
Newsletter, September/October 2009

EU Law News

A bi-monthly review of EU legal developments affecting business in Europe

Defense and security procurement

New Directive enters into force

Directive 2009/81/EC on defense and security procurement aims at introducing fair and transparent procurement rules for defense and security at the European Level. The new Directive seeks to increase transparency and competition of the defense and security markets. According to the European Commission with the new Directive, Member States now have at their disposal Community rules they can apply to complex and sensitive transactions without putting at risk their legitimate security interests.

Before the introduction of the Directive, defense and sensitive security products have been regulated by national rules, which have deviated greatly amongst each other in terms of publication, tendering procedures, selection and award criteria. These discrepancies pose a major obstacle towards the development of a common European Defense equipment market and increase the risk for non-compliance with the Internal Market principles. The Commission alleges that under the new Directive the number of exemptions from the Internal Market rules is kept to a strict minimum. However, Member States would still have the possibility to use Article 296 EC Treaty to exempt defense and security procurement contracts which are so sensitive that even the new rules cannot satisfy their particular security needs.

World Trade Organisation

Ruling on Boeing vs. Airbus

The World Trade Organisation has issued a draft ruling on the case that American aviation giant Boeing has brought against the European Union in October 2004. Boeing accused the EU of illegally providing subsidies to Airbus. According to international trade rules government support for manufacturing is illegal if it can be showed that the funding

hurts the industry of another WTO Member State. Boeing claims the EU has been funding up to a third of the development costs (approximately 200 billion dollars) for Airbus, which is was no longer grounded since Airbus has outgrown Boeing in terms of market share. The European Union filed a counter complaint that same year, accusing the United States of wrongly directing subsidies amounting to 23 billion dollars to civil aviation through military research funds. US officials say their claims have been vindicated by the confidential interim report, but WTO Member States claim the outcome is much more complex than simply a victory for the US. The ruling on the case against Boeing is expected in six months.

State Aid

Commission opens in-depth investigation into long term funding mechanism

The European Commission has authorised payment of state aid of €450 million for France Télévisions in 2009. According to the European Commission the definition of the broadcasting mission vested in France Télévisions and the checks to which it is subject comply with EC Treaty state aid rules and, in particular, with the Commission Communication on state aid for the funding of public service broadcasters. At the same time the Commission has opened a formal investigation into several aspects of funding notified for subsequent years and therefore wishes to examine whether the funding mechanism for France Télévisions for 2010 and beyond complies with these rules. The Commission is concerned about France's notice that it intends to set up a multiannual funding mechanism for the France Télévisions consisting of funding from the public-service broadcasting contribution and an annual subsidy exceeding €2 billion by 2012. France and other stakeholders will have the opportunity to comment on the concerns. Opening an in-depth investigation in cases involving major public intervention of this complexity is standard practice and aims at increasing legal certainty.



Competition Policy

Commission publishes 2008 Annual Report

The European Commission's 2008 report on Competition Policy gives an account of the major developments in EU competition policy and enforcement actions. EU Competition Policy and especially State Aid control focused particularly on the financial and economic crisis.

Among the major reforms of the Commission in the field of State Aid is the move to a more economic effects based analysis of the support measures notified by the Member States through the adoption of a general block exemption regulation and the introduction of a balancing test. In its fight against cartels, the Commission introduced a mechanism to settle cartel cases with the agreement of the parties involved through a simplified procedure. The Commission hopes that the new procedure allows it to deal more quickly with cases and to free up resources for other cases. Also, the Commission published a White Paper on damages actions for breach of the EU antitrust rules – a project that has been stuck since it contains measures which the Commission considers to be apt to overcome obstacles currently blocking effective compensation for victims of anti-competitive behaviour. Reporting on its major enforcement actions, the Commission has placed particular importance on cartel decisions, and decisions in the energy and IT sector such as the penalty payment by Microsoft.

VAT News

European Commission issues proposal to establish better cooperation between Tax Authorities in VAT issues

In the past years cross border VAT frauds had EU member states lose billions of euro in tax revenues. The European Commission therefore considered it necessary to tackle this tax evasion and fraud by issuing a proposal which rewrites the current EU legislation on administrative cooperation between tax authorities. Outlining the areas for improvement, the communication also reports recommendations that member states should undertake to improve transparency, the exchange of information and fair tax competition in the EU.

One of the most important proposals is the creation of Eurofisc. This operational structure should help Member States timely stopping

fraud together, catching fraudsters and prevent new fraud schemes to emerge and spread by allowing a very fast exchange of targeted information between all Member States as well as the setting up of common risk and strategic analysis.

Other innovations include joint responsibility for the protection of VAT revenues in all Member States, direct access to tax authorities of other Member States to a limited amount of information in Member States' databases and the introduction of an enhanced and secure system for validation of taxpayers' counterparts' VAT number and identity.

Merger

Commission opens investigation into proposed takeover of SUN Microsystems by Oracle

Following on a preliminary investigation of the European Commission into the acquisition of US hardware and software vendor Sun Microsystems by Oracle Corporation, a US database and application software company, the European Commission has now decided to open an in-depth investigation under the EU Merger regulation. Sun Microsystems and Oracle Corporation are two major players in the market for databases. Both companies compete directly in several sectors and therefore the proposed acquisition raises concerns on the compatibility with the Single Market. The in-depth investigation will address whether the acquisition would significantly impede effective competition within the European Economic Area (EEA) or a substantial part of it. The final decision will not be taken until 19 January, 2010.

This publication has been carefully prepared but is intended for general guidance only. On any specific matter, reference should be made to the appropriate adviser.

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