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EU Law News

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

EU Presidency

From Lisbon to Madrid: Spanish Presidency facing a rough road ahead

The Spanish Presidency, being the first country to hold the reins under the Lisbon Treaty, will see many institutional reforms, but will also face an increasing number of challenges. In tandem with first time EU President Herman van Rompuy, Spanish Prime Minister José Luis Rodríguez Zapatero, is heading the six-month presidency in the first half of 2010. One of the key goals of the Spanish Presidency is to push forward a new 10-year plan for jobs, economic growth and innovation in the EU.

Originally adopted in 2000, the Lisbon Strategy set, inter alia, the principal objective of turning Europe into the world's most competitive economy by 2010. Whilst the global financial crisis can be partially blamed, it is painfully obvious that the objectives set have not been achieved, and are "postponed" with the new "2020 strategy". The targeted overall employment participation rate of 70% of the EU workforce stagnated at 65.9% in 2008. Research and Development spending was only 1.8% of the EU GDP instead of the targeted 3%. Finally, the hoped for growth rate of 3% turned out to be a 4.1% contraction in EU GDP by 2009.

In addition, the Spanish agenda contains a strong emphasis on developing EU external relations and countering the fall-out from the failure of the Copenhagen conference.

Internal Market

Council reaches agreement on an enhanced patent system in Europe

The Council has achieved a political breakthrough by unanimously adopting a conclusion on an enhanced patent system in Europe. Back in 2000, the Commission proposed a regulation for a Community Patent. The debate around this proposal was stalled until the Commission adopted a Communication "Enhancing the patent system in Europe" in 2007. This Communication proposed the establishment of a Patent Court and the drawing up of an EU Patent Regulation.

The EU Patent Court will be endowed with the highest level of legal and technical expertise in patents. Parties will no longer have to litigate in parallel in different countries. The EU Patent Regulation will create an EU patent that will prevent parties from requesting a patent in each Member State. All in all, these decisions will make it less costly for businesses to protect innovative technologies and make litigation more accessible and predictable.

Although it is a significant step closer to a single market for patents, the Court of Justice of the EU is required to give its legal opinion regarding a new Patent Court, and the European Parliament still needs to debate the Patent Regulation.

Trade

Decades old trade war ends with banana deal

For over 16 years the European Union has been in conflict in the context of the banana trade with, on the one hand the United States, and on the other the Latin American, African and Caribbean countries. The dispute started when the EU limited the import of certain types of bananas. According to the US, the EU broke free trade rules by applying a scheme giving banana producers from former colonies in the Caribbean special access to European markets. The EU applied this scheme to protect banana farmers in the Caribbean from competition from Latin America, whose bananas are cheaper because they are grown on a larger scale in mechanized plantations run by US-headquartered corporations.

The US filed its complaint to the World Trade Organization (WTO) in 1997 and won, but the EU did not remove the trade barriers. Now the EU has finally reached a deal with the parties to the dispute and has committed itself to cutting the duties it applied to bananas from Latin America, and extending its aid program to banana growers in certain African, Caribbean and Pacific countries. The cuts will be applied in eight phases decreasing the tariff from the current €176 to an eventual €114 per tonne in 2017.

In return, the US and Latin American countries will drop the legal charges filed at the WTO. The deal needs to be approved by the 27 Member States of the EU but marks important progress towards a new deal on global commerce in the WTO's Doha round.

State aid

European Commission approves major aid packages for banks

Following the ING case discussed in the previous issue of this newsletter, the European Commission has now approved two schemes granting aid to the Royal Bank of Scotland (RBS) and the Belgian KBC group.

When in 2008 RBS's share price collapsed, the UK government granted the bank an estimate amount of £60b - £100b (€67b - €111b) which is the largest amount of aid ever given to a company in the history of the EU. RBS was partially nationalized after this. In line with EU rules on State aid, RBS had to submit a restructuring plan to the Commission and prove that the aid would not unduly affect competition. RBS also agreed to divest an equivalent of about 5% of the UK market share of lending business to small and medium sized companies.

The Belgian KBC group had to submit a similar restructuring plan after having received a recapitalization of €3.5b, a second recapitalization of a further €3.5b and an additional asset relief measure on a portfolio containing collateralized debt obligations. The Commission had opened three separate in depth investigations regarding the asset relief measures. KBC has committed itself to repayment of a significant proportion of the restructuring costs, and also to divestment, run-down and listing of various businesses.

As in the ING case, the Commission has approved the State aid because it ensured the commercial viability of the two banks, while at the same time taking steps to tackle distortions in competition.

Competition

Microsoft not completely off the hook after major deal with Commission

In late 2009 Microsoft initialed a deal with the European Commission on its dispute regarding Microsoft's Internet Explorer. The 10 year old browser dispute has been one of the key cases of the Commission against Microsoft. At least another three anti-trust cases against Microsoft are expected to be pursued by the Commission in 2010.

In the past 10 years, Microsoft has been fined repeatedly by the European Commission on grounds of its unfair monopoly position amounting to a total of €1.68b. The latest complaint came from owners of Google Chrome, Mozilla and Opera in that the bundling of Internet Explorer with Windows gave Microsoft an unfair share of 90% of the browser market.

Microsoft has now offered facilities to allow rival browsers access to its operating software. According to Microsoft this would dispel the accusation that it has an unfair distribution advantage due to its bundling of Internet Explorer with Windows. The complainants are likely to accept the offer, but have instigated a bid for more neutrality towards the use of the brand name and logo of Explorer.

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