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EU Law News

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



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Climate Change Plan

Council pushes for reduction of greenhouse gases (GHGs)

On 14 March 2008, the European Council instructed the Commission to continue supporting efforts to reduce GHG emissions with ambitious new measures. The initial target is a 20% cut in greenhouse gases by 2020, compared with 1990 levels. By 2020, Member States are required to triple use of renewables such as solar and wind power to 20% of energy consumption and to make biofuels 10% of fuel use. The Council, working closely with the European Parliament, has set the end of 2008 as the deadline for agreement on the detailed proposals, with formal adoption by early 2009.

Political support for the measures is growing along with concerns over GHG levels, the EU's dependence on energy imports and the security implications of climate change. The Council wants a package adhering to principles of transparency, economic efficiency and cost-effectiveness, as well as fairness and solidarity in the distribution of effort between Member States. It should also take into account the need for sustainable economic growth.

The Spring 2009 European Council will serve as the basis for the new Energy Action Plan from 2010 onwards and a Strategic Energy Review that will focus in particular on security of supply, interconnectors, and external energy policy. The Council attaches particular importance to the EU and its Member States speaking with a common voice on energy issues with third parties such as Russia.



Takeovers and Protectionism

ECJ judgment in Endesa and E.ON case

According to the European Court of Justice (ECJ), giving its judgment in the *Endesa* case (C-196/07) on 6 March 2008, Spain illegally rejected EU demands to withdraw restrictions on the takeover of the Spanish power company Endesa by Germany's E.ON (though E.ON has since withdrawn its bid). The case caused much debate about protectionism between EU countries and, in September 2006, the European Commission adopted a decision finding that Spain had infringed the Merger Regulation by making the acquisition of Endesa subject to conditions that are incompatible with Community law.

Agreeing with the Commission, the ECJ emphasised that bringing proceedings for failure to fulfil obligations is the ultimate means of enforcing compliance with Community law. Spain had also not shown that it was impossible to implement the Commission's decisions. In its judgment, the Court found that Spain has failed to fulfil its obligations under Community law by not withdrawing within the periods prescribed a number of conditions imposed by the Spanish Government. The ECJ ruling removes a potential barrier to cross-border mergers.

Food Labelling

New rules proposed to inform and protect consumers

On 30 January 2008, the European Commission adopted a draft Regulation to make food labels clearer and more relevant to the needs of EU consumers. Commission priorities include the promotion of healthier diets among EU citizens and better informed customers.

Pre-packaged food will have to display key nutritional information on the front of the package. General requirements on how this information should be displayed are also set out. In addition, the draft Regulation extends the current requirements for allergen labelling to cover non pre-packed food, including food sold in restaurants and other catering establishments. The Commission hopes the food industry will benefit from a clearer, more harmonised legislative framework for food labelling and the creation of a level playing field for all operators. Member States can promote additional national schemes, provided they do not undermine the EU rules.

International Trade

EU and US report Chinese media restrictions to WTO

The EU and the United States have filed complaints at the World Trade Organisation (WTO) over Chinese restrictions on foreign financial news providers working in the country. The dispute has been brewing since September 2006 when China renewed the monopoly held by state news agency Xinhua, which prevents foreign providers of financial information services from dealing directly with Chinese clients. The dispute comes amid growing tensions between China and Western economies over trading practices.

Last month, China suffered its first ever defeat at the WTO over a US complaint on car-part tariffs, and analysts expect many more disputes to follow. The case on auto parts was among a growing list of complaints at the WTO targeting China, and the victory by the US could embolden other nations to take similar action. China, which joined the WTO in 2001, has increasingly become the focus of WTO complaints after a relatively low profile in its first few years in the organisation.

State Aid

ECJ ruling on unnotified State aid

On 12 February 2008, the ECJ ruled in the *CELF* case (C-199/06). From 1980 to 2002, CELF received operating subsidies from the French State to offset the extra costs of handling small orders placed by booksellers established abroad. During 1992, SIDE, a competitor of CELF, began a 15-year challenge of the subsidy under Article 88(3) of the EC Treaty. The ECJ ruled that the effects of unlawful State aid granted without prior notification to the Commission have to be reversed, even if the relevant aid is approved by the European Commission at a later stage.

Under EC law, the aid recipient must pay interest in respect of the period of illegality. The ECJ points out, however, that domestic law of the Member States might require repayment of aid with interest thereon and compensation for damages caused by the unlawful nature of the aid. The ECJ ruled that interest must be paid for the period between a Commission decision declaring the aid to be compatible with the common market and the annulment of that decision by the competent Community court (the ECJ, for example).

Health Care

Stakeholders urge action on health services directive

A debate organised by the European Parliament in early March has added to pressure from doctors, patients and health care providers for the Commission to publish its promised draft directive on the provision of cross-border health services. Key stakeholders want formal discussions to begin, despite fears they could trigger anti-European campaigning by some groups ahead of the ratification of the Lisbon Treaty. Although ECJ rulings have supported a citizen's right to cross-border health care, the law remains unclear and there is frustration over the Commission's failure to publish its legislative proposals, setting out the circumstances under which EU patients can legitimately be covered for treatment received in other Member States.

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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