
Newsletter, September/October 2010

EU Law News

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

The EU's great challenges

European Commission President José Manuel Barroso, in his inaugural State of the Union address to the European Parliament on 7 September 2010, described the financial and economic crisis as one of the EU's 'greatest challenges ever'. He set out the agenda for the Commission over the coming year, confronting five major issues:

1. dealing with the economic crisis and governance
2. restoring job growth
3. building an area of freedom, justice and security
4. launching negotiations for a modern EU budget, and
5. pulling the EU's weight on a global stage.

Key areas of activity in the context of the economy will be:

- to increase the surveillance and enforcement of the stability and growth pact
- financial regulation, and
- a proposal for a tax on financial activity.

In supporting job growth the Commission will put forward proposals for a European Skills Passport and a European Vacancy Monitor. A need to deepen the internal market will be addressed in the coming months by a new single market act. On the global stage, the EU will aim to take a more prominent role in the G20 to achieve progress in greater global economic co-ordination, more stable financial markets, and seeking agreement on the reform of international financial institutions.

EU patent future uncertain

The ECJ has received objections from the European Parliament and seven Member States concerning the European Commission's proposal for a single patent court.

Since 2003, moves have been made towards the development of an EU Community patent. Earlier this year, the European Commission announced that it aimed to conclude agreement on a unified patent litigation system. This would in turn, establish a court with jurisdiction over existing European patents and the future Community patent system.

Despite being one of the top priorities of the Belgian Presidency, the existing legal and linguistic problems now seem to have severely hampered the discussions on the single patent court. In his response on 2 July 2010, to the request of the Council of the European Union for an Opinion on the compatibility of the proposed European Patent Court System with European Treaty Law, the Advocate General (AG) indicated that the envisaged Agreement creating a unified patent litigation system would be incompatible with the treaties

According to the AG the draft agreement does not satisfy the requirement of effective judicial control over the granting of patents or the desire for a correct and uniform application of EU law. The language issue also remains unsolved, as the current regime before the central division of the European and Community Patents Court might violate the rights of the defence. The AG's opinion will be followed later this year by a ruling from the ECJ as a whole.

In addition to the negative opinion coming from the AC, several Member States are backing this opinion, emphasizing the current unsolved conflicts with the EU treaties. The European Parliament has repeatedly expressed grave concern regarding the feasibility of the current proposal.

The Belgian Presidency has a difficult task ahead in reaching an agreement on this issue before the end of the year.

Court finally rules in favor of Deutsche Post

In 2002, the European Commission ordered Deutsche Post to repay €572 million in state aid, an amount which Germany's national post operator had received for losses it incurred between 1990 and 1995. The Commission opened an investigation after it had received complaints from rival companies that Deutsche Post was carrying out parcel deliveries at below cost price. The Commission subsequently claimed that Deutsche Post was using the state aid to undercut competitors.

When the case was brought before the General Court, it held that the Commission did not use a valid calculation method to evaluate whether Deutsche Bank was indeed over-compensated, nor did the Commission examine all the evidence presented. In its appeal to the ECJ, the Commission argued that the General Court's decision was flawed.

The ECJ has now rejected the Commission's appeal and concluded the € 572 million was not illegal state aid and therefore should not be repaid by Deutsche Post.

New financial supervision system approved

As reported in the EU Law Newsletter July/August, an EU decision on the European financial supervision framework was due in early September. The European Parliament, the European Commission and the Member States reached agreement in principle to a radical overhaul of the way banks and markets in the EU are supervised. The proposal has now been endorsed by the EU Finance ministers.

Earlier this year parties had been unable to strike a deal as there was disagreement on the level of powers to be given to the three new EU-level watchdogs covering the banking, insurance and securities markets sectors. It has now been agreed that the watchdogs will draw up common technical rules and standards from January 2011 onwards, but the day-to-day supervision of companies will remain the responsibility of national supervisors.

Anti-Counterfeiting Trade Agreement closer to finalization

After having held the 10th round of negotiations on the proposed Anti-Counterfeiting Trade Agreement (ACTA) in Washington in August, the negotiating parties have come closer to reaching an agreement. Negotiations are expected to come to an end in September. The EU is represented in the negotiations by the European Commission, the EU Presidency and EU Member States.

The multilateral agreement aims to establish international standards on intellectual property rights enforcement. This entails the creation of a new international body outside the existing international institutions such as the World Trade Organization (WTO), the World Intellectual Property Organization (WIPO) and the United Nations.

During the latest negotiations, participants stressed the importance of ACTA as a way to more effectively combating the proliferation of counterfeiting and piracy, which poses a real threat to legitimate trade and the sustainable development of the world economy. Furthermore, participants to the negotiations emphasized that ACTA will be consistent with the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS Agreement).

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
Phone +32 2 6277 760, Fax +32 2 6277 761
helmut.janssen@luther-lawfirm.com

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