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EU Law News

A bi-monthly review of EU legal developments

affecting business in Europe

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Newsletter November/December 2013

Progress made on several EU bilateral trade agreements

On 18 October, key elements of a Comprehensive Economic and Trade Agreement (CETA) were agreed between EU Trade Commissioner Karel De Gucht and Canadian Trade Minister Ed Fast. Once implemented, this will stand as the first free trade agreement between the European Union and a G8 country. Compromises had to be reached on several highly contested topics, including access for Canadian beef and pork into European markets and European dairy products into Canada, liberalisation of government procurement at provincial and municipal levels, and patent protection for pharmaceutical products.

The agreement will remove over 99% of tariffs between the two economies, while taking steps to liberalise trade in services, in particular financial services, telecommunications, energy and transport. All levels of Canadian government will open their public procurement markets to European suppliers, and clauses are also introduced to harmonise measures for the protection of intellectual property and to promote sustainable development in trade. The European Union estimates that this far-reaching agreement will increase bilateral trade in goods and services by €26bn.

In parallel, the EU-Central America Association Agreement became operational at the beginning of October, liberalising trade barriers between the EU, Costa Rica and El Salvador. Honduras, Nicaragua and Panama had already been applying the Agreement since 1 August 2013. The EU and Singapore also released the text of their Free Trade Agreement on 20 September 2013, after negotiations were concluded back in December 2012.

In total, the EU already has in place trade agreements with nearly 50 partners. Negotiations for 11 trade agreements have finished with the agreements yet to enter into force, and 11 further trade agreements are currently under negotiation.

Standard VAT Return format introduced by Commission

On 23 October 2013, the European Commission introduced their proposal for a Standard VAT Declaration to be mandatorily introduced across the EU. Currently, the content and format of VAT returns vary significantly across Member States, imposing an extra administrative burden for businesses operating in the Single Market. The Commission's proposal looks to ease this complexity by ensuring a simple structure and standardised information and deadlines.

The Commission's proposal introduces a common format applicable in all Member States. The format contains five mandatory information boxes: chargeable VAT, deductible VAT, net VAT amount (payable or receivable), total value of input transactions and total value of output transactions. Member States will also be entitled to ask for up 21 optional boxes of additional information, which are intended to cater for the specific requirements of different tax administrations. Measures are additionally introduced to harmonise the periodicity of the returns, the submission of deadlines, the procedures to submit corrections and the format of electronic submission of returns.

By making the standardised VAT declaration mandatory in all Member States, the Commission hopes to avoid the situation of national tax administrations having to deal with several different formats of VAT returns, and also looks to reduce the loopholes that could be exploited for tax evasion purposes. It has calculated that the overall benefits of a standard VAT return could reach €15bn a year for the EU economy, with the removal of obstacles to cross-border trade bringing an economic benefit of €3bn to €6bn and with reduced administrative burdens adding another €9bn. Once adopted by Council and Parliament, the Directive is scheduled to enter into force on 1 January 2017.

Debt write-off for Slovakian wine producer ruled incompatible with EU state aid rules

On 16 October 2013, the European Commission reaffirmed its decision that a €11m write-off of tax debt in favour of wine producer Frucona Košice was incompatible with EU state aid rules. This came following a judgement by the EU Court of Justice on the Commission's earlier 2005 decision, in which it was ruled that the Commission had made a manifest error of assessment by failing to take into account the duration of the bankruptcy proceedings.

After addressing these shortcomings in a new decision, the Commission holds to its opinion that the non-payment that its competitors had to bear gave Frucona Košice an undue economic advantage, incompatible with state aid rules. In 2004, Frucona held accumulated tax debts equivalent to €16.9m, and so asked for an agreement under Slovakia's applicable insolvency legislation. In July 2004, the tax office agreed to write of 65% of this debt. Frucona had contended that this was an appropriate action to be taken, and that bankruptcy proceedings would have been less advantageous.

The European Commission has now more thoroughly concluded that the tax office would have obtained a higher repayment of its claims through a bankruptcy procedure or the tax execution procedure, and so the debt write-off gave an advantage to Frucona Košice as compared to its competitors, thereby involving state aid. Because Frucona Košice had not presented any genuine restructuring plan to demonstrate realistic prospects of returning to profitability, the aid was adjudged to be incompatible with EU rules.

Far-reaching telecoms market reform

On 11 September 2013, the European Commission introduced its "Connected Continent" legislative package, which will implement far-reaching measures for moving closer to a single EU telecommunications market. At present, the telecommunications sector still operates largely on the basis of 28 national markets, with no telecoms company operating across all Member States, and both operators and customers facing differing prices and rules.

When adopted, the Commission's package is intended to improve this situation by reducing consumer charges, simplifying red tape faced by companies, and bringing a range of new rights for both users and service providers. Measures are introduced to simplify EU rules for telecom operators, including a single authorisation for companies to operate in all 28 Member States, and further harmonisation of the way operators can rent access to networks owned by other companies.

To the benefit of consumers, the package also indicates that incoming roaming call charges while travelling within the EU would be banned from 1 July 2014, and recommends that international call premiums within Europe should be abolished. Other measures are introduced to ensure legal protection for open internet (net neutrality), EU-harmonised new consumer rights, co-ordinated spectrum assignment and improved investor certainty.

Commission proposes to apply ETS only to European regional airspace

On 16 October 2013, the European Commission proposed amending the EU emissions trading system (EU ETS) so that aviation emissions would be covered only for the part of flights that takes place in European regional airspace. It is intended that this adjustment would apply from 1 January 2014 until a global market-based mechanism (MBM) becomes applicable to international aviation emissions by 2020, as targeted by the International Civil Aviation Organisation (ICAO).

In its meeting in Montreal on 4 October 2013, the ICAO had committed in a resolution to agree on this global market-based mechanism at its next general assembly in 2016. However, ICAO's resolution also contained a paragraph rebuking the EU's ETS, with the stipulation that no country can include another country's airlines in their ETS without a mutual agreement between the two. The EU ETS was originally designed to impose a cap on carbon dioxide emissions from all planes arriving or departing from EU airports.

The Commission maintains that EU countries have the sovereign right to regulate their own airspace, and so in their revised interim proposal, all emissions from flights between airports in the European Economic Area (EEA) would continue to be covered. However, from 2014 to 2020, flights to and from countries outside the EEA would now benefit from a general exemption for those emissions taking place outside EEA airspace, with only the emissions taking place within EEA airspace to be covered. Flights to and from third countries which are not developed countries and which emit less than 1% of global aviation would benefit from a full exemption.

Modernisation of Professional Qualifications Directive

At the beginning of October 2013, the Commission put forward a proposal for modernising the 2005 Professional Qualifications Directive in order to adapt its provisions to the evolving European labour market. They have at the same time adopted a Communication announcing the start of an evaluation to assess barriers restricting access to regulated professions in each Member State.

Regulated professions are professions for which access is conditional upon the possession of a specific qualification or for which the use of a specific title is protected (i.e. Doctors, Lawyers, Nurses, Architects and Accountants). Different national regulatory schemes can make it difficult for qualified professionals to apply for job vacancies in other Member States, something the Commission has looked to improve with the Professional Qualifications Directive.

Their proposed modernisation introduces the concept of a European professional card, which would take the form of an electronic certificate to be exchanged between competent authorities in order to streamline recognition procedures. Amongst several other provisions, the Commission also outlines a mutual evaluation exercise to be conducted between Member States, where each must evaluate and justify the professions regulated in their territories. This is being implemented through the aforementioned Communication, and will identify when conditions for accessing certain professions are overly complex, burdensome or irregular.

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