

EU Political Update: 17 - 21 December 2012

Week in Review – announcements and publications

Internal Market: Parliament approves unitary patent rules as Attorney General recommends dismissing appeal against enhanced cooperation

On 11 December, Members of the European Parliament (**MEPs**) [approved](#) the EU patent package (unitary patent, language regime and unified patent court). The agreement creating a unified patent court will enter into force on 1 January 2014 or after thirteen contracting states ratify it (provided that the UK, France and Germany are among them). The other two Acts would apply from 1 January 2014, or from the date when the international agreement enters into force, whichever is the latest. The package has been adopted using the enhanced cooperation procedure between 25 Member States. Spain and Italy are currently outside the new regime, but are free to join at any time.

Separately, Advocate General (**AG**) Bot, of the European Court of Justice (**CJEU**), [issued](#) an opinion recommending that the CJEU dismiss an action brought by Italy and Spain opposing the development of the EU unitary patent rules. AG Bot disagreed with Spain and Italy's contention that there is no shared competence between the EU and the Member States for the purpose of setting up enhanced cooperation in the area of the unitary patent, or that the creation of such a patent comes within the exclusive competences of the EU, since it forms part of the competition rules necessary for the functioning of the internal market.

AG Bot also dismissed arguments against the unitary patent rules on grounds of requirements that, if patent applications are not made in English, French or German, they will have to be accompanied by a translation into one of these three languages.

The Advocate General held that the question of language arrangements is not a condition that determines the validity of the decision authorising enhanced cooperation. Finally he also ruled that the decision does not prevent either Spain or Italy from participating in the enhanced cooperation in future.

Gender Balance: list of 'Global Board Ready Women' published in an online database

On 12 December, the European Business Schools Women on Boards Initiative [announced](#) that it is migrating its 'Global Board Ready Women' list of 8,000 women into an online database. The list will be consultable online for corporations and executive search companies.

The women on the list all fulfil criteria developed and defined over the last year and a half by members of the European Business Schools / Women on Boards initiative. All of the women are suitable to be considered for publicly listed company board level positions and have at least five years' experience in one or more of the following roles:

- Chair and / or NED of listed / private corporations;
- CEO, COO, CFO or other C-suite executive / director level in listed / private corporations;

Key issues

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- Family member and controlling shareholder of boards of large family companies;
- Director of government agencies;
- Director of a non-profit organisation;
- Institutional investment community senior professional;
- Professional firm's senior partner serving boards and their committees as clients;
- Entrepreneur; and / or
- Senior academic with relevant experience.

The database will be administered by the [Financial Times Non-Executive Directors' Club](#) on LinkedIn and every application to be part of the database will be formally assessed and reviewed so that only those women meeting the criteria are accepted.

International Trade: Commission welcomes Parliament's support for closer ties with Central America and trade deals with Peru and Colombia

On 11 December the European Parliament gave its [backing](#) to a major political and economic deal with Central America (Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama) as well as an important trade deal with Peru and Colombia.

The Association Agreement with Central America is the first ever region-to-region Association Agreement which relies on three mutually reinforcing pillars, namely political dialogue, cooperation and a trade agreement. According to Trade Commissioner Karel De Gucht, *'today's green light from the European Parliament paves the way to opening our markets to create business opportunities, creating growth and jobs in the EU and Peru, Colombia and across Central America.'*

Under the Lisbon Treaty, Parliament is required to give its consent to the Union's association and trade agreements and to be co-legislator on trade matters with the Council. On 11 December, Parliament also voted on the Regulation implementing the bilateral Safeguard Clause of the agreements that will provide a safety net for Union industries in case of an injurious surge of imports from the countries concerned.

[According](#) to the Commission, *'both agreements will provide for a progressive and reciprocal liberalisation, leading to an ambitious free trading regime.'*

Internal Market: Commission adopts Action Plan to modernise European company law and corporate governance

On 12 December the Commission [adopted](#) an [Action Plan](#) outlining 16 different initiatives in the areas of company law and corporate governance. Some of these will be proposals for new legislation whilst others may require soft law (recommendations and corporate governance codes) or an information pack. All are considered priority actions.

Commission analysis and consultations over the last two years indicate that further improvements can be made by encouraging and facilitating long term shareholder engagement, by increasing the level of transparency between companies and their shareholders and by simplifying cross-border operations of European undertakings.

[Key elements](#) of the Action Plan include:

- Increasing the level of transparency between companies and their shareholders, for example, in respect of board diversity and risk management policies, in order to improve corporate governance;
- Initiatives aimed at encouraging and facilitating long-term shareholder engagement; and

- Initiatives in the field of company law to support European business and encourage their growth and competitiveness, particularly in relation to cross-border activities.

In addition, the Action Plan foresees merging all major company law Directives into a single instrument. According to the Commission, this will make European company law more accessible and comprehensible, and reduce the risk of future inconsistencies between them.

Aviation: MEPs vote on "better airports package"

On 12 December Parliament [voted](#) in support of proposed measures to help increase the capacity of Europe's airports, reduce delays and improve the quality of services offered to passengers. In its vote on the "airports package" Parliament gave strong support to the Commission's proposals to improve slot allocation as well as to improve the transparency of noise decisions. Parliament referred the proposals on ground handling back to the relevant Parliamentary Committee for further consideration.

According to European Commission Vice-President Siim Kallas, the EU needs *'to work further to find common ground to tackle problems of quality and efficiency in ground handling. 70% of delays happen on the ground not in the air.'*

Whilst Parliament voted to support the Commission's proposals for the introduction of secondary trading slots, it added additional measures to strengthen the Commission's proposals on the independence of the slot coordinators across Europe and higher transparency of information regarding slot information. Parliament supported the Commission's proposal to increase the transparency in the process of setting noise-related restrictions at airports.

The rules on slots and noise will now be considered by the Council which must try to reach a political agreement.

Financial Services: Parliament votes in favour of enhanced cooperation on the FTT

On 12 December the Commission proposal to authorise the use of the enhanced cooperation procedure for a Financial Transactions Tax (FTT) [received](#) resounding support from Parliament with 533 votes to 91, and 32 abstentions.

Algirdas Šemeta, Commissioner responsible for Taxation and Customs Union, [stated](#) that *'the eleven willing Member States must be allowed to move ahead with the Financial Transactions Tax, for the sake of fair taxation and a stronger Single Market.'* The text stresses that the ultimate goal should still be a worldwide FTT, and urges the EU to continue campaigning for that. To this end, the eleven countries (Austria, Belgium, Estonia, France, Germany, Greece, Italy, Portugal, Slovakia, Slovenia and Spain), representing 90% of eurozone GDP, should set an example of what a geographically wider tax could achieve.

Having obtained Parliament's consent, the Commission now needs a qualified majority vote in favour in the Council.

Financial services: ECOFIN Council agrees position on bank supervision

On 13 December the Economic and Financial Affairs Council (ECOFIN) [set out](#) its position, with a view to negotiations with Parliament, on two proposals aimed at establishing a single supervisory mechanism (SSM) to oversee credit institutions in the European Union. Agreement in the Council will enable the Presidency to negotiate with Parliament, with the aim of adopting the legislation before the end of 2012, in line with the European Council's conclusions of October.

The proposals comprise:

- A Regulation conferring on the European Central Bank (ECB) specific policy tasks relating to the prudential supervision of credit institutions; and
- A Regulation amending [Regulation \(EU\) No 1093/2010](#) establishing the European Banking Authority (EBA).

Under the proposals, the ECB, in cooperation with national supervisory authorities, would have direct oversight of all eurozone banks. Non-euro Member States wishing to participate in the SSM would be able to enter into cooperation arrangements.

The ECB would be responsible for detecting risks to banks' viability and requiring them to take the necessary actions. It would be competent for licensing and authorising credit institutions, assessing qualifying holdings, ensuring compliance with

minimum capital requirements, ensuring the adequacy of internal capital, conducting supervision on a consolidated basis and supervisory tasks in relation to financial conglomerates. The ECB would also ensure compliance with provisions on leverage and liquidity, apply capital buffers and carry out, in coordination with resolution authorities, early intervention measures for breaches or potential breaches of regulatory capital requirements.

The ECB's oversight would be phased in over the course of 2013. It will initially cover only those credit institutions which have received financial assistance. It will be extended, by July 2013, to include systemically important institutions and by 1 January 2014 to all credit institutions. The proposals also foresee changes to the EBA Regulation, in particular as regards voting modalities, which are intended to ensure that the countries participating in the SSM would not have an automatic veto in the EBA's board of supervisors.

People on the move

There are no appointments of note.

This week in the Institutions

European Commission

17 December

- President José Manuel Barroso will attend the Brussels Sustainable Development Summit, Brussels
- Commissioner Viviane Reding will deliver a speech to a conference organised by The Council of Bars and Law Societies of Europe on the Common European Sales Law, Brussels
- Commissioner Viviane Reding will deliver a speech during the Vodafone Foundation Smart Accessibility Awards, Brussels
- Commissioner Michel Barnier will receive the General Electric CEO for Europe, Nani Beccalli, Brussels

18 December

- The Commission will [adopt](#) a Communication entitled 'The Digital Agenda for Europe – Driving European Growth Digitally'
- President José Manuel Barroso will attend the announcement of the laureates of the EU Children of Peace Prize and the launch of the Nobel Peace Prize Laureates in Portraits exhibition with Commissioners Androulla Vassiliou and Kristalina Georgieva, Oslo
- Commissioner Michel Barnier will receive the President of Société Générale, Frédéric Oudéa, Paris
- Commissioner Günther Oettinger will receive representatives of the Alliance for a Competitive European Industry, Brussels

19 December

- Weekly College of Commissioners meeting
- The Commission will [adopt](#) new Broadband Guidelines on state aid to broadband networks, replacing its current Broadband Guidelines of 2009

- The Commission will [adopt](#) its proposal to revise the Tobacco Products Directive
- The Commission will [propose](#) a blueprint for a new culture of entrepreneurship in Europe

21 December

- President José Manuel Barroso and Commissioner Günther Oettinger will attend the EU-Russia summit, Brussels

European Parliament

17-21 December – Committee meetings

17 – 18 December

[Committee on Economic and Monetary Affairs \(ECON\)](#)

- Monetary dialogue with Mario Draghi, President of the European Central Bank
- Exchange of views and Economic Dialogue with the President of the Council and Cypriot Finance Minister, Vassos Shiarly
- Establishing a facility for providing financial assistance to Member States whose currency is not the Euro
- Securities settlement in the EU and central securities depositaries (CSDs); and amendment of Directive 98/26/EC
- Amendment of Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts

[Committee on the Internal Market and Consumer Protection \(IMCO\)](#)

- Union Customs Code (Recast)
- Implementation of the Audiovisual Media Services Directive
- Annual report on competition policy
- A new agenda for European consumer policy
- Protection of individuals with regard to the processing of personal data; and the free movement of such data (General Data Protection Regulation)
- Alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR)
- Online dispute resolution for consumer disputes (Regulation on consumer ODR)
- Public procurement
- The governance of the single market

[Committee on Legal Affairs \(JURI\)](#)

- Corporate Social Responsibility: promoting society's interests and a route to sustainable and inclusive recovery

- Implementation of the Audiovisual Media Services Directive
- Protection of individuals with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and the free movement of such data (Directive)

[Committee on Industry, Research and Energy \(ITRE\)](#) and [Joint Committee Meeting](#)

- Mini-Hearing on "Industry and Research Perspectives of the General Data Protection Regulation"
- Connecting Europe Facility
- The Energy roadmap 2050, a future with energy
- Electronic identification and trust services for electronic transactions in the internal market

[Committee on Constitutional Affairs \(AFCO\)](#) and [Joint Committee Meeting](#)

[Committee on Budgets \(BUDG\)](#)

[Committee on Budgetary Control \(CONT\)](#)

[Committee on Culture and Education \(CULT\)](#)

[Committee on Development \(DEVE\)](#)

[Committee on Employment and Social Affairs \(EMPL\)](#)

[Committee on the Environment, Public Health and Food Safety \(ENVI\)](#) and [Coordinators Meeting](#)

[Committee on Women's Rights and Gender Equality \(FEMM\)](#)

[Committee on International Trade \(INTA\)](#)

[Committee on Civil Liberties, Justice and Home Affairs \(LIBE\)](#) and [Joint Committee Meeting](#)

[Committee on Fisheries \(PECH\)](#)

[Committee on Regional Development \(REGI\)](#)

[Committee on Transport and Tourism \(TRAN\)](#) and [Joint Committee Meeting](#)

Council of the European Union

17 December

- Environment Council, Justus Lipsius building, Brussels. On the [agenda](#):
 - Proposal for a Decision of the European Parliament and of the Council on a General Union Environment Action Programme to 2020 'Living well, within the limits of our planet';
 - Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: 'A Blueprint to Safeguard Europe's Water Resources';
 - Greening the European semester

18 - 20 December

- Agriculture and Fisheries Council, Justus Lipsius building, Brussels. On the [agenda](#):

- Reform of the Common Agricultural Policy – Presidency progress report;
- Sugar production levies 2002-2006

20 - 21 December

- Transport, Telecommunications and Energy Council, Justus Lipsius building, Brussels. On the [agenda](#):
 - The Connecting Europe facility (CEF), the future funding instrument for the trans-European networks in the transport, energy and telecommunications sectors;
 - The new financial and governance framework for the European satellite navigation systems EGNOS and Galileo for the period 2014 to 2020;
 - Conclusions in response to the Commission's communication of September on the future challenges for the EU's external aviation policy

21 December

- Coreper I

European Council – [The President's Agenda](#)

17 December

- Report on the European Council to the European Parliament plenary session

18 December

- Meeting with NATO Secretary-General Anders Fogh Rasmussen
- Inauguration of the EU Nobel Peace Prize Exhibition (Berlaymont)

20 December

- Presentation of letters of credentials of the Holy See Ambassador to the EU

20-21 December

- EU-Russia Summit

[Court of Justice of the European Union and General Court – This week's judicial calendar](#)

Court of Justice of the European Union

19 December

- Judgment – [C-288/11 P](#) – **Mitteldeutsche Flughafen and Flughafen Leipzig v Commission** – *State aid* – Advocate General: Sharpston

Appeal brought against the judgment of the General Court (Eighth Chamber) of 24 March 2011 in Joined Cases T-443/08 and T-455/08 Freistaat Sachsen and Others v Commission and Mitteldeutsche Flughafen and Flughafen

Leipzig/Halle v Commission, by which the General Court partially dismissed an action for partial annulment of Commission Decision 2008/948/EC of 23 July 2008 on measures by Germany to assist DHL and Leipzig Halle Airport (OJ 2008 L 346, p. 31) – Applicability of the provisions of European Union law on State aid to aid granted for the construction of airport infrastructure – ‘Undertaking’ within the meaning of Article 107(1) TFEU – Temporal application of the Commission’s guidelines

- Judgment – [C-452/11 P](#) – **Heineken Nederland and Heineken v Commission** – *Competition* – Advocate General: Jääskinen

Appeal brought against the judgment delivered by the General Court (Sixth Chamber, Extended Composition) on 16 June 2011 in Case T240/07 Heineken Nederland and Heineken v Commission by which the General Court annulled Article 1 of Commission Decision C(2007) 1697 of 18 April 2007 relating to a proceeding under Article 81 [EC] (Case COMP/B/37.766 – Dutch beer market) in so far as the European Commission found that Heineken NV and Heineken Nederland BV had participated in an infringement consisting in the occasional coordination of commercial conditions, other than prices, offered to individual consumers in the on-trade segment in the Netherlands

- Judgment – [C-445/11 P](#) – **Bavaria v Commission** – *Competition* – Advocate General: Jääskinen

Appeal brought against the judgment delivered by the General Court (Sixth Chamber, Extended Composition) on 16 June 2011 in Case T235/07 Bavaria v Commission by which the General Court annulled Article 1 of Commission Decision C(2007) 1697 of 18 April 2007 relating to a proceeding under Article 81 [EC] (Case COMP/B/37.766 – Dutch beer market) in so far as the European Commission found that Bavaria NV had participated in an infringement consisting in the occasional coordination of commercial conditions, other than prices, offered to individual consumers in the on-trade segment in the Netherlands

- Opinion – joined cases: [C-478/11 P](#); [C-479/11 P](#); [C-480/11 P](#); [C-481/11 P](#) and [C-482/11 P](#) – **Gbagbo v Council; Koné v Council; Boni-Claverie v Council; Djédjé v Council; N'Guessan v Council** – *Common foreign and security policy* – Advocate General: Cruz Villalón

Appeal lodged against the order of the General Court (Fifth Chamber) of 13 July 2011 in Case T-348/11 Gbagbo v Council by which the General Court dismissed as manifestly inadmissible the appellant’s action seeking, firstly, the annulment of Council Decision 2011/221/CFSP of 6 April 2011 amending Council Decision 2010/656/CFSP renewing the restrictive measures against Côte d’Ivoire and, secondly, of Council Regulation (EU) No 330/2011 of 6 April 2011 amending Regulation (EC) No 560/2005 imposing certain specific restrictive measures directed against certain persons and entities in view of the situation in Côte d’Ivoire (OJ 2011 L 93, p. 10) in so far as they concern the appellant – Lack of individual notification of that decision – Force majeure

- Judgment – [C-207/11](#) - **3D I** – *Taxation* – Advocate General: Jääskinen

Reference for a preliminary ruling – Commissione tributaria regionale – Interpretation of Articles 2, 4 and 8(1) and (2) of Council Directive 90/434/EEC of 23 July 1990 on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different Member States (OJ 1990 L 225, p. 1) – Transfer of shares – National legislation under which, in consequence of a transfer or exchange of shares, the transferring company is to be taxed on the capital gains arising from the transfer and the capital gain is to correspond to the difference between the initial cost of acquiring the shares or holdings transferred and their current market value – Exemption where the transferring company carries over in its own balance sheet a special reserve fund equivalent to the capital gains arising upon the transfer

- Opinion – [C-216/11](#) – **Commission v France** – *Free movement of goods* – Advocate General: Cruz Villalón

Failure of Member State to fulfil obligations – Infringement of Article 34 TFEU and of Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and

monitoring of such products (OJ 1992 L 76, p. 1), in particular Articles 8 and 9 thereof – National legislation imposing financial sanctions, above certain thresholds, in relation to the holding, for private purposes, of tobacco products acquired in one Member State and transported to another – Purely quantitative assessment criteria – Quantitative restrictions on imports

- Judgment – [C-310/11](#) – **Grattan** – *Taxation* – Advocate General: Kokott

The text is not available in English

- Judgment – [C-557/10](#) – **Commission v Belgium** – *Freedom to provide services* – Advocate General: Cruz Villalón

Failure of a Member State to fulfil obligations – Infringement of Article 56 TFEU – National legislation which imposes a prior notification requirement on independent service providers established in other Member States (the ‘Limosa’ declaration) – Restriction on the freedom to provide services – Discriminatory nature of the restriction – Lack of justification and proportionality

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

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