

EU Law News

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

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Towards an Energy Union strategy

The so called Energy Union is one of the key political priorities of the Juncker Commission. The Vice-President for the Energy Union, Maroš Šefčovič has identified five “pillars” on which he bases his reform and reorganization of Europe’s energy policy into a new European Energy Union.

First, energy security is driven by the situation in Ukraine, the relations with Russia and the possibility of common purchasing of gas at European level.

Secondly, the completion of the internal energy market is aimed at reducing the differences among energy markets in Europe and overcoming inefficiencies. There will be a review of the Agency for the Cooperation of Energy Regulators (ACER) and the regulatory framework.

Thirdly, energy efficiency, with a focus on buildings, has been identified as an important target for the EU, and recent geopolitical developments have made it even more imperative.

Fourthly, the deployment of renewable energy is an important pillar to reconcile energy security and decarbonisation of the energy mix in view of the UN Conference on climate change at the end of 2015. President Juncker therefore wants the European Energy Union to become the world number one in renewables energies.

Finally, the Energy Union framework will underline the importance of research and development in the field of energy. Commissioner Šefčovič plans to publish the Energy Union strategy on 25 February 2015. The package will involve an action plan, with an annex of “concrete proposals”, including legislation, decisions and analysis. However some are afraid it will be a repackaging exercise only.

Investigation into online music licensing

On 14 January 2015 the Commission opened an in-depth investigation into a joint venture for online music licensing between collective rights management organisations (CMOs) to ensure that it is in line with the EU Merger Regulation. The Commission wants to consider whether it could be detrimental to the commercial conditions for digital service providers (DSPs) in Europe which could lead, ultimately, to higher prices and less choice for European consumers of digital music.

CMOs manage the copyrights of authors, performers and writers of musical works. They also grant licences on their behalf and redistribute the royalties collected from the exploitation of their copyrights. The CMOs are PRS for Music Limited (PRSfM) of the United Kingdom, Föreningen Svenska

Tonsättares Internationella Musikbyrå u.p.a. (STIM) of Sweden and Gesellschaft für musikalische Aufführungs- und mechanische Vervielfältigungsrechte (GEMA) of Germany. DSPs need to secure a licence from each of the CMOs managing the relevant copyrights in the music works covering one or several countries. After the transaction, PRSfM, STIM and GEMA would not offer multi-national licenses for their repertoire individually and DSPs could obtain those only from the joint venture as described above.

An earlier preliminary investigation by the Commission indicated that the combination of the music repertoires currently controlled by each of three CMOs in the online licensing of musical works, and currently among the most important in the EEA, could lead to increased bargaining power for the joint venture.

The Commission has now until 29 May 2015 to take a final decision on whether the proposed transaction would significantly impede effective competition.

Transatlantic Trade and Investment Partnership negotiations

Ever since negotiations started in July 2013 between the United States and the European Union, the Transatlantic Trade and Investment Partnership (TTIP) has been marred with complications on multiple levels. Indeed, it comes as little surprise that creating the free trade area between the two largest economic blocks in the world is not something that could be achieved overnight. Yet, the latest round of talks (the 8th) held in February 2015 were also the occasion for the newly appointed Commissioner for Trade, Cecilia Malmström, to instigate “a fresh start” to the negotiations, as she had vowed to do when taking office in November 2014.

The EU’s chief negotiator, Mr. Ignacio Garcia Bercero, spoke about the elements that were approached during this round of talks, these being intellectual property, state of origin and energy and raw materials in particular. It was also noted that Small and Medium Enterprises formed a large part of this TTIP round of discussions. This was explained by the European Commission in that many presentations during the negotiations have shown that less arduous custom procedures and other regulatory hurdles were important to these businesses. Similarly, as in the previous rounds, the Commission remarked that both the EU and US teams have had the opportunity to spend a whole day listening to civil society bodies and these considerations are a major part of these negotiations.

Nonetheless, while food regulatory practices were discussed in depth one important topic was put aside during this round of discussions, i.e. the Investor State Dispute Settlement (ISDS). This comes after several Member States have expressed concerns about it, and for instance, the French parliament

adopted a resolution as recently as 3 February 2015 calling for the exclusion of this procedure from TTIP. Faced with this resistance, the European Commission has acknowledged that “there is a huge skepticism against the ISDS instrument” and decided to sideline this topic.

It is expected that discussions on ISDS are unlikely to stop, as the Commission has faced a “maladministration” investigation after refusing five leading NGOs access to documents on ISDS. Indeed, issues of transparency have plagued the rounds of talks as many within and outside NGOs have claimed that, since these discussions occur behind closed doors, transparency is something that has been lacking throughout the process.

Circular Economy – a refresh?

On 22 January 2015 Frans Timmermans, the Commission Vice-President, announced the withdrawal of the so-called Circular Economy package, which was proposed by the previous Commission. The package was intended to increase recycling levels and tighten rules on incineration and landfill. Protests by key European Parliamentarians as well as economic operators from the recycling industry said that the package would create €600bn net savings, two million jobs and deliver 1% GDP growth. However, the formal decision to withdraw the package is expected to be taken shortly.

Karl-Heinz Florenz, MEP said that too much useful raw material is ending up on waste dumps and there are clear environmental and economic benefits from a circular economy approach. He added that Europe should take the lead and the new proposal should include strong provisions for packaging and packaging waste, landfill of waste, end-of-life vehicles, batteries and accumulators and waste electrical and electronic equipment. Jeremy Wates of the European Environmental Bureau, a federation of 140 environmental NGOs from across Europe, said that that Austria and Germany had for example already achieved a recycling level above 60%, that Belgium was at 58% and the Netherlands at 50%. He said that others studies show that recycling is economically far more advantageous than building and maintaining incinerators.

In response to this critique Commissioner Timmermans said that the decision is part of his drive to cull pending legislation and cut red tape. Commission officials said elements of the existing waste management will be revised and new elements will be added. It is expected that a new more ambitious and practical proposal will be made before the end of 2015.

Investigation into the Belgian excess profit ruling

The Commission is looking at the compliance with EU state aid rules of certain tax practices in Member States in the context of aggressive tax planning by certain multinationals with a view to ensuring a level playing field. Some Member States seem to allow multinational companies to take advantage of their tax systems and thereby reduce their tax burden.

On 3 February 2015 the Commission launched an investigation into a system of tax exemptions offered by the Belgian tax administration through so-called “excess-profit tax” rulings. These are tax rulings that multinational groups can benefit from but are neither available to Belgian groups nor to stand-alone companies. It also appears that the deals are only struck with companies that move substantial parts of their business to Belgium. The scheme would therefore seem to be benefitting only a selected group of multinational companies.

Belgium claims that the system is justified under the arm's length principle and the OECD rules aimed at avoiding double taxation. The Commission says it has concerns about this claim and the investigation will examine it carefully. The tax rulings overestimate the benefits of belonging to a multinational group – and therefore the alleged excess profit. The Commission also revealed that the tax discounts typically amount to over 50% of the profits covered by the tax ruling – and in some cases to as much as 90%.

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

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