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EU Law News

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

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Newsletter July/August 2013

EU-China solar trade dispute escalates

On 4 June 2013, the European Commission announced that it would impose provisional anti-dumping duties on imports of solar panels, cells and wafers from China. After pressure from Germany, who feared that retaliation from China could hit its export-driven economy, the Commission had toned down its initial ambition, choosing to implement a phased introduction of duties to allow time for negotiations. The duty will be set at 11.8% until 6 August 2013, and 47.6% thereafter if no compromise is reached. On 5 December 2013, the European Council will vote on whether the duty should remain in force.

This announcement was made after a nine month anti-dumping investigation, launched by the Commission in September 2012. The Commission's investigation demonstrated that Chinese companies have been selling solar panels in Europe at far below "fair value", which should allegedly be 88% higher than the price at which they are currently being placed on the market. This has allowed Chinese firms to capture more than 80% of the European solar panel market in only a few years.

China responded almost immediately to announce the launch of an anti-dumping and anti-subsidy probe into European wine, after concerns from their domestic wine industry that wines imported from Europe are entering China's market by use of dumping and subsidies. Since then, both sides have been locked in negotiations to agree a minimum price for Chinese importers above their production costs.

New EU accounting rules to reduce administrative burden for small companies

After being formally endorsed by a vote in the European Parliament on 12 June, a new Accounting Directive will be implemented to consolidate the provisions of its two predecessors [1], and reduce the administrative burden of financial statements for small companies. The Directive also looks to improve the quality and comparability of information disclosed.

The new Directive will simplify the preparation of financial statements for small companies, which are defined as those with less than 50 employees, a turnover of not more than €8m and/or a balance sheet of not more than €4m. Under these definitions, the Commission estimates that more than 90% of EU companies will qualify as "small" for accounting purposes.

The new rules require that to satisfy regulatory requirements, smaller companies need only to provide a balance sheet, a profit and loss account, and notes. Separate provisions for micro-companies, which constitute those companies with less than 10 employees and a turnover of not more than €0.7m, have also been incorporated into the Directive. All of the new rules remain at the discretion of Member States, which are still entitled to impose more extensive accounting standards on small companies within their jurisdictions.

Commission proposes rules for compensation of cartel victims

On 11 July 2013, the European Commission proposed new legislation to facilitate damage claims by citizens and companies when they are victims of infringements of EU antitrust rules, such as cartels and abuses of a dominant market position.

Although the European Court of Justice has formally recognised the right for all victims of antitrust infringements to be compensated for the harm suffered, due to procedural obstacles and legal uncertainty only a few of those victims manage to obtain compensation. In 2010, the European Commission estimated that unrecovered damages from infringements of EU antitrust law amounted to over €20bn, with victims only seeking to obtain compensation in 25% of all antitrust decisions taken.

The Commission's proposal allows for the decisions of national antitrust authorities to be considered as evidence of guilt in private actions in all Member States, removing the need for follow-on litigation to prove that an infringement occurred. The proposal also provides EU courts with increased powers to force defendants in private damages actions to turn over documents and other evidence to their alleged victims, and extends the limitation period in which a damages claim can be brought.

The proposal will now be debated in the European Parliament and Council.

UK referred to European Court of Justice over labour restrictions

On 30 May 2013, the European Commission made the decision to refer the United Kingdom to the European Court of Justice for failing to apply the 'habitual residence' test to EU nationals who reside in the UK and claim social security benefits. In its place, the UK applies a 'right to reside' test, which according to the Commission prevents EU citizens from receiving the specific social security benefits to which they are entitled.

Under EU law, social security benefits have to be granted to people from other EU Member States on the condition that their place of habitual residence is in the Member State in question. According to the Commission, the UK's unilaterally applied 'right to reside' test imposes an additional condition onto entitlement for social security benefits. Residence rights are granted in the UK solely on citizenship, with other EU nationals having to meet additional conditions to receive equivalent benefits.

This, according to the Commission, amounts to unlawful discrimination in the field of access to social security benefits, with figures showing that the UK refused benefits to 28,400 EU citizens living within its borders between 2009 and 2011. After first being asked to remove the offending provisions back in 2011, the UK government has continued to maintain that the 'right to reside' test is vital to ensure that benefits are paid only to people legally living in Britain.

Pharmaceutical companies fined €146m for delaying market entry of generic medicines

On 19 June 2013, the European Commission imposed a fine of €93.8m on Danish pharmaceutical company Lundbeck and fines totalling €52.2m on several producers of generic medicines. In 2002, Lundbeck had agreed with each of these companies to delay the market entry of cheaper generic versions of its branded antidepressant, Citalopram. The Commission ruled that this violated EU antitrust rules that prohibit anticompetitive agreements.

After Lundbeck's basic patent for the Citalopram molecule had expired, it only held a number of related process patents providing more limited protection. To maintain market share against inevitable competition, Lundbeck agreed with various generic producers not to enter the market in return for substantial payment and other inducements, which, according to the Commission amounted to tens of millions of Euros.

This gave Lundbeck the certainty that generic producers would stay out of the market for the duration of the agreements, without giving the generic producers any guarantee of market entry thereafter. Joaquín Almunia, Commission Vice-President in charge of competition policy, condemned such an agreement for "directly harming patients and national health systems, which are already under tight budgetary constraints".

Croatia becomes 28th Member of European Union, while Latvia is given green light to adopt Euro in 2014

On 1 July 2013, Croatia officially became the 28th Member of the European Union, after a long process to align its rules and administrative procedures with those of the EU. Croatia is the first country to accede to the EU since Bulgaria and Romania in 2007, and stands as only the second of the seven ex-Yugoslav States to obtain membership (after Slovenia).

A few days later, on 5 July, the Commission also confirmed that Latvia has achieved a sufficient degree of sustainable economic convergence with the Euro area to allow it to adopt the Euro as from 1 January 2014. This decision was subsequently endorsed by the European Council on 9 July. All five of the EU's convergence criteria were complied with by Latvia across 2012, confirming the success of its macro-economic adjustment process throughout the financial crisis.

€70.2bn ring-fenced after trilogue agreement on Horizon 2020

On 25 June, the European Council, Parliament and Commission reached an agreement to ring-fence €70.2bn within the overall EU budget for Horizon 2020, the EU's 2014-2020 Framework Programme for Research and Innovation. In principle, the percentages of budget allocation across the three key "pillars" have also been agreed upon:

- Excellent Science – European Research Centre, infrastructure, future and energy technologies – 37%
- Industrial Leadership – Specific support for SMEs and key enabling technologies – 22.5%
- Societal Challenges – To direct research towards young problems associated with an ageing society and environmental blight – 38%

Separate provisions are also to be included pledging that 20% of Horizon 2020 funding will be directed at SMEs, and that funding applications will be rationalised across the whole framework.

[1] Directive for individual financial statements (78/660/EEC) and Directive for consolidated financial statements (82/349/EEC)

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