

EU Law News

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

- Commission to modernise EU Trade Defence Instruments
- The Netherlands told to end selective tax exemption for public companies
- Commission to investigate MasterCard over inter-bank fees
- Commission package to modernise EU Trademark System
- ECJ concludes that work contracts with language bias infringe the free movement of workers
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Commission to modernise EU Trade Defence Instruments

On 10 April 2013, the European Commission released a proposal to adapt the EU's Trade Defence Instruments (TDIs) to tackle unfair competition from dumped and subsidised imports more effectively. At present, any EU industry can complain to the European Commission if it suffers from unfair competition as a result of an imported product being subsidised by its country of origin or being sold in the EU at prices lower than its market value. In line with World Trade Organisation (WTO) rules, the EU then has the right to impose TDIs – anti-dumping, anti-subsidy and safeguard measures – on those highlighted products to prevent damage to its domestic industry.

The Commission's proposal looks to "equip EU businesses better to tackle unfair trade practices abroad, while not negatively affecting EU consumers or companies relying on imports". To lower the risk of retaliation against those companies requesting that TDIs be imposed, the proposal provides more comprehensive measures for the Commission to launch investigations on its own initiative without an official complaint from EU industry. Under certain circumstances, the EU will also now be empowered to impose additional duties that are equal to the dumping/subsidy margin, and not only sufficient to remove the injury caused to EU industry, as is current practice.

Other aspects look to provide importers with greater predictability regarding the EU's anti-dumping and anti-subsidy measures, and to impose higher duties on offending countries to discourage other trading partners from engaging in unfair trading practices. The legislative proposal must now be approved by the European Council and Parliament, while the accompanying draft procedural guidelines will be subject to a three-month public consultation.

In the interim, on 15 May, the Commission committed to open an ex-officio anti-dumping and anti-subsidy investigation into imports of mobile telecommunications networks and their essential elements from China. This would mark the first time an investigation has been opened solely on the initiative of the Commission, without a complaint first being made by a European company.

The Netherlands told to end selective tax exemption for public companies

In May, the European Commission formally requested that, in line with EU State aid laws, the Netherlands should abolish the exemption from corporate tax granted to Dutch public undertakings. The Commission expressed its opinion that public companies carrying out economic activities in competition with private companies should likewise be subject to corporate

tax. Exempting certain companies because they are publicly owned distorts competition in the internal market.

Under the Dutch Corporate Tax Law, economic activities by public bodies – either as part of the public administration or in the form of publicly owned companies – are, in principle, exempted from corporate tax. This includes all services, and several major publicly owned companies, including the port of Rotterdam, Holland Casino, and Maastricht's airport; all of which compete directly with private players in the Netherlands and in the EU who do not benefit from the same kind of treatment.

The Commission has proposed that the Netherlands abolish the corporate tax exemption for publicly owned companies. For the Dutch public administration, the corporate tax exemption can be maintained only on the proviso that all economic activities are reallocated into publicly owned companies that are subject to corporate tax. The Netherlands was given one month to inform the Commission whether it could agree to these proposals.

Commission to investigate MasterCard over inter-bank fees

The European Commission has opened formal proceedings to investigate whether MasterCard's inter-bank fees for non-EU cardholders and business practices violate EU antitrust rules. With European consumers and businesses making more than 40% of their non-cash payments per year by card, the Commission has prioritised the removal of any competition distortions from inter-bank arrangements on fees and other conditions. MasterCard was already banned from charging cross-border card fees within the EU after a Commission ruling in 2007, and equivalent Commission investigations into Visa's practices are ongoing.

In this latest development, the Commission has opened an in-depth investigation into inter-bank fees imposed on payments made by MasterCard cardholders from non-EEA countries. Inter-bank fees are charged by a cardholder's bank to a merchant's bank for each sales transaction with a payment card. They are particularly high for non-European cardholders, and can considerably inflate the costs of payment card usage at merchant outlets to the detriment of merchants and their consumers.

The Commission is also investigating all rules on "cross-border acquiring" in the MasterCard system that limit the possibility for a merchant to benefit from better conditions offered by banks elsewhere in the market, and any related business rules or practices which amplify the underlying competition concerns. An EU regulation on inter-bank fees for card payments will separately be proposed by the Commission with the aim of

ensuring legal certainty and a level playing field across the EU for all providers.

Commission package to modernise EU Trademark System

On 27 March 2013, the European Commission proposed a package of initiatives to modernise and streamline trademark registration systems across the EU. This will comprise a recasting of the 1989 Trademark Directive (now codified as 2008/95/EC), a revision of the Community Trademark Regulation (now codified as 207/2009/EC) and a revision of the 1995 Commission Regulation (2869/95) on the fees payable to the Office for Harmonisation in the Internal Market (OHIM).

In the EU, trademarks can be registered either at national level at the intellectual property (IP) offices of Member States, or at EU level as a Community Trademark (CTM) at the OHIM. In its new package, the Commission has proposed to apply a principle of “one-class-per-fee” to both national and community levels. Presently, the fixed fee for registering a trademark allows for the registration of up to three product classes. The revised system will allow businesses – particularly SMEs – to pay a lower cost equivalent to their individual needs when seeking protection for one class of product only.

The Commission has also outlined several other objectives:

- streamline and harmonise registration procedures
- increase legal certainty through textual amendments
- improve means to combat counterfeit goods
- facilitate better co-operation between the OHIM and Member State IP offices

The recast Directive and revised Regulation will now be subject to approval by the European Parliament and Council, while the Commission Regulation will be adopted directly by the Commission.

ECJ concludes that work contracts with language bias infringe the free movement of workers

On 16 April 2013, the European Court of Justice (ECJ) ruled that Belgium’s Flemish community had infringed EU freedom of movement by providing that employment contracts must be concluded in the Dutch language. Under current Flemish law, an employment contract that is drafted in a different language is void, even if the employee is from abroad. This provision exists as part of a strategy to protect and promote the Dutch language. The ECJ was asked by the Belgian court to determine if this law infringed the free movement of workers within the EU.

The case specifically concerned the situation of Anton Las, a Dutch national working for PSA Antwerp, a multinational group whose registered office is in Singapore. Las’ contract was terminated by his employers because it was drafted in English rather than in Dutch. The ECJ found such a situation to be in breach of EU law, noting that legislation making “only the Dutch text authentic in drafting of cross-border employment contracts concluded by [Flemish employers]... is liable to have a dissuasive effect on non-Dutch speaking employees and employers from other Member States”. Regional legislators in Belgium will now be required to amend their language requirements for employment contracts.

Negotiations launched for EU-Japan Free Trade Agreement

On 25 March 2013, the EU and Japan officially launched their negotiations for a bilateral Free Trade Agreement (FTA). The first round of negotiations was held in Brussels from 15 to 19 April 2013, with the EU team headed up by Mauro Petriccione, Director in the Commission’s Directorate-General for Trade, and the Japanese side being led by Ambassador Jun Yokota, Ministry of Foreign Affairs.

Both sides are working towards a comprehensive agreement in goods, services and investment, which also eliminates tariffs and non-tariff barriers. The agreement will also cover other trade-related issues, such as public procurement, regulatory issues, competition and sustainable development. The Commission has estimated that an agreement between the two parties will boost the EU’s economy by 0.6 to 0.8% of its GDP and will result in growth and the creation of 400,000 jobs. EU exports to Japan are expected to increase by 32.7%, while Japanese exports to the EU would increase by 23.5%.

This publication is intended for general information only. On any specific matter, specialised legal counsel should be sought.

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