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EUROPEAN COMMUNITY **LAW NEWS**

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Štúrova 4
811 02 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

INTRODUCTION OF EURO IN SLOVAKIA

Council Regulation (EC) No 693/2008 of 8 July 2008 amending Regulation (EC) No 974/98 as regards the introduction of the euro in Slovakia; Council Regulation (EC) No 694/2008 of 8 July 2008 amending Regulation (EC) No 2866/98 as regards the conversion rate to the euro for Slovakia; Council Decision of 8 July 2008 in accordance with Article 122(2) of the Treaty on the adoption by Slovakia of the single currency on 1 January 2009.

The above regulations and decision represent legal regulation for introduction of the euro in the Slovak Republic.

On the basis of reports presented by the Commission and the European Central Bank on the progress made in the fulfilment by the Slovak Republic of its obligations regarding the achievement of economic and monetary union, the Commission concluded that in Slovakia, the national legislation, including the Statute of the national central bank, is compatible with Articles 108 and 109 of the Treaty and the Statute of the European System of Central Banks.

Further, regarding the fulfilment by Slovakia of the convergence criteria mentioned in the four indents of Article 121(1) of the Treaty, the Commission states that (i) the average inflation rate in Slovakia in the year ending March 2008 stood at 2.2 percent, which is well below the reference value, and it is likely to remain below the reference value in the months ahead, albeit with a narrowing margin; (ii) the budget deficit in Slovakia has seen a credible and sustainable reduction to below 3 percent of GDP; (iii) Slovakia has been a member of ERM II since 28 November 2005; in the two-year period ending 18 April 2008, the Slovak koruna (SKK) has not been subject to severe tensions and Slovakia has not devalued, on its own initiative, the SKK bilateral central rate against the euro; (iv) in the year ending March 2008, the long-term interest rate in Slovakia was, on average, 4.5 percent which is below the reference value.

Therefore, according to Article 122(2) of the Treaty, the Council, acting by qualified majority on a proposal by the Commission, has decided that Slovakia fulfils the necessary conditions for the adoption of the single currency – euro. The derogation in favour of Slovakia in respect of participation in Economic and Monetary Union referred to in Article 4 of the 2003 Act of Accession shall be abrogated with effect from 1 January 2009.

The single currency – euro shall be adopted in the Slovak Republic as of 1 January 2009 without any "phasing-out" period. The conversion rate applicable to Slovak korunas has been determined at 1 EUR = 30.1260 SKK, what corresponded to then current central rate of SKK in the exchange rate mechanism (ERM II).

Official Journal of the European Union, L 195, 24 July 2008

michal.zeman@cechova.sk
michaela.jurkova@cechova.sk

POSTAL SERVICES: COMMISSION DECISION RELATING TO HYBRID MAIL SERVICES

Commission Decision of 7 October 2008 on the Slovakian postal legislation relating to hybrid mail services

The latest amendment to Act No. 507/2001 Coll. on Postal Services effective from 1 April 2008 ("Act on Postal Services" and "Amendment") replaced the cumulative condition of collecting and delivering, contained in the definition of postal reservation, with alternative one. The content of services reserved to universal service provider, being Slovenská pošta, has been thereby extended for delivering of bulk items sent by the client to the operator by electronic means (so called "hybrid mail").

Pursuant to Commission Decision of 7 October 2008 on the Slovakian postal

legislation relating to hybrid mail services ("Decision") that is directly binding on the Slovak Republic, the Article of Act on Postal Services, as amended by the Amendment, the General Authorization of the Postal Regulatory Office of 18 July 2008, the interpretation of these acts and their preceding versions by the Slovak authorities, as well as enforcement measures undertaken against private operators, are contrary to Article 86(1) of the EC Treaty, read in conjunction with Article 82 of the EC Treaty since according to the European Commission they reserve to Slovenská pošta the delivery of hybrid mail items which should be open to competition.

At the time of writing this Article, the Slovak Republic has not informed the Commission of the measures it has taken to put an end to the infringement mentioned above.

peter.mateja@cechova.sk
tomas.rybar@cechova.sk

STATE AID – NEW GENERAL BLOCK EXEMPTION REGULATION

Commission Regulation (EC) No 800/2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty (General block exemption Regulation)

By the General Block Exemption Regulation, the European Commission declares that certain categories of state aid are compatible with the EU single market and shall not be subject to the requirement of prior notification laid down in Article 88(3) of the EC Treaty. Therefore, the EU Member States may implement state aid measures which fulfil the conditions of the General Block Exemption Regulation without having gone through the notification procedure. Purpose of this General Block Exemption Regulation was to consolidate into one text and to harmonise the rules previously existing in different regulations.

The General Block Exemption Regulation regulates the following state aid types: (i) aid for research, development and innovation; (ii) regional aid; (iii) investment aid for small and medium enterprises; (iv) training aid; (v) aid for disadvantaged or disabled workers; (vi) aid in the form of risk capital; (vii) aid for environmental protection; and (viii) aid promoting female entrepreneurship. The fact that a particular state aid measure is not covered by the General Block Exemption Regulation does not imply that it is going to be prohibited by the Commission. Such measures falling outside the scope of the General Block Exemption Regulation will merely remain subject to the standard obligation of prior notification to the Commission.

State aid exempted by the General Block Exemption Regulation may be cumulated with any other aid exempted under the General Block Exemption Regulation as long as those aid measures concern different eligible costs.

The General Block Exemption Regulation repeals Commission Regulation (EC) No 1628/2006 on the application of Articles 87 and 88 of the Treaty to national regional investment aid. Further, it stipulates that any references to the above repealed Regulation and to Regulation (EC) No 68/2001, Regulation (EC) No 70/2001 and Regulation (EC) 2204/2002 shall be construed as references to the General Block Exemption Regulation.

The General Block Exemption Regulation came into effect on 29 August 2008 and it shall apply until 31 December 2013.

Official Journal of the European Union, L 214, 9 August 2008, p. 3-47

jakub.ondrejka@cechova.sk
michaela.jurkova@cechova.sk

STATE AID - INCOMPATIBILITY OF SLOVAK INDIVIDUAL TAX CONCESSION WITH THE COMMON MARKET

Commission Decision of 4 June 2008 on State aid C 57/07 (ex N 843/06) which the Slovak Republic is planning to implement for Alas Slovakia, s.r.o.

By a letter dated 15 December 2006, the Slovak authorities notified their intention to grant a regional investment aid for up to SKK 100,813,444 (approx. EUR 2.89 million) in the form of a tax concession for Alas Slovakia, s.r.o. (the "beneficiary") active

in the extraction and processing of non-reserved minerals for building materials. The beneficiary had been granted 100% corporate tax concession for 5 years before the accession of the Slovak Republic to the EU. The notified tax concession was based upon Section 52(3) of Act No. 595/2003 Coll. on income tax, as amended, under which the beneficiary was allowed to apply for a further tax credit of 50% during the subsequent five years, i.e. between 2007 and 2011, in order to set up three new establishments and to modernise, rationalise and diversify six existing production facilities. The Commission examined whether the expected contribution of the aid to regional development of the regions of Nitra, Trnava and Trenčín would offset its negative effects on competition and trade, and raised several doubts on compatibility of the planned regional investment aid with the common market under derogation laid down in Article 87(3)(a) of the EC Treaty and the 1998 Guidelines on National Regional Aid ("RAG 1998").

First, regional investment aid is limited to initial investment contrary to operating aid covering also replacement aid, which is allowed only under specific conditions laid down by RAG 1998. Second, there was only relatively limited regional contribution of the planned aid, and the Commission pointed out to a relatively high amount of aid per created job. Furthermore, the incentive effect of additional regional aid was quite doubtful, since the location of beneficiary's activities is determined by the availability of minerals and the beneficiary is already operating in most of the establishments. Finally, there was a considerable potential effect on trade and distortion of competition, as the trade with other Member States (e.g. Austria or the Czech Republic) could be distorted.

In the absence of any comments from the Slovak Republic and third parties to dispel the doubts raised by the Commission, the Commission deemed the abovementioned doubts to be confirmed. Hence, the Commission decided on 4 June 2008 that the notified tax concession was not compatible with the common market and that the planned state aid may not be implemented.

Official Journal of the European Union, L 248, 17 September 2008, p. 19 - 24

michaela.jurkova@cechova.sk

COMPETITION LAW – NEW GUIDELINES ON NON-HORIZONTAL MERGERS

Guidelines on the assessment of non-horizontal mergers under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings; Notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004

The Commission has published its new Guidelines on non-horizontal mergers. The guidelines set rules for examinations of mergers of undertakings active on different markets by the Commission under powers conferred upon it by Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (the "Merger Regulation"). These guidelines shall apply to concentrations of vertical (companies engaged in the same supply chain as customers and suppliers) and conglomerate nature (mergers of companies active in unrelated markets). New guidelines adopted after public consultation launched by the Commission have ambition to reflect less formalistic approach to assessment of mergers, with emphasis laid on economic effects of proposed concentrations on the market. New guidelines complement the Guidelines on horizontal mergers, which deal with mergers of companies who compete on the same markets.

The Commission revised also another important piece of legislation on competition law, the Commission Notice on remedies acceptable in a process of clearance of concentrations. The document shall provide companies with clear understanding how to remedy competition concerns identified by the Commission in assessment of concentrations notified under the Merger Regulation. The main changes include the introduction of a form

for submitting information on proposed remedies, details on divestiture and suitable purchaser of divested assets, as well as conditions for accepting remedies concerning access to facilities.

Guidelines on the assessment of non-horizontal mergers under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings, Official Journal of the European Union, C 265, 18 October 2008

Notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004, Official Journal of the European Union, C 267, 22 October 2008

martin.vavrincik@cechova.sk
michaela.jurkova@cechova.sk

PRIVATE INTERNATIONAL LAW - ROME I REGULATION

Regulation (EC) 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I)

Following the adoption of Regulation (EC) No 44/2001 of 22 December 2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (the Brussels I Regulation) and of Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II Regulation), the Rome I Regulation completes the harmonisation of the rules of private international law relating to both contractual and non-contractual obligations in civil and commercial matters.

The Rome I Regulation actually replaces and converts into a Community regulation based on Article 61(c) of the EC Treaty the Rome Convention on the law applicable to contractual obligations, opened for signature in Rome on 19 June 1980 (80/934/ECC), what shall standardise the relevant rules of private international law in the Member States by conferring a power of interpretation on the Court of Justice of the European Communities (the protocols conferring on the Court of Justice the jurisdiction to interpret the Rome Convention never entered into force). The Rome I Regulation also intends to modernise the rules of the Rome Convention, in particular for the protection of consumers and workers (known as the "weaker parties").

The Rome I Regulation will apply to contracts concluded after 17 December 2009. The Regulation will not apply in Denmark and in the United Kingdom.

Official Journal of the European Union, 4 July 2008, L177, p. 6-16

michaela.jurkova@cechova.sk

DATABASE PROTECTION - EXTRACTION WITHOUT TECHNICAL PROCESS OF COPYING

Judgement of the Court of Justice in Case C-304/07 Directmedia Publishing GmbH v Albert-Ludwigs-Universität Freiburg of 9 October 2008

On 9 October 2008, the Court of Justice of the European Communities (the "Court") issued a judgement concerning the sui generis database protection in connection with the operation of consulting a protected database on-screen and transferring material contained therein following individual assessment of the transferor.

The application was made in a dispute between a German university that published on the Internet a database of German verse titles drawn up by Mr Knoop, a professor at that university (the "University"); and a marketer of a CD-ROM collection of German verse compiled predominantly from this database ("Directmedia"). The German court raised a question whether using the contents of a database by Directmedia in the above circumstances constitutes an 'extraction' within the meaning of the Database Directive (Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases) which the University may prevent; or whether the 'extraction' within the meaning of that provision presupposes the (physical) copying of data.

In its judgement, the Court held that the transfer of material from a protected database to another database following an

on-screen consultation of the first database and an individual assessment of the material contained in that first database is capable of constituting an 'extraction'. According to the Court, the fact that material contained in one database may be transferred to another database only after a critical assessment by the person carrying out the act of transfer does not preclude a finding that there has been a transfer of elements from the first database to the second one.

We note that the Database Directive has been transposed into the Slovak legislation through the Copyright Act (Act No. 618/2003 Coll. on copyright and related rights, as amended). Under Slovak law, the creator of a database shall have the right to authorise any extraction from the database, while the extraction is defined as permanent or temporary transfer of all or a substantial part of the contents of a database to another medium by any means or in any form. The Slovak courts shall construe the term 'extraction' in compliance with this judgement.

http://curia.europa.eu

peter.mateja@cechova.sk
michaela.jurkova@cechova.sk

INTERNET SERVICES PROVIDERS - ELECTRONIC COMMERCE

Judgement of the Court of Justice of 16 October 2008 in Case C-298/07 Bundesverband der Verbraucherzentralen und Verbraucherverbände – Verbraucherzentrale Bundesverband eV v deutsche internet versicherung AG

The Court of Justice of the European Communities (the "Court") ruled on the basis of a reference for preliminary ruling concerning the interpretation of Article 5(1)(c) of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce). The reference concerned the preliminary question whether a service provider operating exclusively on the internet is under an obligation to communicate its telephone number to clients prior to the conclusion of a contract.

The Court in this judgement declared that under Article 5(1)(c) of Directive 2000/31/EC, a service provider is required to supply to recipients of the service, before the conclusion of a contract with them, in addition to its electronic mail address, other information which allows the service provider to be contacted rapidly and communicated with in a direct and effective manner. That information, however, does not necessarily have to be a telephone number. Such information may be in the form of an electronic enquiry template through which the recipients of the service can contact the service provider via the internet, to whom the service provider replies by electronic mail. On the other hand, in a situation where a recipient of the service, after contacting the service provider electronically, finds himself without access to the electronic network, the service provider must provide to the recipient access to another, non-electronic, means of communication.

http://curia.europa.eu

andrea.jezerska@cechova.sk
michaela.jurkova@cechova.sk

LABOUR LAW – HIGHER PROTECTION OF TEMPORARY AGENCY WORKERS UNDER NEW EC DIRECTIVE

Proposal for the Directive of the European Parliament and the Council on temporary agency work

Under the Directive on working conditions for temporary workers (the "Directive") which was endorsed by the European Parliament on 22 October 2008, temporary workers hired through agencies shall be equally treated as employees on permanent contracts.

The Directive ensures that temporary workers are granted the same rights as the permanent workers in terms of basic working and employment conditions (including pay, holidays, working time, rest periods and maternity leave) and in terms of

access to collective facilities (such as canteens, child care facilities, or transport services). In order to increase their employability, the Directive also provides for better access to training both when working on an assignment, and in between assignments. Furthermore, the Directive also gives the temporary workers the right to be informed of any vacant posts in the user undertaking.

The principle of equal treatment as the general rule shall apply from day one of the temporary work. Any exemptions will have to be agreed by social partners, either through collective bargaining or through social partner agreements concluded at national level.

The final version of the Directive is now waiting for its publication in the Official Journal of the European Union. The Member States will then have to transpose the Directive into their respective national laws within three years following its entry into force.

Under the currently applicable Slovak Labour Code (Act No. 311/2001 Coll., as mended), wage conditions of temporary workers do not have to equal to those of permanent employees provided the temporary employee works for the employer for less than three months. Furthermore, the Slovak Labour Code does not guarantee equal treatment of temporary workers as concerns holidays, rest periods, child care facilities and transport services; therefore, it will be necessary to amend it to comply with the Directive.

http://register.consilium.europa.eu/pdf/en/08/st10/st10599.en08.pdf

zuzana.holasova@cechova.sk
michaela.jurkova@cechova.sk

TRADEMARKS AND COMPARATIVE ADVERTISING

Judgement of the Court of Justice of 12 June 2008 in Case C-533/06 O2 Holdings Limited and O2 (UK) Limited v Hutchinson 3G UK Limited

This reference for a preliminary ruling relates to the interpretation of Article 5(1) of First Council Directive 89/104/EEC to approximate the laws of the Member States relating to the trade marks, and Article 3a(1) of Council Directive 84/450/EEC concerning misleading and comparative advertising. Reference was made in the context of a dispute between O2 Holdings Limited ("O2") and O2 (UK) Limited ("O2 UK") on the one side and Hutchinson 3G UK Limited (hereinafter as the "H3G") on the other side concerning the use of marks belonging to O2 and O2 UK by H3G in comparative advertising.

O2 and O2 UK run their business as suppliers of the mobile phone services, and use bubble images as their trade marks registered in the United Kingdom for various ways of advertising their services. In 2004, H3G launched an advertising campaign in which it compared the price of its services with the services provided by O2 and O2 UK, using the moving black and white bubble imagery. O2 and O2 UK began proceedings against H3G where they accepted that the price comparison was true and advertisement as a whole was not misleading but they contested the use of their registered trade marks.

The Court of Justice in its judgment states that Article 5(1) and (2) of Directive 89/104/EEC and Article 3a(1) of Directive 84/450/EEC must be interpreted to the effect that the proprietor of a registered trade mark is not entitled to prevent the use by a third party of a sign identical with, or similar to, his mark, in a comparative advertisement which satisfies all the conditions, laid down in Article 3a(1) of Directive 84/450, under which comparative advertising is permitted.

However, where the conditions required in Article 5(1)(b) of Directive 89/104 to prevent the use of a sign identical with, or similar to, a registered trade mark are met, a comparative advertisement in which that sign is used cannot satisfy the condition, laid down in Article 3a(1)(d) of Directive 84/450, under which comparative advertising is permitted. Article 5(1)(b) of

Directive 89/104 is to be interpreted as meaning that the proprietor of a registered trade mark is not entitled to prevent the use by a third party, in a comparative advertisement, of a sign similar to that mark in relation to goods or services identical with, or similar to, those for which that mark was registered where such use does not give rise to a likelihood of confusion on the part of the public, and that is so irrespective of whether or not the comparative advertisement satisfies all the conditions laid down in Article 3a of Directive 84/450 under which comparative advertising is permitted.

http://curia.europa.eu

michal.simunic@cechova.sk
michaela.jurkova@cechova.sk

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

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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 Maretta (1601/318 172 11), Mgr. Tomáš Rybár (3988/307 967 76), Mgr. Tomáš Zárecký (4020/360 754 18)

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Štúrova 4 , 811 02 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