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EUROPEAN COMMUNITY LAW NEWS

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FOODS

Regulations 1924/2006 and 1925/2006, respectively, on nutrition and health claims made on foods and on the addition of vitamins and minerals and of certain other substances to foods introduce detailed rules on the requirements applicable to the use and substantiation of health claims on, and the addition of nutrients to foods. These new rules have been adopted in the context of existing Community rules on the labelling and advertisement, as well as other existing rules on specific foods (novel foods, food supplements, foods for particular nutritional uses).

[Publication - OJ 2006, L 404, p 9 (replaced by OJ 2007, L 12, p 3) and OJ 2006, L 404, p 26.]

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European Court of Justice dismissed in its entirety the appeal by Danone against the judgment of the Court of First Instance and upheld a fine of EUR 42.4 mln imposed on the French food company group Danone for cartel activity on the Belgian beer market.

The Court stated that any repeated infringement was among the factors to be taken into consideration in the analysis of the gravity of the infringement in question, and confirmed that depending on circumstances of the case, even decisions adopted 17 and 27 years earlier can be used as proper references for repeated offences. Further, the Court held that the Commission had a particularly wide discretion as regards the choice of factors to be taken into account for the purposes of determining the amount of fines, in line with the Commission's task of ensuring compliance with the competition rules.

The importance of the ruling is seen in confirming the legality of the Commission's po-

licy of increased fines imposed on repeat offenders as envisaged in recently adopted Commission's Guidelines on imposition of fines.

Case C-3/06 P, Groupe Danone v Commission (See <http://curia.europa.eu/en/index.htm>)

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COSMETICS

A simplification of Council Directive 76/768/EEC of 27 July 1976 on the approximation of the laws of the Member States relating to cosmetic products was announced by the Commission. The Commission intends to simplify the Cosmetics Directive in the form of a recast, i.e. a legislative technique that enables to codify a legislative text and its amendments and to introduce substantive improvements. Any comments and information on this public consultation should be submitted to the Commission by Friday evening, 16 March 2007 at the latest.

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SERVICES IN GENERAL

Directive 2006/123/EC on services in the internal market, also named the "Services Directive" or the "Bolkenstein Directive", further implements the basic right of the free movement of services contained in the Treaty of the European Community. The Directive must be implemented by the end of 2008 but many of its key provisions are already relevant now, including a prohibition to introduce contrary national measures as of the end of 2006 (stand still) and the obligation to review existing national provisions in light of the Directive.

[Publication - OJ 2006, L 376, p 36]

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INSURANCE

The Commission has published in January 2007 its interim report on the competition inquiry into the business insurance sector, which shows evidence of fragmented markets and highlights factors that may adversely affect competition. This would ultimately allow the Commission to detect distortions of competition that, where appropriate, could then be tackled through antitrust enforcement, either by the Commission or by the Member States' competition authorities. Before reaching final conclusions due to be published in September 2007, the Commission invites all stakeholders to submit their views and observations on the preliminary findings. The consultation period lasts until 10 April 2007.

The Solvency II Directive proposal will be accompanied by an impact assessment report which explains the need for legislative action, outlines the objectives of the work and the various options available to meet these objectives. An impact assessment report measures in a qualitative and quantitative way the various options taking account of stakeholders' comments. The Quantitative Impact Studies run by the Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS) will be a key input in assessing the quantitative impact of the proposal. All interested parties to the Solvency II project are kindly invited to answer a very general and short questionnaire on Solvency II. This questionnaire will close on 23 March 2007.

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TELECOMMUNICATIONS

The Court of First Instance has confirmed a fine imposed by the Commission on a French telecom operator for abuse of dominant position. In its decision which is justified extensively, the Court has notably specified under which conditions, in particular with respect to the coverage of costs, the reduction of its prices by a dominant operator was compatible with Article 82 EC

(prohibiting the abuse of a dominant position).

[Case T-340/03 (See <http://curia.europa.eu/en/index.htm>)]

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TRANSPORT

The Commission has on 24 January 2007 adopted an "airport package" consisting of three key initiatives: a proposal for a directive on airport charges, a communication on airport capacity, efficiency and safety in Europe and a report on the implementation of the ground handling directive. The package focuses on the role of airports in the further development and competitiveness of the European internal aviation market and will mark the future of airport regulation in Europe by ensuring regulatory convergence between Member States.

The Commission has recently published Discussion Paper "General Aviation In The European Community". The aim of this paper is to identify certain issues for the sole purpose of discussion with the interested stakeholders. It does not prejudge on any decision that the European Commission may take in the future. All interested parties and stakeholders are invited to comment on the Discussion Paper and submit their observations by 1 April 2007 at the latest.

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ENERGY

The Commission proposes a comprehensive package of measures to establish a new Energy Policy for Europe to combat climate change and boost the EU's energy security and competitiveness. The package proposed by the Commission seeks to provide solutions to these challenges based on three central pillars: 1. The aim is to give real choice for EU energy users, whether citizens or businesses, and to trigger the huge investments needed in energy. The single market is good not just for competitiveness, but also sustainability

and security. 2. The Commission proposes to maintain the EU's position as a world leader in renewable energy, by proposing a binding target of 20% of its overall energy mix will be sourced from renewable energy by 2020. 3. The Commission reiterates the objective of saving 20% of total primary energy consumption by 2020. The Commission will seek endorsement of the energy and climate change proposals during the Spring European Council and will come forward with legislation in light of these discussions.

The Commission has decided to refer Spain to the European Court of Justice because it considers that certain provisions of Spanish legislation that extends the powers of the Comisión Nacional de Energía (CNE), the Spanish electricity and gas regulator, constitute unjustified restrictions on the free movement of capital and the right of establishment in violation of EC Treaty rules (Articles 56 and 43 respectively). The Commission's decision concerns the Spanish Royal Decree-Law 4/2006 of 24 February, which amends the functions of the Comisión Nacional de Energía.

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STATE AID

The main feature of the new Commission regulation on de minimis aid is to raise the level under which State aid is considered as compatible with EC law from 100 000 to 200 000 Euros over any period of three years as from 1 January 2007 subject to detailed conditions. It must be noted that significant changes are introduced regarding the method used to calculate the de minimis ceiling (now 200 000 Euros) as well as the areas to which de minimis rules apply.

[Publication - OJ 2006, L 379, p 5]

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EUROPEAN ORDER FOR PAYMENT PROCEDURE

European order for payment procedure simplifies the procedure for recovery of uncontested civil and commercial claims (i.e. claims where there is no dispute over whether the pecuniary claim is based on sufficient merits of the case) between the Member States. The system introduced by Regulation (EC) No 1896/2006 creating a European order for payment procedure shall allow to enforce uncontested payments using an EU-wide standard procedure and avoid necessity to deal with unfamiliar legal procedures in foreign countries, since it shall be directly enforceable in all Member States (except for Denmark which opted out) with no further exequatur or procedure required.

The Regulation comes into force on 12 December 2008.

[Publication - OJ 2006, L 399, p 1]

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INTELLECTUAL PROPERTY, COPYRIGHT

Directive 2006/116/EC on the term of protection of copyright and certain related rights is a codified version of the Directive 93/98/EEC, which was repealed by this directive. The directive lays down the terms of protection of copyright and related rights above the minimum level granted by Berne Convention and Rome Convention and identically throughout the Community in order to establish a high level of protection of these rights. According to the directive, the duration of author's rights of a literary or artistic work and cinematographic or audiovisual works shall run for the life of the author and for 70 years after his death. The duration of performers' rights shall expire 50 years after the date of the performance. Member States are obliged to notify the Commission of any governmental plan to grant new related rights.

Directive 2006/115/EC on rental right and lending right and on certain rights related to copyright in the field of intellectual property was adopted as a codified version of the Directive 92/100/EEC.

[Publication: OJ 2006, L 376]

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PUBLIC PROCUREMENT

The Court of Justice of the European Communities in preliminary ruling based on reference under Article 234 EC from the Tribunal administratif de Lyon (France) ruled on interpretation of Council Directive 93/37/EEC concerning the coordination of procedures for the award of public works contracts, as amended by European Parliament and Council Directive 97/52/EC. The Court has decided what is considered as being public works contracts and criteria for determination of value of such contracts. It also stated that a contracting authority is not exempt from using the procedures for the award of public works contracts laid down in Directive 93/37, on the ground that, in accordance with national law, the agreement may be concluded only with certain legal persons, which themselves have the capacity of contracting authority and which will be obliged, in turn, to apply those procedures to the award of any subsequent contracts.

Case C-220/05 (See <http://curia.europa.eu/en/index.htm>)

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TAXATION, VAT

Council Directive 77/388/EEC on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax and uniform basis of assessment has been significantly amended on several occasions. Therefore there was a need for updated and integrated directive governing the system of added valued tax. The new Council Directive 2006/112/EC on the common system of value added tax summarizes the whole system and stipulates the rules to be generally applied. The Directive also contains a list of directives that are repealed by this Directive. This Directive entered into force on 1 January 2007 and must be implemented by Member States by 1 January 2008.

[Publication – OJ 2006, L 347, p. 1-118]

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SLOVAKIA'S ACTION AGAINST COMMISSION

Slovakia has brought its historically first action at the Court of First Instance against the Commission with respect to the Commission's decision on the Slovak National Allocation Plan for CO₂ Emissions Allowances for the period 2008-2012. The Ministry of Justice of the Slovak Republic searches to change the Commission's decision which reduced the volume of emissions allowances for Slovakia for the respective period from requested 41.3 millions ton to only 30.9 millions annually.

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Advokátska kancelária Čechová & Partners
Združenie advokátov: JUDr. Katarína Čechová (evidenčné číslo v zozname advokátov vedenom Slovenskou advokátskou komorou/IČO: 0339/317 831 63) poverená vedením účtovníctva združenia pod IČ DPH SK1020333083, JUDr. Jana Borská (4543/308 665 37), Mgr. Zuzana Gaálová (2157/318 155 96), Mgr. Ing. Michaela Jurková (4286/307 989 57), Mgr. Tomáš Mareta (1601/318 172 11), Mgr. Tomáš Rybár (3988/307 967 76), Mgr. Tomáš Zárecký (4020/360 754 18)

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