. Furthermore, on 8 December 2014, the Article 29 data protection working group, consisting of European data protection authorities, published a joint statement in which they insisted that data protection was a “fundamental right”. “The EU draft data protection package should be adopted in 2015. Whilst contributing to the unification of the European digital market, it must ensure a high level of data protection to individuals, in accordance with European values and fundamental rights as the Article 29 group included in their statement.

In 2015 the EU’s proposal for a Network and Information Security directive will also be discussed. Critical sectors would include energy, transport and finance; however, the Commission, Germany and France propose that search engines and e-commerce platforms and social networks would be covered. The European Parliament also wants all companies within a sector to fall under the new law‘s scope - but Member States want the flexibility to pick and choose within sectors. Internet companies are concerned that if Member States have their way, this would result in a fragmentation of security standards across the bloc. Therefore companies like Google and Cisco are looking for an exclusion that would avoid the costs of compliance with additional security measures and the requirement to report security breaches to national authorities.

## EU-Switzerland Competition Law Agreement

On 1 December 2014 the co-operation agreement in competition matters between the EU and Switzerland entered into force. The new agreement follows several years of negotiation and dissatisfaction by the authorities with the current situation where only limited co-operation is permitted.

The agreement will enable the exchange of evidence obtained in investigations against breaches of competition law, for example in the same or a related conduct or transaction and when the receiving authority can use the evidence. The exchange of information is subject to strict conditions protecting business secrets and personal data and is only for the enforcement of competition laws. Evidence cannot be used to impose sanctions on individuals.

The two authorities can also discuss policy issues and enforcement efforts, as well as notifying each other of concrete enforcement activities affecting each other’s major interests. It is noteworthy that Canada and the EU are very close to reaching a similar second-generation cooperation agreement.

## Latvian Presidency

Prime Minister Laimdota Straujuma of Latvia presented the Council Presidency‘s program with the theme of “a connected, competitive and engaged Europe”. Latvia will hold the Presidency during the first half of 2015 for the first time since joining the EU in 2004.

The new European Fund for Strategic Investments (EFSI) will be developed in co-operation with the European Investment Bank (EIB). It will be based on a €16bn guarantee from the EU budget and 5 billion euro, which will be allocated by the EIB, and which will serve as “seed money” – in the form of guarantees. Member States are also encouraged to make their contributions which will be applied to the Stability and Growth Pact‘s flexibility plan.

European and national funds will help finance the deployment of fixed and wireless broadband networks. It is, however, important that public sector funding does not create disincentives for private investment in new areas or distort competition in already competitive broadband markets.

There is still a high level of fragmentation in European communications markets due mainly to divergent regulatory approaches to comparable market situations. Latvia is expected to tackle remaining obstacles to the completion of a full Digital Single Market and the creation of a more consistent regulatory environment in information and communications technologies.

Latvia’s priorities include also the development of the concept of the Energy Union. The goals of the Energy Union are to strengthen energy independence by significant investment, to complete the development of the internal energy market and to improve the energy infrastructure through more efficient and effective energy transmission, interconnectors and storage.

During the Presidency, around 200 events will be held including high level political meetings. One of the main events will be the Eastern Partnership Summit. Latvia will also organise a Digital Agenda Assembly, a European Conference on Standardisation, a Social Partners Forum, and an eHealth Week.

Lithuania will adopt the euro on 1 January 2015, and withdraw its own currency, the Litas. As of that day 19 EU Member States and 337 million Europeans will share the euro. One of the challenges the Presidency will have to meet is to keep stability in the face of elections in Greece.

In strengthening the EU's role as a global actor the Latvian Presidency has to identify key factors needed to boost the investment climate, as well as to favour economic growth and job creation. One way this can be accomplished is through the EU and US co-operating to find effective ways to encourage growth and by progressing of the Transatlantic Trade and Investment Partnership (TTIP) discussions.

## German renewable energy aid by and large approved; aid by Austria and Poland challenged

On 25 November 2014 the European Commission decided that the surcharge collected from energy consumers and passed on to producers of energy from renewable sources under the German Renewable Energy Act of 2012 (Erneuerbare-Energien-Gesetz – "EEG 2012") qualified as state aid and therefore needed the Commission's approval. This approval was granted. However, the Commission found that in part the surcharge reductions for energy-intensive consumers (as for example aluminum, steel, paper and glass producers) were not in line with EU state aid rules and need to be recovered from the beneficiaries.

The Commission's investigations into the EEG 2012 had stirred major discomfort in the German industry as the risk involved amounted to a total of several billion euros and a negative decision would have increased energy costs for many companies to a level that had driven them out of the market. While the decision of 25 November 2014 will mean an extra bill of several hundred thousand euros for some companies the overall effect on the industry is generally perceived to be acceptable.

The core question is whether a legal framework as provided for by the EEG 2012 that organizes the collection of the surcharge and its distribution to producers of renewable energy involves state aid. If it did not, the Commission would have no competence to intervene. A major argument against the Commission's point of view is that no state resources are used in the EEG system. Rather, the system enables that private money can flow from one market participant, the consumer, to another market participant, the industrial company. The Commission's counter-argument is that this system is organized and supervised by the state, i.e. the private money is state-controlled and therefore has to be treated as state money. It is expected that Germany and some of the companies faced with an extra bill for having benefitted too much from a reduction of the surcharge will challenge the Commission at the European Court of Justice (ECJ).

There are several other cases pending that concern renewables. In one recent decision dated 11 December 2014 the ECJ found that Austria is breaking European Union law with its plans to shelter energy-intensive industries from the cost of subsidising renewable power. The Austrian Green Electricity Act has not yet entered into force but could allow energy intensive businesses to avoid the full cost of a fixed price for green energy. The ECJ ruled that the Act constituted state aid in violation of EU laws. In another case, the advocate general rendered his opinion to the ECJ that Poland failed to implement in full the EU renewable energy law. The ECJ is expected to rule on that case in early 2015.

## Competition Law: Truck producers

On 20 November 2014 the European Commission has sent a Statement of Objections to heavy and medium duty truck producers. The statement is a formal step in Commission investigations into suspected violations of EU antitrust rules. The Commission began with raids on a number of companies' headquarters in January 2011 but has declined to identify the companies, saying only that a large number were involved.

Commissioner Margrethe Vestager said that she believed it would be extremely difficult to reach agreed settlements in this case. "Keeping the cost of road transportation high has a damaging effect on the rest of the economy", she said during a news conference in Brussels. Volvo and Daimler have warned shareholders in statements and in annual reports that it may have to pay "considerable fines". Companies can be fined up to 10% of their worldwide annual revenue if the Commission concludes that there is sufficient evidence of an infringement of EU rules.



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