

Brussels Brief

A weekly overview of the regulatory, legal and political developments of the institutions and the issues facing the European Union



03 July 2009

Key Developments

Energy: Council Adopts Third Energy Liberalisation Package

Lawrence Grabau

The Council of the European Union has voted to adopt the five legislative measures that comprise the third energy liberalisation reform package. The measures put in place the regulatory framework needed to make the opening of the energy market fully effective and to create a single EU gas and electricity market.

The package consists of: i) a Directive establishing common rules for the generation, transmission, distribution and supply of electricity; ii) a Directive establishing common rules for the transmission, distribution, supply and storage of natural gas; and iii) a Regulation on conditions for access to the network for cross-border exchanges in electricity and gas; and a Regulation establishing an Agency for the Co-operation of Energy Regulators.

The measures are expected to be published in the Official Journal in August 2009. Member States will have 18 months to implement the rules.

State Aid: Italy Referred to the ECJ for Failure to Recover Illegal Social Security Exemption Aid

Teresa Arnoni

The European Commission has decided to refer Italy to the European Court of Justice (ECJ) for failure to implement an April 2004 judgment confirming a 1999 Commission decision that ordered the recovery of illegal State aids granted by Italy in the form of exemptions from social security contributions.

In its 1999 decision, the Commission found that part of the aid granted by Italy was incompatible with the Single Market. In 2004, the ECJ ruled that Italy had not taken the measures necessary for the recovery of the aid. To date, Italy has recovered only 20 per cent of the total aid, estimated at about EUR 281 million.

The Commission has requested sanctions on Italy's infringement comprising daily penalty payments and a lump

sum payment covering the period since the Court's previous judgment in 2004.

Trade Mark: CFI Dismisses Action to Block Trade Mark Registration

Matthew Kopetski

The Court of First Instance (CFI) has dismissed Danjaq's action against Mission Productions to block the registration of the word sign "Dr. No" as a Community trade mark. The CFI dismissed this action because Danjaq had failed to establish that the word signs "Dr. No" and "Dr. NO" were used as trade marks or that the title of the film "Dr. No" was used in the course of trade.

In 2001, Mission Productions, a media company based in Germany, applied to the Office of Harmonization for the Internal Market (OHIM) to register the word sign "Dr. No" as a Community trade mark. Danjaq, a U.S. company that manages the intellectual property rights to the "James Bond" films, opposed this registration, arguing that (i) it would be confused with its earlier and already well known marks and (ii) these earlier word signs are non-registered marks used in the course of trade. OHIM rejected Danjaq's claim, finding that it had failed to provide sufficient evidence to prove its arguments. Danjaq appealed against this decision to the CFI.

The CFI agreed with OHIM's analysis. The Court noted that the purpose of a trade mark is to identify the commercial origin of particular set of goods or services. It then found that the word signs "Dr. No" and "Dr. NO" do not serve this purpose, but instead help differentiate that film from other films in the "James Bond" series. Finally, the CFI noted that, although copyright protection cannot be relied upon in trade mark opposition proceedings, it may be used in later proceedings seeking to declare a registered Community trade mark invalid.

Tax: Commission Refers Luxembourg to ECJ over Savings Tax Directive

Jacques Pieters

The European Commission has referred Luxembourg to the European Court of Justice (ECJ) for failing to amend its practice in relation to taxing at source the interest received by non-residents on savings held in Luxembourg. The Savings

Tax Directive provides for exchange of information between EU Member States relating to interest on savings held by non-residents. Through a separate treaty, a similar system has been agreed upon with Switzerland. In practice this means that, for example, the Netherlands will notify the French tax authorities of interest payments received by a French resident on a Dutch savings account. It is then up to the French Government to decide whether or not to tax this interest.

Austria, Belgium, Luxembourg and Switzerland have opted not to exchange this type of information. Instead, these countries have committed to tax such interest payments at source and pass the proceeds (partially) on to the relevant countries, without giving more detailed information about the individual non-resident.

Luxembourg, however, refuses to apply this tax at source to individuals benefiting from "non-domiciled resident" status in their country of residence (mainly Ireland, Malta and the United Kingdom). This seriously erodes the basic principles that underlie the Savings Tax Directive.

This discussion may be overtaken by changes to bank secrecy legislation. Belgium and Luxembourg were included in the Organisation for Economic Co-operation and Development tax havens "grey list" in April 2008. Belgium has already announced it will change its bank secrecy legislation and Luxembourg is expected to follow suit shortly.

NEXT WEEK'S EVENTS

Monday 6 July – Friday 10 July 2009

COUNCIL MEETINGS

- No Council meetings scheduled for next week

COURT OF JUSTICE

Judgments

Approximation of laws

- C-558/07 S.P.C.M. and Others

Area of Freedom, Security and Justice

- C-204/08 Rehder
- C-272/08 Commission v Spain

Competition

- 511/06 P Archer Daniels Midland v Commission

Environment and consumers

- C-557/08 Commission v United Kingdom

Freedom of movement for persons

- C-469/08 Commission v Belgium
- C-556/08 Commission v United Kingdom

State aid

- C-369/07 Commission v Greece
- C-319/07 P 3F

Taxation

- C-397/07 Commission v Spain

Opinion

Company law

- C-199/07 Commission v Greece

Environment and consumers

- C-226/08 Stadt Papenburg

Principles of Community law

- C-118/08 Transportes Urbanos y Servicios Generales

Social policy

- C-555/07 Küçükdeveci

Taxation

- C-246/08 Commission v Finland
- C-182/08 Glaxo Wellcome
- C-267/08 SPÖ Landesorganisation Kärnten

COURT OF FIRST INSTANCE

Agriculture

- T-373/05 Italy v Commission

Competition

- T-450/05 Peugeot and Peugeot Nederland v Commission

Customs union

- T-219/07 DSV Road v Commission

Environment and consumers

- T-238/07 Ristic and Others v Commission

Intellectual property

- T-230/07 Laboratorios Del Dr. Esteve v OHMI - Ester C (ESTER-E)
- T-28/08 Mars v OHMI - Ludwig Schokolade (Forme d'une barre chocolatée)
- T-71/08 Promat v OHMI - Prosima Comercial (PROSIMA PROSIMA COMERCIAL S.A.)
- T-225/08 Mineralbrunnen Rhön-Sprudel Egon Schindel v OHMI - Schwarzbräu (ALASKA)
- T-226/08 Mineralbrunnen Rhön-Sprudel Egon Schindel v OHMI - Schwarzbräu (Alaska)
- T-257/08 Biotronik v OHMI (BioMonitor)

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