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# EU Law News

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



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## Reform Treaty Agreed at European Summit

### New arrangements aim to make the EU-27 more efficient

While no longer carrying constitutional symbols of statehood like a flag and anthem, the “Reform Treaty” aims to make the EU-27 more effective by streamlining decision-making. Proposals include a full-time EU president, a high representative for foreign policy supported by a diplomatic service, a reorganised European Commission and additional areas for qualified majority voting. Agreement was reached on 23 June 2007 after Poland finally consented to the “double majority” voting system. This means that a decision is taken in the Council if approved by 55% of Member States representing at least 65% of the EU’s population.

The EU’s commitment to “undistorted competition” has been scrapped from a list of the EU’s objectives – a move that some say could hinder the fight against protectionism and illegal State aid. However, Competition Commissioner Neelie Kroes said that competition policy is fundamental to the Internal Market and the Council re-confirmed the European Commission’s duties as the independent competition enforcement authority for Europe.

The EU will now convene an Intergovernmental Conference (IGC) before the end of July. Angela Merkel, German chancellor and host of the summit, said the IGC will complete its work as quickly as possible and, in any case, before the end of 2007. This would allow sufficient time to ratify the resulting treaty before the European Parliament elections in June 2009.



## Telefónica: dominant position

### Telefónica heavily fined for violating competition rules

Fining the company over €151m, the Commission states that Telefónica had imposed unfair prices in the form of a margin squeeze between the wholesale prices it charged to competitors and the retail prices it charged to its own customers in the period 2001-2006. Telefónica thereby weakened its competitors, making their continued presence and growth difficult: competitors were forced to make losses if they wanted to match Telefónica’s retail prices. As the only Spanish telecommunications operator with a nationwide fixed telephone network, Telefónica controls the entire ADSL value chain in Spain. The Commission says that Spanish consumers pay 20% more than the EU-15 average for broadband access. Broadband penetration in Spain is 20% below the EU-15 average, and its rate of growth is nearly 30% less.

After the Commission opened formal proceedings in February 2006, the Spanish regulator analysed broadband markets under the new regulatory framework, which led it to significantly decrease Telefónica’s regional and national wholesale prices in December 2006. Only this intervention put an end to the abuse identified in the Commission’s decision.

## Audiovisual Media Services Without Frontiers

### EU Ministers pledge support for audiovisual industry

The sector faces unprecedented change, driven largely by the impact of digital technologies and consequent shifts in audience behaviour. The EU Culture Ministers' commitment to the audiovisual sector was underlined by their adoption of the Audiovisual Media Services without frontiers Directive. The AVMS Directive will modernise the rules for traditional and emerging audiovisual media services and give more flexibility to European TV- and film-makers to produce digital content, thanks to more relaxed advertising rules. The Directive is expected to enter into force before the end of 2007. Member States will be given 24 months to transpose the new provisions into national law, so that the modernised legal framework for audiovisual business will fully apply in 2009.

## EU Health Strategy

### Consultation shows support for increased EU co-operation

The results of a public consultation process reveal that there is support for more co-operation between the Commission and Member States to improve and protect health in Europe. Respondents highlighted key issues such as informing and empowering citizens, quality and safety in healthcare in relation to cross-border issues, and addressing key lifestyle-related factors affecting health, such as nutrition and physical activity, alcohol consumption, smoking and mental health. An attempt to meet the health challenges facing Europe and to close the gap between old and new Member States, the EU Health Strategy will set broad objectives for the next decade.

Meanwhile, the Commission said it would give Europe's food and drink industry until 2010 to demonstrate that voluntary measures can tackle the growing problem of obesity. Health Commissioner Markos Kyprianou said this also meant better diets and more physical activity. The Commission presented a policy paper highlighting the looming health crisis. The last three decades have seen the levels of overweight and obesity in the EU population rise dramatically, particularly among children, where the estimated prevalence of overweight is 30%. Consumer organisations have called for more restrictions on food advertising aimed at children and labels warning shop-

pers about high salt, sugar or fat content of food and drinks products. Industry had already accepted voluntary curbs on advertising and labelling, and has welcomed the EU paper.

## Endesa Merger Approved

### ENEL and Acciona will get sole control of Endesa

ENEL SpA, based in Italy, and Acciona SA, based in Spain, are now allowed to proceed in their takeover bid for Spain's largest electricity company, which followed the withdrawal from the bidding war of the German energy giant E.ON. The Commission concluded that the proposed transaction would not significantly impede effective competition in the EU and European Economic Area (EEA) or any substantial part of it. In a parallel operation, that falls outside the scope of the Merger Regulation and will therefore be examined by the national competition authorities, Acciona plans to acquire sole control over Endesa's renewable energy business. ENEL and Endesa will transfer a number of rights and assets to E.ON.

## EU-US: Cosmetics and Medical Devices

### Confidentiality agreement reached by the European Commission and the US Food and Drug Administration

They will from now on be able to exchange confidential information about the safety of cosmetics and medical devices, thus improving health protection and facilitating EU-US trade. The exchange of information includes advance drafts of legislation, post-marketing data and information that could have an impact on public health, such as vigilance data or news about impending regulatory actions.

Closer economic co-operation is the main aim of the new Transatlantic Economic Council (TEC). The TEC's work programme covers co-operation initiatives to harmonise standards and improve trade in the areas of regulatory co-operation, intellectual property rights, secure trade, financial markets, innovation, technology and investment.

**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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