

## EU Law News

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

### **EC questions France about possible state aid to Agence France Presse**

The European Commission has sent a letter to the French authorities requesting more information over potentially illegal state aid given to Agence France Presse (AFP), the international news agency based in Paris. The allegations of illegal state aid come from the German press agency DPP (now DAPD) which filed a complaint against AFP in February last year claiming that AFP was benefiting from illegal state aid, notably through a French state subscription to AFP's services worth €110m per year for its ministries and administrations. DAPD claim that this subscription amounts to a direct grant to the news agency from the state in contravention of EU law as the agency is believed to offer the same services to other organisations for far less. Germany is believed to pay only €3.75m for its own news subscriptions.

If the Commission finds that the subscription was illegal state aid, AFP could be required to pay back the subsidies received from the French state over the last ten years which would be a heavy blow to the agency. France is understood to argue that its relationship with AFP is of a purely commercial nature; the Commission has contacted other EU governments to enquire about their own practice regarding media subscriptions.

### **Commission reports increased interception of fake products**

The European Commission has released its annual report on goods seized at European borders for infringing intellectual property rights. Increased interception rates of fake or counterfeit goods attempting to enter the single market has been reported, with the seizure of over 103 million products suspected of violating intellectual property rights. According to the Commission, the figures represent a doubling of shipments stopped by customs authorities compared to the previous year. The increase is largely

attributed to a growing number of interceptions in postal traffic, which has significantly increased as a result of the growing number of online purchases in Europe. Intellectual property has been identified by European authorities as a cornerstone of the European economy and as a driving factor in growth areas such as research, innovation and employment. The Commission has proposed legislation to further strengthen customs authorities in combating intellectual property fraud.

The total value of the goods stopped was in excess of €1bn. By far the largest category of seized goods were cigarettes (34%) followed by office supplies (9%), other tobacco products (8%), labels, tags and emblems (8%), clothing (7%) and toys (7%). 14.5% of goods seized were household products which the Commission said raised concerns for the health and safety of European consumers. China, accounting for 85% of the goods seized, remained the main source of fake and counterfeit products.

### **Commission opens investigation into possible UK state aid to Royal Mail**

The European Commission has opened an in-depth investigation into whether the UK government will breach EU state aid rules if it follows through with planned restructuring of Royal Mail in advance of expected privatisation early next year. In particular the Commission is looking into whether distortions of competition will result from plans for relieving it of its "pension deficit" and strengthening its balance sheet. The restructuring of Royal Mail's finances are seen by the UK government as necessary towards finding a buyer for the postal operator. The so-called pension deficit relief is estimated by UK authorities to amount to £8bn (around €9bn). In addition, the UK notified measures to strengthen Royal Mail's balance sheet, including restructuring of the company's £1.7bn debt (around €1.9bn), and the provision of a revolving credit facility.

The Commission, however, has cast doubt on the proposed restructuring saying that the UK has not convincingly demonstrated that the current restructuring is in line with existing Commission guidelines on rescuing and restructuring firms in trouble. The Commission further questions UK claims that the pension deficit derives from Royal Mail's operations as a state monopoly but rather that they reflect the difficulties all companies have found themselves in relation to their own pension schemes due to adverse conditions in financial markets consequent upon the financial crisis. As such, they do not follow recent Commission practice on legacy costs as has been claimed by UK authorities. The Commission is also investigating measures in favour of the Belgian postal incumbent bpost and the German postal incumbent Deutsche Post.

#### **Commission approves temporary Spanish restriction on free movement of Romanian workers**

The European Commission has given its assent to Spain's reintroduction of restrictions on the access to its labour market for Romanian workers up until 31 December 2012. The free movement of workers is one of the four freedoms regarded as the core of the European single market. The restriction was introduced in reaction to "serious disturbances" caused by the financial crisis. Spain has been particularly hard-hit by the fallout from this crisis, with unemployment rising to above 20% in May 2011. According to the European Commission, "the continuous increase of Romanian residents in Spain and their high level of unemployment have had an impact on the capacity of Spain to absorb new inflows of workers". The restriction does not, however, apply to Romanian workers already active in the Spanish labour market. According to Commission figures, 30% of Romanian nationals in Spain are currently unemployed and the number of Romanian workers in the Spanish labour market increased from 388,000 in 2006 to 823,000 in 2010, making them the largest group of foreign nationals in Spain.

Under Romania's and Bulgaria's accession agreements, EU Member States could restrict access to nationals from the new Member States up 31 December 2013. Spain had already granted

access to its labour market and had to resort to using the so called "safeguard clause" which allows members to reintroduce restrictions to free labour market access "if it is undergoing or foresees serious labour market disturbances". Spain's use of the clause is the first time that it has been invoked in the area of free movement of workers.

#### **European Court of Justice rules that honey containing GMOs, even unintentionally, must be regarded as food produced from a GMO**

In a preliminary ruling delivered on 7 September 2011, the European Court of Justice held that honey which contains pollen from genetically modified maize must be regarded as food containing genetically modified organisms (GMOs) under EU legislation and must be marketed as such, irrespective of whether the pollen was introduced intentionally into the honey. The case, *Karl Heinz Bablok and Others v Freistaat Bayern (C-442/09)*, involves a beekeeper whose bees collected pollen from a neighbouring plantation of genetically modified maize on plots of land owned by Freistaat Bayern. Pollen from these plantations was later found in the honey and other food supplements being produced by Mr Bablok. Under the EU regulation on genetically modified food, authorisation must first be sought before food containing GMOs as an ingredient can be put on the market in the EU. The ruling has wider implications as it will also affect importations of similar food products and supplements from outside Europe where the use of GMOs in the growing of crops is more common.

*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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