

- **TREATY OF LISBON**  
page 1
- **SCHENGEN ENLARGEMENT**  
page 1
- **ANTITRUST – AKZO NOBEL CASE**  
page 2
- **STATE AID - FAILURE OF GREECE TO FULFIL OBLIGATION TO RECOVER STATE AID**  
page 2
- **STATE AID – AMENDED RULES FOR SUBMISSION OF STATE AID NOTIFICATIONS**  
page 3
- **INFORMATION SOCIETY: PROTECTION OF INTELLECTUAL PROPERTY RIGHTS**  
page 3
- **PROTECTED DESIGNATION OF ORIGIN – PARMIGIANO REGGIANO**  
page 4
- **SERVICE OF JUDICIAL AND EXTRAJUDICIAL DOCUMENTS**  
page 4
- **TAXATION – INDIRECT TAXES ON RAISING OF CAPITAL**  
page 5
- **TAXATION – EXCHANGE OF VAT INFORMATION**  
page 5

## TREATY OF LISBON

On 13 December 2007, the Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community was signed in Lisbon by the representatives of the 27 EU Member States. The Treaty clarifies the formulation of values, principles and objectives governing the activities of EU and performance of functions of its authorities, defines fundamental decision making processes and specifies the form of legal acts of the EU. It also determines the rights of its citizens towards the EU.

It contains key institutional innovations. Qualified majority voting in the Council will be extended to new policy areas with the aim to make the decision-making process faster and more efficient. The double majority rule for Council decisions (defined as at least 55 % of the Member States representing at least 65 % of the population of the EU) will apply from 2014.

A permanent President of the European Council to chair EU Summits for a two-and-a-half years renewable term will be elected. A new High Representative of the EU for Foreign Affairs and Security Policy will replace the current EU High Representative for Foreign Affairs and the external relations commissioner. The Treaty is reducing the number of Commissioners from 27 to 15 by 2014 and reducing the number of Members of European Parliament to a maximum of 750 (with a minimum of 6 and a maximum of 96 per country). The European Parliament will have increased powers in legislation, budgetary and international agreements and it will have the same powers in the formulation of legislation as the Council.

The EU has been granted a single legal personality. The Treaty of Lisbon, for the first time, recognizes the right of a Member

State to quit the EU upon fulfilment of the stipulated conditions by setting the exit clause.

In accordance with its Article 6, the Treaty will have to be ratified by the Member States in accordance with their respective constitutional requirements, and will enter into force on 1 January 2009, provided that all instruments of ratification have been deposited, or, failing that, on the first day of the month following the deposit of the last instrument of ratification. After Hungary, Slovenia, Malta, Romania, the French Republic, Bulgaria, Poland, the Slovak Republic, Denmark and Austria, Latvia and Lithuania have recently become next Member States in which the ratification procedure has been concluded.

Official Journal of the European Union, C 306, 17 December 2007

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## SCHENGEN ENLARGEMENT

Council Decision of 6 December 2007 on the full application of the provisions of the Schengen acquis in the Czech Republic, the Republic of Estonia, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic (2007/801/EC)

By this decision, the legal regulations forming the Schengen acquis and listed in Annex 1 to this decision, started to apply in full also for the Czech Republic, Estonia, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia as of 21 December 2007. These new Member States were included into the Schengen system as of that day; however, the abolition of checks on persons at air borders started to apply as of 30 March 2008.

Therefore, since 30 March 2008, the Schengen legal regulations have been applicable in full for the following states (including some non-EU countries): Austria,

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Belgium, Czech Republic, Denmark, Estonia, Finland, France (except for all overseas territories), Germany (except for Büsingen), Greece (except for Mount Athos), Hungary, Iceland, Italy (except for Livigno), Latvia, Lithuania, Luxembourg, Malta, Netherlands (except for Aruba and Netherlands Antilles), Norway (except for Svalbard), Poland, Portugal, Slovakia, Slovenia, Spain and Sweden.

Official Journal of the European Union, L 323, 8 December 2007, p. 34 - 39

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### ANTITRUST – AKZO NOBEL CASE

Judgement of the Court of First Instance of 12 December 2007 in Case T-112/05 Akzo Nobel NV and Others v Commission of the European Communities

By its decision, the Court of First Instance (CFI) upheld the Commission's decision 2005/566/EC of 9 December 2004, imposing a fine on five companies of Akzo Nobel Group for their participation in a cartel on the choline chloride (vitamin B4 used in animal feed) market (Case COMP/E 2/37.533 – Choline chloride). The Commission found that number of undertakings had infringed Article 81 EC Treaty and Article 53 of the Agreement on the European Economic Area (EEA) by participating in a complex of agreements and concerted practices consisting of price fixing, market sharing and agreed actions against competitors in the choline chloride market in EEA.

The Commission addressed its decision to Akzo Nobel NV, Akzo Nobel Functional Chemicals BV, Akzo Nobel Chemicals BV, Akzo Nobel Chemicals International BV and Akzo Nobel Nederland BV jointly and severally. These companies submitted an application for annulment of the Commission's decision to the CFI, raising pleas in law that the Commission wrongly attributed joint and several liability for the infringement of Akzo Nobel.

The CFI in its upholding judgment ruled that although the parent company was not a participant in the cartel, it holds 100 % of

the capital of its subsidiaries, which were involved in the anti-competitive conduct, therefore is presumed to exercise a decisive influence over its subsidiaries' policies (which presumption has not been rebutted by the applicants), and forms with them a single economic unit. The Commission, therefore, did not err in establishing a joint and several liability.

The applicants further claimed that the Commission breached Article 23(2) of Regulation No. 1/2003, as the amount of the fine imposed by it exceeds 10% of Akzo Nobel Functional Chemicals' turnover for 2003. The CFI reasoned that for the purposes of imposing a fine in this case, a combined turnover of the parent company and all its subsidiaries must be taken into account, as they form one undertaking within the meaning of Article 81 EC, and rejected the applicants' pleas.

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### STATE AID - FAILURE OF GREECE TO FULFIL OBLIGATION TO RECOVER STATE AID

Judgment of the Court of Justice in Case C-419/06, Commission of the European Communities v Hellenic Republic

The Court of Justice in this judgement declared that, by not taking within the prescribed period all measures necessary to put an end to aid declared unlawful and incompatible with the common market and to recover it from recipients, Greece has failed to fulfil its obligations under the decision of the European Commission C(2005)2706.

The Commission, in its decision C(2005)2706, held that Greece was under an obligation to recover the various forms of state aid without delay from, and immediately suspend the granting of any additional aid to, Olympic Airways and Olympic Airlines and to inform the Commission of measures taken. As Greece had not fulfilled its obligation by the end of

the time period laid down by the Commission, the present action was brought by the Commission.

In the proceedings, Greece has submitted that the Commission had failed to provide a reliable method of calculation to make possible determination of the aid amounts to be recovered. Moreover, Greece has challenged the validity of the Commission's decision. The Court of Justice found that the Commission is not obliged to determine the exact amount of aid to be repaid when it orders repayment of aid that has been declared incompatible with the common market. Further, the Court of Justice ruled that an EU Member State to which a state aid decision has been addressed, can not validly justify failure to implement that decision on the basis of its alleged illegality. It is the procedure under Article 230 EC Treaty under which the illegality and annulment of that decision shall be sought.

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## STATE AID – AMENDED RULES FOR SUBMISSION OF STATE AID NOTIFICATIONS

Commission Regulation (EC) No. 271/2008 amending Regulation (EC) No. 794/2004 implementing Council Regulation (EC) No. 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty

The main feature of the Commission Regulation is to facilitate and accelerate the submission of state aid notifications by the EU Member States and their assessment by the Commission. From 1 July 2008, notifications shall be transmitted electronically via web application State Aid Notification Interactive (SANI). All correspondence in connection with a notification shall be transmitted electronically via the secured e-mail system Public Key Infrastructure (PKI). Exemptions from this rule are possible in exceptional circumstances only upon the agreement of the Commission and the relevant EU Member State. In the absence of such an agreement, any notification not submitted via SANI shall not be considered as submitted to the Commission.

Furthermore, the Regulation stipulates a new method for fixing and calculation of the interest rate to be used for receiving state aid granted in breach of Article 88(3) of the EC Treaty. Annexes to the Regulation include amended templates for state aid notifications.

The regulation entered into force on 14 April 2008 and is binding in its entirety and directly applicable in the EU Member States.

Official Journal of the European Union, L 82/3, 25 March 2008.

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## INFORMATION SOCIETY: PROTECTION OF INTELLECTUAL PROPERTY RIGHTS

Judgement of the Court of Justice of the European Communities in Case C-275/06 *Productores de Música de España (Promusicae) v Telefónica de España SAU* of 29 January 2008

On 29 January 2008, the Court of Justice issued a judgement concerning the obligation of Member States to lay down a duty of providers of electronic communications and data storage services to retain and make available connection and traffic information generated during the supply of an information society service in connection with civil proceedings.

The application was made in a dispute between a Spanish non-profit-making organisation of producers and publishers of musical and audiovisual recordings ("Promusicae") and a Spanish electronic communications services provider ("Telefónica") in connection with disclosure of the identities of certain persons whom Telefónica provided with internet access services. According to Promusicae, those persons were using certain peer-to-peer file exchange program and thereby providing access to phonograms in which members of Promusicae held the exploitation rights. Promusicae therefore sought disclosure of the above information in order to be able to bring civil proceedings against the persons concerned.

The case thus raises the question of the need to reconcile the requirements of the protection of different fundamental rights, namely the right to respect for private life on the one hand and the rights to protection of property and to an effective remedy on the other.

In its judgement, the Court of Justice held that the Community directives referred to in the proceedings, do not require the Member States to lay down an obligation to communicate personal data in order to ensure effective protection of copyright in the context of civil proceedings. However, pursuant to this judgement, Community law requires that, when transposing the Directives, the Member States provide for a fair balance between the right for protection of property on one hand and the right for personal data protection on the other.

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## PROTECTED DESIGNATION OF ORIGIN – PARMIGIANO REGGIANO

Judgment of the Court of Justice of 26 February 2008 in Case C-132/05 Commission of the European Communities v Germany

Due to complaints filed by several subjects and since the term ‘Parmesan’, according to the Commission, was a translation of the protected designation of origin (“PDO”) ‘Parmigiano Reggiano’ and its use constituted a breach of Article 13(1)(b) of Council Regulation (EEC) No. 2081/92 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (the “Regulation”), the Commission requested the German authorities to bring to an end the marketing in the German territory of products designated as ‘Parmesan’ which did not comply with the specification for the PDO ‘Parmigiano Reggiano’.

The German government replied that the term ‘Parmesan’ had become a generic name for hard cheeses of diverse origins, grated or intended to be grated, distinct

from the PDO ‘Parmigiano Reggiano’, and therefore, its use did not infringe the Regulation.

The Commission then brought infringement proceedings against Germany for its failure to proceed against the use, in its territory, of the name ‘Parmesan’, and thus to fulfil its obligations under Article 13(1)(b) of the Regulation.

Although the Court in its judgment confirms that the use of the term ‘Parmesan’ on products which do not comply with the specification for the PDO ‘Parmigiano Reggiano’ constituted infringement of the protection provided for that PDO under Article 13(1)(b) of the Regulation (as the German government failed to show that the name Parmesan has become generic), it however, ruled that it is the authorities of the Member State from which the PDO in question comes, who shall ensure compliance with the PDO specification. The Commission has not demonstrated that Germany has failed to comply with the obligations under the Regulation, and therefore, the Court has dismissed the Commission’s action.

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## SERVICE OF JUDICIAL AND EXTRAJUDICIAL DOCUMENTS

Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000

This Regulation regulates conditions for service of judicial and extrajudicial documents in civil and commercial matters (except for liability of the state for actions or omissions in the exercise of state authority) from one Member State to another Member State. The Regulation cannot apply if the address of the person to be served with the document is unknown. The Regulation does not apply to Denmark.

For the purposes of service of documents, each Member State shall designate transmitting and receiving agency or agencies competent for the service under this Regulation. Documents to be delivered under this Regulation shall be delivered by the receiving agencies based on the application of the transmitting agencies prepared in the official language of the Member State of the receiving agency (or other language acceptable by that Member State).

Each Member State shall be free to effect service of judicial documents on persons residing in another Member State, without application of any compulsion, directly through its diplomatic or consular agents. However, any Member State may make it known that it is opposed to such service within its territory, unless the documents are to be served on nationals of the Member State in which the documents originate. Moreover, each Member State shall be free to effect service of judicial documents directly by postal services on persons residing in another Member State by registered letter with acknowledgement of receipt or equivalent.

**Official Journal of the European Union, L 324, 10 December 2007, p. 79 - 120**

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## TAXATION – INDIRECT TAXES ON RAISING OF CAPITAL

Council Directive 2008/7/EC of 12 February 2008 concerning indirect taxes on the raising of capital

This Directive repeals and supersedes in full Directive 69/355/EEC of 17 July 1969 concerning indirect taxes on the raising of capital, with effect from 1 January 2009. The Directive regulates levying of indirect taxes in respect of: (a) contributions of capital to capital companies (defined for each Member State in Annex I to the Directive) – “capital duty”; (b) restructuring operations involving capital companies; and (c) the issue of certain securities and debentures, which can create double taxation interfering with the free movement of capital.

In principle, none of the above transactions shall be subject to indirect tax in the Member States. However, Member States which as at 1 January 2006 charged a capital duty, may continue to do so provided that they comply with the provisions of the Directive. If, at any time after 1 January 2006, a Member State discontinues the charging of capital duty, it may not reintroduce it.

Member States are obliged to bring into force laws, regulations and administrative provisions, which are necessary to comply with articles of the Directive by 31 December 2008 at the latest.

**Official Journal of the European Union, L 46, 21 February 2008, p. 11-22**

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## TAXATION – EXCHANGE OF VAT INFORMATION

Council Regulation (EC) No 143/2008 amending the Council Regulation (EC) No 1798/2003 on administrative cooperation in the field of value added tax and repealing Regulation (EEC) No 218/92 as regards the introduction of administrative cooperation and the exchange of information concerning the rules relation to the place of supply of services, the special schemes and the refund procedure for value added tax.

The regulation defines more precisely the rules and procedures for the exchange of value added tax information on services supplied electronically as well as for any subsequent exchange of information between Member States. The competent authorities of each Member State shall ensure that persons involved in the intra-Community supply of goods or services and under certain conditions also non-established taxable persons supplying services electronically are allowed to obtain confirmation of the validity of the VAT identification number of any specified person.

If the competent authority of the Member State of establishment (where the taxable person is established) receives the application for refund of VAT to taxable persons not established in the Member

State of refund but established in another Member State, the authority shall forward the application to the competent authorities of each Member State of refund concerned with confirmation that the applicant is a taxable person for the purposes of VAT and that the identification or registration number given by this person is valid for the refund period within 15 calendar days of the receipt of application and by electronic means. The regulation also lays down more detailed rules and procedures for the conservation of

information regarding refund of value added tax.

The Regulation entered into force on 20 February 2008, Article 1 shall apply from 1 January 2010 and Article 2 shall apply from 1 January 2015. The Regulation is binding in its entirety and directly applicable in the Member States.

**Official Journal of the European Union, L 44, 20 February 2008**

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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), JUDr. Jana Ďurišová (4260/307 989 73), JUDr. Simona Haláková (5503/318 195 41), 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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