Luther.

EU Law News

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

- EU imposes Financial Transaction Tax and restrictions on bankers' bonuses
- Ryanair-Aer Lingus merger blocked by European Commission
- UK "Green Deal" referred to European courts over reduced VAT rate
- Single European Patent formally signed
- Negotiations to be launched on EU-US Transatlantic Trade and Investment Partnership
- WTO concludes that China's anti-dumping duties on EU scanners were illegally imposed
- Update: European Commission fines Microsoft for non-compliance with browser choice commitments

Newsletter March/April 2013

EU imposes Financial Transaction Tax and restrictions on bankers' bonuses

The European Commission formally proposed a tax on financial transactions in 11 Eurozone states on 14 February, following the request for enhanced cooperation on the initiative in autumn 2012. The Commission forecasts that the Financial Transaction Tax (FTT) could generate up to €35bn each year, and make banks more accountable following the 2008 banking crisis.

The FTT will be applied in 11 EU Member States [1], which had united to request enhanced cooperation after a 2011 pan-EU proposal had been rejected by the other 16. Due to come into force in January 2014, the FTT will cover transactions carried out on all financial instruments and markets, once there is an established link to the "FTT-zone". According to the Commission, 85% of these targeted transactions, which will not include foreign exchange trading, take place between financial firms rather than EU citizens and businesses. The tax would be set at 0.01% for derivatives and 0.1% for stocks and bonds.

Several other initiatives have been introduced across the last two months to deepen regulation of the EU's financial sector. On 5 March, the Council of the EU was able to endorse the so-called "CRD 4" package, amending the EU's rules for capital requirements for banks and investment firms. The package comprises a directive and a regulation, and imposes restrictions on bankers' bonuses alongside several other key provisions. It was agreed upon by national finance ministers after extended dialogue with the European Parliament, and will mandate that bankers face an automatic cap on bonus payouts at the level of their salaries.

Ryanair-Aer Lingus merger blocked by European Commission

On 27 February, the European Commission announced its decision to block Ryanair's third attempt to acquire Irish competitor Aer Lingus, on the basis of the EU Merger Regulation (2004/139/EC). The proposed acquisition would have combined the two leading airlines operating in Ireland, which according to the Commission, "would have harmed consumers by creating a monopoly or a dominant position on 46 routes where there is currently vigorous competition".

This marked the third time that the proposed acquisition was notified to the Commission. Ryanair's first attempt had been prohibited in 2007, with the Commission's decision upheld by the EU General Court; while the second was withdrawn in 2009. Although this time Ryanair had offered a series of remedies during the investigation, the Commission concluded that their competition concerns had still not been properly addressed.

The proposed merger would have created an absolute monopoly on 28 of the 46 routes on which Ryanair and Aer Lingus currently compete, with a further 11 routes otherwise being populated only by chartered airlines. The Commission's investigation also "confirmed the existence of high barriers to entry", with Ryanair's and Aer Lingus's strong market positions in Ireland allegedly making it difficult for new competitors to constrain the merged entity in market behaviour.

Ryanair are preparing a comprehensive appeal, condemning the "narrow political interests" which they perceive to have influenced the investigation.

UK "Green Deal" referred to European courts over reduced VAT rate

On 21 February, the European Commission referred the UK to the European Court of Justice (ECJ) for its reduced VAT rate applied to the supply and installation of energy-saving materials as part of the flagship "Green Deal" energy efficiency initiative. The Commission is of the opinion that this reduced rate goes further than what is allowed under the EU VAT Directive (2006/112/EC).

Under the rules laid down by the Directive, energy saving materials would only qualify for reduced VAT rates if they were used for social purposes in the construction, renovation, and alteration of housing. The UK's "Green Deal" VAT reductions were disqualified from this category by the Commission because they apply universally to all UK systems, without a redistributive element.

The "Green Deal" is intended to help the UK meet its climate targets by allowing cost-effective renovations and refurbishments of energy-inefficient homes, which can be recouped through energy bill repayments. According to the Commission, reduced VAT rates would be less effective than other financial incentive mechanisms, such as direct subsidies, in achieving these objectives, because of difficulties in precisely defining relevant product lists and in targeting only the most vulnerable sections of the population.

UK Government Ministers have committed to fight the court action, with their opinion remaining that "the reduced rate for energy-saving measures within residential buildings is within the scope of what is allowed under the VAT Directive".

Single European Patent formally signed

On 19 February, the EU formally approved the introduction of a new unitary patent for 24 participating Member States. The unitary patent will come into force on 1 January 2014 to streamline the previous administrative procedure, whereby patents had to be validated separately in individual EU Member States. Under the new system, patents will be available on a 'one-stop shop' basis from the European Patent Office, and will be applicable across all participating Member States.

Patents grant the exclusive legal right to develop and exploit an idea for a limited period of time, ensuring that innovators benefit from their inventions. Any patent disputes will now be handled by a single and specialised patent jurisdiction: the Unified Patent Court (UPC). After protracted negotiations between Germany, France and Britain, it was decided at the end of 2012 that the UPC's headquarters would be located in Paris, with infringements of patents in life sciences to be heard in London, and engineering and physics-related cases to be dealt with in Munich.

Michel Barnier, the EU Internal Market Commissioner, estimated that "costs will be reduced by over 80%" from the unitary patent package. However, Italy and Spain have refused to enter into the enhanced cooperation on the unitary patent protection due to language concerns, although Italy has added its signature to the general agreement. Bulgaria were able to resolve domestic administrative matters to sign the agreement on 5 March, while Poland will not sign until it has assessed the potential negative impact of the unitary patent on its economy.

Negotiations to be launched on EU-US Transatlantic Trade and Investment Partnership

On 13 February, EU and United States leaders announced that negotiations would begin on a transatlantic trade and investment agreement. This will aim to go beyond the classic approach taken by bilateral trade agreements of removing tariffs and opening markets on investment, services and public procurement. The agreement will also focus on aligning rules and technical product standards, which can currently impose an additional cost burden on affected products equivalent to a tariff of more than 10%.

On 12 March, José Manuel Barroso, President of the European Commission, revealed that the Commission had successfully agreed a draft negotiating mandate for the Transatlantic Trade and Investment Partnership Agreement, which will now be sent for EU Member States to approve before negotiations can start. The Commission estimates that such a comprehensive and ambitious agreement could bring overall annual gains of a 0.5% increase in GDP for the EU and a 0.4% increase in GDP for the US by 2027. According to Barroso, 80% of these gains will arise from reducing regulatory burdens and bureaucracy.

WTO concludes that China's anti-dumping duties on EU scanners were illegally imposed

In late February, a World Trade Organisation (WTO) panel found that China's anti-dumping duties on X-ray security scanners imported from the EU were in breach of WTO anti-dumping rules. According to WTO rules, "anti-dumping duties can only be imposed under strict conditions to address cases in which exports sold below fair value cause damage to the domestic industry of the importing country".

Because these conditions were not met and due process and transparency requirements had not been respected, the panel ruled that China should bring its measures in line with WTO rules by removing duties on EU imports of X-ray security scanners. China now has 60 days from the publication of the WTO panel's report to appeal against its findings.

The panel's report also highlighted recurrent shortcomings found in trade defence investigations carried out in China, sending the strong signal that the right to use trade defence instruments must not be abused by WTO members.

Update: European Commission fines Microsoft for non-compliance with browser choice commitments

Updating on an article in the November/December EU Law Newsletter, the European Commission has dealt Microsoft a €561m fine for failing to comply with its commitments to offer users a browser choice screen enabling them to easily select their preferred web browser. The previous article reported on the case in detail after the European Commission sent its preliminary Statement of Objections to Microsoft.

[1] Belgium, Germany, Estonia, Greece, Spain, France, Italy, Austria, Portugal, Slovenia, Slovakia

Luther, EU Law Center
Avenue Louise 240, B-1050 Brussels
Phone +32 2 6277 760, Fax +32 2 6277 761
helmut.janssen@luther-lawfirm.com
gabrielle.williamson@luther-lawfirm.com

Luther Rechtsanwaltsgesellschaft mbH advises in all areas of business law. Our clients include medium-sized companies and large corporations, as well as the public sector. Luther is the German member of Taxand, a worldwide organisation of independent tax advisory firms.

Berlin, Cologne, Dresden, Dusseldorf, Essen, Frankfurt a. M., Hamburg, Hanover, Leipzig, Munich, Stuttgart, Brussels, Budapest, London, Luxembourg, Shanghai, Singapore

Your local contacts can be found on our website www.luther-lawfirm.com