

## EU Law News

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

- Google told to change privacy policy by EU data regulators
- ECJ confirms passenger rights for flight cancellations
- UK Green Investment Bank adjudged compliant with EU state aid rules
- Microsoft sent Statement of Objections by European Commission over failure to implement internet browser commitments
- European Commission investigates Italian tax reductions in areas affected by natural disasters

## Google told to change privacy policy by EU data regulators

Twenty-seven of Europe's data protection agencies, including data protection agencies from Croatia and Liechtenstein, have asked Google to amend its newly introduced privacy policy to better protect the rights of its users. In a formal letter sent on 16 October 2012, members of the EU's Article 29 Working Party questioned the legality of Google's decision in March to consolidate 60 privacy policies and pool data collected on individual users across its services.

The letter was written after an inquiry by CNIL, the French data commission, and concluded that "combining personal data on such a high scale creates high risks". Specific concerns were raised that Google provides insufficient information to users on the categories of data being processed, and does not collect their "unambiguous consent" for all intended purposes of the combined data. This threatens to contravene the user's fundamental rights and freedoms.

The Article 29 Working Party makes twelve recommendations for how Google can bring its policy in line with data protection legislation and principles. These look to induce better disclosure of how Google processes personal data in each service, and how it clarifies the purposes and means of the combination of data to its users. Google is now invited to reply to CNIL advising as to how it will update its policies. In a statement released after the letter's publication, Google's global privacy counsel Peter Fleischer maintained that Google "are confident that our privacy notices respect EU law".

## ECJ confirms passenger rights for flight cancellations

On 23 October 2012, the European Court of Justice (ECJ) reconfirmed that travelers whose flights are delayed by more than three hours deserve equal compensation to those whose flights were fully cancelled with the same period of notice. Their judgment answered two cases involving European airlines: the first a dispute between Lufthansa airlines and its passengers over a 24-hour flight delay (C-581/10); and the second brought before UK courts by TU Travel, British Airways, easyJet Airline and the International Air Transport Association (IATA) following the UK Civil Aviation Authority's introduction of obligatory compensation for delayed flights (C-629/10).

The ECJ reiterated that due to "the principle of equal treatment", those passengers whose flights are delayed and those whose flights are cancelled on short notice must be regarded as comparable in terms of their right to compensation. Passengers on flights starting or ending in the European Union are entitled to between €250 and €600 for delayed or cancelled flights under

EU rules, although no compensation is required if the air carrier proves that the delay was caused by extraordinary and unavoidable circumstances.

## UK Green Investment Bank adjudged compliant with EU state aid rules

The European Commission concluded in October 2012 that public funding of £3bn (€3.7bn) granted by the UK for the creation of a Green Investment Bank (GIB) investing in environmentally-friendly products is compliant with EU state aid rules. The GIB will only invest in projects that could not obtain sufficient funding from the markets. Article 107(3) of the Treaty on the Functioning of the European Union (TFEU) allows national governments to grant aid to support the development of certain economic activities but only where such aid does not adversely affect trade between EU member states.

The Commission's investigation found that the GIB's concept foresees several safeguards to avoid the crowding out of private investments, and therefore preserves a level playing field between competitors in the EU single market. In particular, project holders seeking funding will have to provide evidence that they have been denied funds or have not obtained all the necessary funding from market operators. Any funding provided by the Green Investment Bank will also come in addition to other market financing wherever possible.

## Microsoft sent Statement of Objections by European Commission over failure to implement internet browser commitments

On 24 October 2012, the European Commission informed Microsoft that, from preliminary investigations, the company had failed to comply with its commitments to offer users a choice screen to select between different web browsers. This was made legally binding in 2009 after the Commission objected to Microsoft's practice of tying its web browser Internet Explorer to the Windows PC operating system, which could represent an abuse of a dominant market position under Article 102 TFEU.

The Commission's list of concerns takes the view that Microsoft has failed to roll out a browser choice screen with its Windows 7 Service Pack 1, released in February 2011. Microsoft has itself acknowledged that the choice screen was not offered with this pack until June 2012 due to a "technical error" which it had moved quickly to address.

A Statement of Objections is a formal step in Commission investigations whereby the concerned parties are informed in

writing of the objections raised; after which a written response is permitted and an oral hearing can be held. If Microsoft is found to have breached legally binding commitments, it can be fined up to 10% of its worldwide annual turnover.

## European Commission investigates Italian tax reductions in areas affected by natural disasters

The European Commission has opened an in-depth investigation to examine whether Italian measures to reduce taxes and contributions due by companies in areas affected by the 1990 Sicilian earthquake and 1994 floods in Northern Italy, are compliant with EU state aid rules.

Under Article 107(2) TFEU, state aid is permitted to “make good damages caused by natural disasters”. However, the Commission has expressed concern that Italy’s measures may have gone beyond the actual damage suffered; and in addition that in some cases, the damage may not have exclusively been caused by natural disasters, and the aid may not always be limited to the compensation of such damage.

Italy’s 2002 amnesty measures looked to reduce by 90% the outstanding tax and contributions of companies affected by aforementioned natural disasters. The Commission was only made aware of the measures in 2011 after being alerted by an Italian court. The Italian Government’s failure to notify these measures breaches the standstill provision of Article 108(2) TFEU.

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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**Auf den Punkt. Luther.**

