

January/February 2008

EU Law News

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



For a free electronic copy of EU Law News,
send your name and address to: EU.Law.News@luther-lawfirm.com

Slovenia's EU Presidency

Priorities for policy action

Slovenia holds the rotating presidency of the European Union in the first half of the year, with France taking over on 1 July. Slovenia is the first of the ten states that joined the EU in 2004 to assume the Presidency. Its top priorities are ratification of the new constitutional treaty and diplomacy between the EU and the Balkan countries, as Kosovo prepares to declare its independence from Serbia. Slovenia will also seek rapid ratification of the recently signed Treaty of Lisbon, aimed at streamlining EU decision-making.

Slovenia is also working towards an early agreement on the energy-climate package. This would put the EU in a strong position with international partners, particularly in view of the climate conference in Copenhagen in December 2009. Slovenia will launch the second cycle of the renewed Lisbon Strategy on jobs and competitiveness at the spring meeting of the European Council.

Enlargement of the Schengen Zone

Enhancing the free movement of persons

As of 21 December 2007, Estonia, the Czech Republic, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia have become part of the Schengen area. Citizens can now travel between 24 countries of the EU without internal land and sea border controls. All the new member countries have applied state-of-the-art border security systems.



Checks at the EU's external borders remain the same. The only difference will be that the new Member States will also check third country nationals in the Schengen Information System (SIS). Access to the SIS by police forces on both sides of the frontier is to enhance and strengthen security. For *bona fide* travellers, journeys in an enlarged EU will be faster and easier. A third country national will be able to travel on the basis of a single Schengen visa and will not need separate national visas. Previous enlargements have shown that citizens living in border areas take advantage of infrastructure on each side of the frontier. For example, people go back and forth to visit shopping centres, restaurants, art galleries and trade shows.

Fostering Innovation

Six markets where the EU can lead the world

The Commission has called for concerted action to quickly foster the emergence of six lead markets where Europe, in its view, has the potential to become a world leader. The "Lead Markets Initiative for Europe" (LMI) focuses on areas where Europe's public authorities can facilitate industry-led innovation by creating favourable legal and regulatory frameworks, setting standards, improving

access to risk capital, providing support for research, and encouraging public procurement for innovative goods and services. The first high-growth lead markets identified are:

- bio-based products
- e-health
- protective textiles
- sustainable construction
- recycling
- renewable energies.

The Commission hopes that its initiative will increase the combined annual turnover of these markets from €120 billion to over €300 billion and result in more than 3 million new jobs in the EU by 2020. The Commission will publish a communication on the implementation of a lead market approach in the first part of 2008.

Pharmaceutical Sector Study

Commission holds inspections at key companies

The Commission has launched a sector inquiry into competition in the pharmaceuticals sector under Article 17 of Regulation 1/2003. It is the first time an inquiry has begun with unannounced inspections. The raids were carried out at the premises of a number of innovative and generic pharmaceutical companies, including Glaxo-Smith-Kline, Astra Zeneca, Wyeth, Sanofi-Aventis, Pfizer, Boehringer Ingelheim, Teva and Ratiopharm. According to the Commission, the raids were a response to indications that competition in pharmaceutical markets in Europe may not be working well. Fewer new pharmaceuticals are being brought to market and the entry of generic pharmaceuticals is slow.

In particular, the inquiry will look at whether agreements between pharmaceutical companies, such as settlements in patent disputes, may infringe the EC Treaty's prohibition on restrictive business practices (Article 81). It will also look into whether companies may have created artificial barriers to entry, such as the misuse of patent rights, vexatious litigation or other means, and whether such practices may infringe the EC Treaty's ban on abuses of dominant market positions (Article 82). An interim report is planned for autumn 2008 and final results are expected in the spring of 2009.

Downloading Music

Challenges in balancing competition and copyright laws

The European Commission has closed its probe of Apple, which was under inquiry for charging British users of its iTunes digital music store more than other EU citizens. The decision follows an announcement by Apple that download prices would be equalised across Europe. However, non-residents still cannot buy from another country's iTunes store.

Competition Commissioner Neelie Kroes said that "the Commission is very much in favour of solutions which allow consumers to benefit from a truly single market for music downloads". Her spokesperson added that Apple's move helps, but does not bring an end to the fragmentation of European markets. The fact that the same content is not available on a pan-European basis is not the result of restrictive business practices but rather the result of the existing state of copyright legislation.

International Trade Negotiations

EU-US Proposal to remove tariffs on environmental goods

US Trade Representative Susan C. Schwab recently announced that the United States and the European Union had submitted a ground-breaking proposal, as part of the Doha Round negotiations, to increase global trade in and use of environmental goods and services – by eliminating tariffs on a World Bank list of technologies directly linked to addressing climate change and energy security.

With "Collaborative Innovation" the theme of the World Economic Forum's January meeting in Davos, this initiative may have some hope of success, but obstacles to a broader worldwide agreement remain formidable. The twin threats of recession and protectionism could make it even harder to break the long-running deadlock in global trade negotiations over, for example, agriculture and manufactured goods.

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.

**Luther
EU Law Center**

Avenue Louise 240, B-1050 Brussels, Telephone +32 (2) 6277 760, Telefax +32 (2) 6277 761

Helmut.Janssen@luther-lawfirm.com