

2/2007

EUROPEAN COMMUNITY LAW NEWS

- **TAXATION**
page 1
- **AIR TRANSPORT**
page 1
- **COMPANIES**
page 1
- **POSTAL SERVICES**
page 2
- **TRANSPORT**
page 2
- **TRADE (ENVIRONMENTAL LAW)**
page 2
- **FREEDOM TO PROVIDE SERVICES – BETTING AND GAMING**
page 2
- **COMPETITION**
page 3

TAXATION

The Commission of the European Communities set up a group of experts in field of transfer pricing and defined its tasks and its structure with effect from 1 March 2007. Main reason was the increasing importance of transfer pricing tax problems as an internal market issue. The group's tasks are to create a platform to discuss and to advise the Commission on transfer pricing tax issues and to assist in finding practical solutions and uniform application of transfer pricing rules within the Community. The group has up to 43 members composed of the representatives from each member state appointed by national authorities concerned; representatives from the private sector appointed by the Commission from experienced specialists, and a chairman. The group may set up sub-groups to examine specific questions; the Commission representative may ask other experts and qualified observers to participate in the work of the group. This Decision of the Commission expires on 31 March 2011.

http://eur-lex.europa.eu/RECH_mot.do

andrea.jezerska@cechova.sk

AIR TRANSPORT

By course of Council Regulation (EC) No. 219/2007, in order to manage the activities of the development phase of the project to modernize air traffic management in Europe and to enhance safety (the SESAR project), a SESAR Joint Undertaking, founded by the European Community and the European Organization for the Safety of Air Navigation (Eurocontrol), was established. The main aim of the SESAR Joint Undertaking is to ensure the modernization of the European traffic management system by coordinating and concentrating all relevant research and development efforts in the Community, to ensure the involvement of air navigation service providers, airspace users, profes-

sional stuff associations, airports, manufacturing industry and other stakeholders of the air traffic management sector in Europe as well as involvement of the relevant scientific institutions. In order to facilitate communication with the founding members, the seat of the Joint Undertaking will be located in Brussels. The SESAR Joint Undertaking will be managing funds composed of the contributions from its members and private undertakings; the minimum initial contribution of the founding members of SESAR Joint Undertaking according to the Article 12 of its Statutes is EUR 10 million.

Council Regulation (EC) No 219/2007 on the establishment of a Joint Undertaking to develop the new generation European air traffic management system (SESAR) entered into force on 27 February 2007 and was published in the Official Journal of the European Union, L 64, 2 March 2007.

http://eur-lex.europa.eu/LexUriServ/site/en/oj/2007/l_064/l_06420070302en00010011.pdf

michaela.jurkova@cechova.sk

COMPANIES

On 15 February 2007 following an agreement with the Council, the European Parliament adopted the Directive on shareholders' voting rights at first reading. The proposal for the Directive was published with the intention of removing barriers to shareholders' involvement in listed companies, particularly cross-border, by setting minimum standards. The provisions set out in the Directive include a prohibition on share blocking, which prevents shareholders from trading shares for a period before a general meeting. A minimum notice period of 21 days is set, although there is some provision for a shorter 14-day period for extraordinary general meetings if electronic voting is available. The right to ask questions at general meetings, to add items to the agenda and table draft resolutions, and to ap-

Hurbanovo nám. 5
811 03 Bratislava, Slovak Republic
tel.: (421-2) 54 41 44 41
fax: (421-2) 54 43 45 98
e-mail: office@cechova.sk
www.cechova.sk

branch:
Avenue d'Auderghem 36
B-1040, Brussels, Belgium
Tel.: +32 (0) 2 230 32 15
fax: +32 (0) 2 230 33 47
e-mail: brussels@cechova.sk
www.cechova.sk

point a proxy holder are also dealt with. The Directive provides that Member States must ensure that companies are not prevented from using methods of electronic participation and voting. The text will be formally adopted in the coming months and published in the Official Journal. Member States will have two years to implement the Directive into their national law.

http://europa.eu.int/eur-lex/lex/LexUriServ/site/en/com/2005/com2005_0685en01.pdf

michaela.jurkova@cechova.sk

POSTAL SERVICES

The EU is entering the final stages of a 15-year process to make European postal services more efficient by opening them up to competition. But member states will first have to overcome differences of opinion regarding the speed of liberalisation and how to achieve a universal service for consumers. On 18 October 2006, the Commission presented its proposal for a Third Postal Services Directive. On 11 December 2006, the Council held a preliminary exchange of views on the proposal and on 7 May 2007 the Parliament's Transport Committee will hold a first-reading vote on a Report by German MEP Marcus Ferber (EPP-ED) on the proposal. On 6 - 8 June 2007 the ministers will discuss the proposal in the Telecommunications Council. Political agreement upon the proposal is possible, although France and its allies are enough to create a blocking minority.

michaela.jurkova@cechova.sk

TRANSPORT

The Trans-European Transport Network Executive Agency (TEN-TEA) has been created by the Commission's Decision C(2006)5034 of 26 October 2006, in accordance with Council Regulation (EC) No. 58/2003. Once operational, the Agency will manage the Community funds available for the promotion of the Trans-European Transport Network (established with the Decision on Community guidelines for the development of the trans-European transport net-

work) in close collaboration with Directorate-General Energy and Transport of the Commission. Starting from 2007, the Agency will be managing an annual budget of approximately 1 billion Euros. The TEN-TEA will be located in Brussels and its multinational team will be composed of up to 99 specialists experienced in finance, project management, engineering and legal affairs.

Official Journal, L 32, 6 February 2007

michaela.jurkova@cechova.sk

TRADE (ENVIRONMENTAL LAW)

The Commission has brought forward a proposal that sets down criminal law sanctions for breach of environmental legislation – the so-called “green crimes” Directive. Seeking to put an end to the divergence in how activity such as the illegal emission of hazardous substances is penalised throughout Europe, the draft Directive obliges Member States to treat serious offences against the environment as criminal acts. It also specifies the type and levels of penalties, both for individuals and companies, that must be set down for certain conduct. For example, Member States must classify intentionally causing death through discharges or emissions of material into the air, soil or water as a criminal act under domestic legislation, and set down a maximum sentence of at least five years. Other sanctions available include fines and, for legal persons, judicial winding-up orders and disqualification from certain activities. The Council and the European Parliament will examine this proposal in the coming months, both having equal decision making power.

http://eur-lex.europa.eu/LexUriServ/site/en/com/2007/com2007_0051en01.pdf

michaela.jurkova@cechova.sk

FREEDOM TO PROVIDE SERVICES – BETTING AND GAMING

In its judgment in joined cases C-338/04, C-359/04 and C-360/04, the ECJ ruled that national legislation which prohibits the pursuit of the activities of collecting, taking,

booking and forwarding offers of bets, in particular bets on sporting events, without a licence or a police authorisation issued by the member state concerned, constitutes a restriction on the freedom of establishment and the freedom to provide services, provided for in Articles 43 EC and 49 EC respectively. Articles 43 EC and 49 EC must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which excludes – and, moreover, continues to exclude – from the betting and gaming sector operators in the form of companies whose shares are quoted on the regulated markets. Although in principle criminal legislation is a matter for which the member states are responsible, ECJ has consistently held that Community law sets certain limits to their power, and such legislation may not restrict the fundamental freedoms guaranteed by Community law. Therefore Articles 43 EC and 49 EC must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which imposes a criminal penalty on persons such as the defendants in the main proceedings for pursuing the organised activity of collecting bets without a licence or a police authorisation as required under the national legislation, where those persons were unable to obtain licences or authorisations because that Member State, in violation of Community law, refused to grant licences or authorisations to such persons.

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62004J0338:EN:HTML>

michal.zeman@cechova.sk

COMPETITION

The Commission has imposed record fines on seventeen elevator and escalator manufacturers for operating a cartel in Belgium, Germany, Luxembourg and the Netherlands. The total amount of the fine of EUR 992,312,200 represent the highest fine ever imposed by the Commission for cartel violations.

According to the findings of the Commission, these companies rigged bids for procurement contracts, fixed prices and allocated projects to each other, shared markets and exchanged commercially important and confidential information between at least 1995 and 2004. Moreover, as maintenance is often done by the companies that installed the equipment, the Commission views the respective markets as distorted even for years to come. In the course of investigation, the Commission has managed to summon up a persuasive load of evidence on contacts and meetings of the companies' representatives, and the convicted companies did not contest the facts found by the Commission in their responses to the Commission's Statement of Objections.

The enormous amount of the fines reflects a hard-core character of the infringement of the EC competition rules, size of the markets for the products, the duration of the cartels and the size of the firms involved. The Commission granted full immunity to the companies providing evidences on the cartel in the Netherlands, Luxemburg and Belgium, however applied also increase of 50% of the penalty for repeated offenders, all in line with the recently adopted Commission's Guidelines on imposition of fines and leniency programme.

Case COMP/ F/38.823

martin.vavrincik@cechova.sk

Prepared in cooperation with Kocián, Šolc, Balaščík, Prague, Czech Republic.

The information contained in this publication is not a legal advice. For any questions regarding the contained information, please consult the contact person for the respective topic or the editor. The European Community Law News is not a printed periodical and is available in electronic format only as a marketing product distributed to a selected group of addressees. If you do not wish to receive the European Community Law News, or wish to be included in our mailing list, please notify the editor at the below e-mail address.

You can find more information on our website: www.cechova.sk, where the online versions of European Community Law News are available through a password. Please contact us at the address below if you wish to obtain the access password.

For information on legal developments in the Slovak Republic, you may obtain the Financial Law News, available under the same conditions as the European Community Law News.

Editor European Community Law News:
Michaela Jurková, michaela.jurkova@cechova.sk

© Čechová & Partners. Unauthorised copying not permitted

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)

Členovia združenia advokátov Čechová & Partners sú zapísaní v zozname advokátov vedenom Slovenskou advokátskou komorou (SAK) so sídlom Kolárska 4, 813 42 Bratislava a advokátske povolanie vykonávajú v zmysle príslušných advokátskych predpisov dostupných na internetovej stránke www.sak.sk, umožňujúcej trvalý prístup k informáciám o tejto stavovskej organizácii. Členovia združenia advokátov nadobudli akademické tituly v Slovenskej republike.

Hurbanovo nám. 5, 811 03 Bratislava,
Slovak Republic,
tel: +421 (2) 544 14 441, fax: +421 (2) 544 34 598,
e-mail: office@cechova.sk, www.cechova.sk
Branch Office: Avenue d'Auderghem 36,
B-1040 Brussels, Belgium,
tel.: +32 (0) 2 230 3215, fax: +32 (0) 2 230 3347,
e-mail: brussels@cechova.sk, www.cechova.sk