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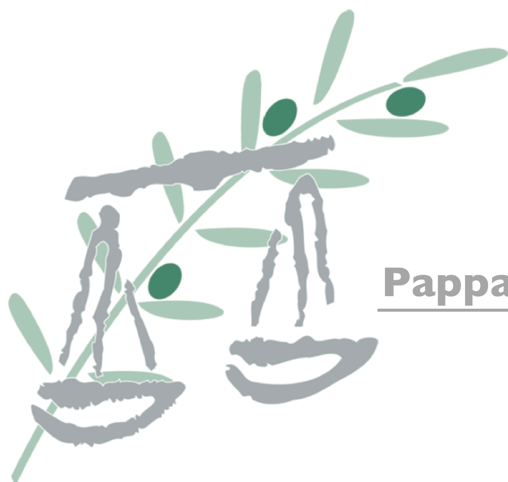

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Competition

Aides d'Etat: La Commission publie deux décisions relatives aux casinos grecs

Panayota Boussis

La Commission européenne a rendu deux décisions à la suite d'enquêtes relatives aux casinos grecs menées en application des règles de l'Union en matière d'aides d'État. Dans sa première décision, elle a conclu que les conditions de la privatisation (49 % détenus par l'État grec) du casino du Mont Parnès étaient exemptes d'aide d'État. Dans sa seconde décision en revanche, elle a considéré que la taxation moins élevée du droit d'entrée dans les casinos publics est illégale parce qu'elle crée, sans justification objective, une discrimination fiscale en faveur de ces derniers.

Première décision de la Commission concernant la vente par l'Etat grec de ses parts dans le casino du Mont Parnès

A l'issue de son enquête, lancée à la suite d'une plainte déposée en 2002 par un soumissionnaire qui avait été exclu de la procédure d'appel d'offres, la Commission a conclu ce mois-ci, que la vente des parts détenues par l'État grec dans le casino du Mont Parnès ne constituait pas une aide d'État.

L'argument principal du plaignant reposait sur le fait que son offre était plus élevée que celle du soumissionnaire ayant remporté le marché ce qui, selon lui constitue une aide d'Etat illégale. Le plaignant considère en effet que cette différence de traitement lors de la procédure a créé un dommage important pour l'Etat grec, qui n'a pas perçu le montant le plus élevé pour la privatisation du casino en question. Ceci est d'autant plus étonnant pour le plaignant que l'Etat avait la possibilité d'annuler la procédure et de publier un nouvel appel d'offres pour cette privatisation et ce, sans aucune obligation d'indemniser les participants ou de fournir une quelconque justification.

La Commission a enquêté sur la procédure de privatisation du casino du Mont Parnès afin de déterminer s'il s'agissait d'une aide d'Etat. Selon la Commission, il y aurait eu aide d'Etat illégale envers le soumissionnaire ayant remporté le marché public si le prix proposé était inférieur au prix du marché. A l'issue de cette enquête, la Commission a constaté que la privatisation du casino Mont Parnès s'était déroulée dans le cadre d'une procédure d'appel d'offres ouverte et inconditionnelle et que la Grèce semble avoir obtenu un prix conforme au marché. Elle a conclu par conséquent que la vente des parts détenues par l'État dans le casino Mont Parnès ne constituait pas une aide d'État.

Conclusion de la Commission sur la différence de taxation des droits d'entrée dans les casinos

La deuxième décision de la Commission relative aux casinos a été rendue à la suite d'une plainte déposée à la Commission en 2009 en raison d'une discrimination entre les différents casinos de Grèce, selon qu'ils étaient publics ou privés. Le régime de taxation des droits d'entrée dans les casinos en Grèce était, selon les plaignants, discriminatoire et constituait une aide d'Etat en faveur des casinos publics.

En vertu de la législation grecque, un droit d'entrée dans les casinos est imposé par décret ministériel, le montant duquel est fixé par ce même décret. Ces droits d'entrée sont taxés à un taux uniforme de 80 %, mais leur prix, qui est réglementé, s'élève à 6 EUR pour les casinos publics tandis que le droit d'entrée dans les casinos privés s'élève à 15 EUR.

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Ces dispositions spécifiques aux casinos de Mont Parnès, de Corfou et de Thessalonique (lequel, en vertu d'un arrêté est sur « l'investissement et la protection des fonds étrangers », a été assimilé aux casinos de Mont Parnès et de Corfou) permettent à ces derniers de ne verser que 4,80 EUR (80 % x 6) par droit d'entrée vendu, alors que les casinos privés doivent verser une taxe sur les entrées d'un montant de 12 EUR par ticket (80 % x 15 EUR).

Le plaignant considérait donc que la législation grecque, par cette différenciation de régime juridique créait une distorsion de concurrence car les trois casinos en question bénéficiaient d'un traitement plus favorable que les autres, attirant en raison d'un prix moins élevé du droit d'entrée légal et obligatoire une clientèle plus importante. Selon le plaignant la législation grecque créait une distorsion de concurrence au détriment des autres casinos. Il cependant à noter que cette situation était due à l'intervention de l'Etat et aux dépens de l'Etat grec qui de par son intervention a été confronté à une perte de recettes fiscales au bénéfice des trois casinos concernés. En effet, l'assiette imposable sur laquelle est assis le prélèvement de 80% était inférieure par rapport à celle des autres casinos du pays.

À l'issue de son enquête, la Commission a conclu que cette différence de traitement fiscal procure un avantage aux seuls casinos publics ou assimilés et a pour effet que l'État grec renonce à des recettes qu'il aurait dû percevoir. De plus, selon la Commission, cette mesure crée une distorsion de concurrence et affecte les échanges entre États membres, les acteurs de ce secteur étant d'habitude des groupes hôteliers internationaux dont les décisions d'investissement peuvent être influencées par cette mesure sélective.

La Commission a par ailleurs considéré que la justification fournie par l'Etat grec, à savoir, l'objectif de décourager les jeux d'argent, n'est compatible ni avec le fait que les casinos dont le droit d'entrée est inférieur englobent ceux qui sont les plus proches des grands centres urbains de Grèce, ni avec la possibilité explicite de faire entrer certains clients gratuitement.

Partant, la Commission a conclu que cette discrimination fiscale constitue une aide illégale et incompatible avec le droit communautaire et a ordonné la récupération de cette aide par la Grèce auprès des casinos publics ou assimilés avec effet rétroactif à 1999 (les pouvoirs de la Commission en matière de récupération d'une aide d'Etat étant soumis à un délai de prescription de dix ans en vertu du règlement (CE) n° 659/1999 du Conseil du 22 mars 1999). En l'absence d'informations précises sur le montant de l'aide, la Commission a fourni à la Grèce des indications quant au mode de calcul du montant à récupérer.

La Commission a également demandé à la Grèce de supprimer toute disposition encore en vigueur, susceptible d'octroyer un quelconque avantage fiscal aux casinos en cause. Elle observe toutefois que la Grèce envisage de modifier le régime de tarification afin d'éliminer les discriminations entre les casinos.

Vice President of the Commission, Joaquin Almunia Announced the Reform of EU State Aids Rules

Panayota Boussis

The current State Aid rules concerning the Services of General Economic Interest will be reformed by the end of the year. They will become clearer and simpler, assuring consequently high-quality public services within the European Union.

Introduction

On May 2nd 2011, Commissioner in charge of Directorate General Competition addressed to the EPC a discourse concerning the important policy initiative of the Commission to reform the State Aid Package on the Services of General Economic Interest (SGEI). Commissioner Almunia explained that the Commission intends to replace the current legal framework by the end of the year and underlined that the review is part of the efforts of the Commission to strengthen the internal market, in the context of the greater emphasis given by the Lisbon Treaty to the public services, in order to guarantee high-quality public services for all. Therefore, last March, after the analysis of the proposals of Member States resulting from a public consultation launched by the Commission and aiming to involve all interested parties in the procedure, the Commission issued a communication to prepare the reform of the EU State Aid rules on SGEI.

It should be reminded that SGEIs do not include all public services but only the services that are economic in nature. The Commission must assure that the public financing of those services does not distort competition within the internal market. The rules currently used in that field had been introduced in 2005. It is the so-called Monti-Kroes package. Commissionaire Almunia considers, however, that this package needs to be reviewed before the end of the year.

The Current Framework

The package applied presently has been adopted in 2005 after a ruling of the Court, well known as the *Altmark* case, which introduced four criteria[1] in order to establish if aid for public services is compatible with the EU law or not.

The Monti-Kroes package includes three elements:

a) a framework setting out the conditions under which State aid for public services can be compatible with the Treaty,
b) a transparency directive to facilitate compliance,

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[1] The Altmark criteria: 1) the recipient undertaking must actually have PSOs to discharge, and the obligations must be clearly defined, 2) The parameters for calculating the compensation must be established beforehand in an objective and transparent manner, to avoid it conferring an economic advantage which may favour the recipient undertaking over competing undertakings, 3) The compensation cannot exceed what is necessary to cover all or part of the costs incurred in the discharge of PSOs, taking into account the relevant receipts and a reasonable profit for discharging those obligations and 4) where the undertaking which is to discharge PSOs is not chosen pursuant to a public procurement procedure which would allow for the selection of the tenderer capable of providing those services at the least cost to the community, the level of compensation needed must be determined on the basis of an analysis of the costs which a typical undertaking, well run and adequately provided with means of transport so as to be able to meet the necessary public service requirements, would have incurred in discharging those obligations, taking into account the relevant receipts and a reasonable profit for discharging the obligations

c) a decision exempting – with conditions – small services from notification.

A retrospective assessment and an analysis of the situation reflect that some elements of the current package are not totally clear. Such elements include: the notion of economic activity, the question of which services should be regarded as SGEI, the notion of an effect on trade between Member States or even the conditions included in the *Altmark* ruling. Therefore, the need for a reform of the current rules seems essential to Commissioner Almunia.

Next Step: the Reform of the State Aid Rules

Since public services constitute a fundamental element of Europe's social market economy, it is important to make these services more efficient. The Commission should also focus on the public financing of the services that have a significant impact on the internal market. The aimed efficiency of the services should indeed not restrain public budget. A way to make these services more efficient is to clarify and to simplify the rules governing them. According to Commissioner Almunia, this is exactly what the Commission intends to do with this reform. He declared precisely that "*the new package should include clearer, simpler and more diversified rules*", otherwise it will be too complicated for national authorities to comply with the rules. Notions like "economic activity" or "reasonable profit", for instance, need to be clarified in order to reduce different interpretations between Member States arising from different institutional or cultural traditions.

The Commission has thus set up a strategy consisting, first, in simplifying the rules for certain types of small-scale public services that have a limited impact on trade between Member States, and for certain types of social services, which will allow to alleviate them from heavy administrative burden and will therefore make them easier to comply with the EU State Aid rules. The second part of the reform will concern the large-scale commercial services with a clear impact on the internal market.

With this reform, Commissioner Almunia aims "*to promote the best level of public services at the least cost for the community*". We will thus wait till the end of the year to discover whether these new rules governing State aids for the Services of General Economic Interest. Let us hope that the goal of the Commission will be achieved.

Fundamental Rights

Directive sur la conservation des données: le CEPD estime que la directive ne répond pas aux exigences de protection des données personnelles

Damien Thavard

Par un avis du 31 mai, le Contrôleur Européen de la Protection des Données estime que la directive européenne sur la conservation des données n'est pas conforme au droit au respect à la vie privé, en particulier au regard de l'article 8 § 2 de la CEDH, et que cette directive devrait être abrogée, ou à tout le moins fortement remaniée.

La directive constitue une ingérence dans le droit au respect de la vie privée

La directive européenne sur la conservation des données (Directive 2006/24/EC) rend obligatoire pour les fournisseurs publics de communications électroniques de conserver les données relatives au trafic et à la localisation des communications de tous les citoyens, et ce pour une période de 2 ans. Cette directive constitue dès lors une ingérence de l'État dans le droit de chacun au respect de sa vie privée, tel que défini par l'article 8 de la Convention Européenne des droits de l'Homme (CEDH) et l'article 7 de la charte européenne des droits fondamentaux.

Pour autant cette ingérence ne constitue pas nécessairement une violation de la CEDH puisque l'article 8 § 2 de la CEDH prévoit qu'*« Il ne peut y avoir ingérence d'une autorité publique dans l'exercice de ce droit que pour autant que cette ingérence est prévue par la loi et qu'elle constitue une mesure qui, dans une société démocratique, est nécessaire à la sécurité nationale, à la sûreté publique, au bien-être économique du pays, à la défense de l'ordre et à la prévention des infractions pénales, à la protection de la santé ou de la morale, ou à la protection des droits et libertés d'autrui ».*

La commission a entamé le processus d'évaluation

Le 18 avril dernier, la Commission européenne a rendu un rapport d'évaluation[2] concernant cette directive, évaluant la mise en œuvre et l'application de la directive et mesurant son impact sur les opérateurs économiques et les consommateurs. Ce mardi 31 mai 2011, le Contrôleur européen de la protection des données a adopté, de sa propre initiative, comme le lui permet l'article 41 du Règlement 45/2001 CE, un avis sur ce rapport d'évaluation de la Commission européenne.

Le CEPD relève tout d'abord, et s'en félicite, que la Commission a dans ce rapport pris en compte les implications de la directive sur les droits fondamentaux relatifs à la protection de la vie privée et des données personnelles, notamment compte tenu des critiques qui ont été exprimées au sujet de la nature intrusive de la directive pour la vie privée.

En effet bien que le CEPD ait estimé que les données relatives au trafic et à la localisation pouvaient jouer un rôle important dans les enquêtes criminelles, il a également exprimé de sérieux doutes quant à la nécessité de conserver les données à une telle échelle, s'interrogeant ainsi sur les caractères proportionnel et nécessaire de cette mesure qui ne lui semblaient pas clairement démontrés, et qui dans ce cas ne répondrait pas aux exigences de l'article 8 § 2 de la CEDH.

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[2] Rapport de la Commission, du 18 avril 2011, au Conseil et au Parlement européen - Rapport d'évaluation concernant la directive sur la conservation des données (directive 2006/24/CE) (COM(2011) 225 final)

L'avis du CEPD

Et dans son avis, le CEPD estime que la directive ne répond pas à ces exigences fixées par le droit fondamental à la protection de la vie privée et des données, puisque la nécessité de la conservation des données telle que fixée par la directive n'a pas été clairement démontrée, que la conservation des données pourrait être réglementée de façon moins intrusive, et que la directive laisse une trop grande marge de manœuvre aux États membres quant aux finalités pour lesquelles les données peuvent être utilisées, ainsi que sur la question de savoir qui peut accéder aux données et sous quelles conditions.

Peter Hustinx, Contrôleur Européen de la Protection des données estime en effet que « *Bien que la Commission ait procédé à une collecte rigoureuse d'informations auprès des États membres, les informations quantitatives et qualitatives fournies par les États membres ne sont pas suffisantes pour tirer une conclusion positive sur la nécessité de la conservation des données telle que prévue par la directive. Il est donc nécessaire d'examiner plus en avant le caractère nécessaire et proportionnel de la directive, et en particulier de considérer des moyens alternatifs, moins intrusifs, pour la vie privée* ».

Un avis constructif : le CEPD comme force de proposition

Fort de ce constat, le CEPD rappelle que l'objectif du rapport d'évaluation est de servir de base pour une éventuelle modification de la directive. Et estime que la Commission devrait envisager toutes les options possibles dans ce nouveau processus, y compris la possibilité d'abroger la directive, éventuellement associée à une proposition de mesure alternative, plus ciblée, au niveau européen.

Dans le cas où la nécessité d'un instrument européen sur la conservation des données serait démontrée, le CEPD estime que cet instrument devrait établir des règles globales et véritablement harmoniser les obligations de conservation des données, ainsi que d'accès et d'utilisation de ces données par les autorités compétentes mais également être exhaustif, c'est-à-dire fixer un objectif clair et précis qui ne peut pas être contourné, tout cela en étant proportionné et n'allant pas au-delà de ce qui est nécessaire.

En ce sens, on ne peut pas donner tort au CEPD. Si résoudre une enquête criminelle est effectivement une nécessité, l'invalidation d'une telle enquête devant la Cour européenne des droits de l'homme ne constitue pas une conclusion vers laquelle il faut tendre. Même si la tentation de restreindre les droits de l'homme pour des motifs de sécurité peut être une voie tentante, c'est également une voie dangereuse qui justifie l'existence de garde-fous et de limites clairement définies, ce vers quoi la Commission devrait tendre dans l'hypothèse d'une révision de cette directive.

Human Rights

The Latest European Court of Human Rights Judgments Imposing Large Fines on Turkey for Violations of Article 1 Protocol 1 to the European Convention (Right to Property)

Argyri Panezi

On the basis of Article 1 of Protocol 1 to the European Convention on Human Rights, the European Court of Human Rights in Strasburg delivered two judgments this May, both adjudicating big fines against Turkey for violations of the right to property. The following article takes a brief account of the two decisions, namely the final judgment for just satisfaction for the case of *Loizou and Others v. Turkey* (May 24) and the *Ağnidis v. Turkey* judgment (also May 24). The first decision holds that Turkey as the respondent state is to pay applicant Kostas Kalisperas, a Cypriot national, EUR 1,300,000, as a just satisfaction to the violations found. The second decision held that Turkey has to pay Ms Ekaterina Agnidis and Evridiki Agnidis EUR 4,000,000 for their damages and also EUR 11,000 in respect of their costs and expenses. The latter two applicants are Turkish nationals who live in Istanbul.

I. *Loizou and Others v. Turkey*

On 24 of May, the Court delivered its final judgment regarding just satisfaction, for the case of *Loizou and Others v. Turkey*. The later case originated in an application (no. 16682/90) against the Republic of Turkey, lodged by twenty-six Cypriot nationals and three registered companies, on January 1990. The principle judgment for this case was delivered on 22 September 2009. More specifically, in the judgment of 22 September 2009 on this case, the Court held that there had been a violation of Article 8 (right to respect for private and family life and the home) and Article 1 of Protocol No. 1 (protection of property) on account of the applicants' deprivation of their home and properties following the Turkish occupation of the northern part of Cyprus.

The Court in the principle decision had held that the administrator of the estate of applicant No.9 (Kostas Kalisperas) had standing to continue the proceedings in the deceased's stead. The Court had found "continuing violations of Article 8 of the Convention by reason of the complete denial of the right of applicants nos. 1,2,3,4,7,8,9,10,12,16 and 17 to respect for their homes and of Article 1 of Protocol 1 to the Convention by virtue of the fact that applicants nos. 1 to 17 were denied access to and control, use and enjoyment of their properties as well as any compensation for the interference with their property rights".

The applicants sought just satisfaction for the deprivation of their properties. According to Article 41 of the Convention, *if the Court finds that there has been a violation of the Convention or the Protocols, thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.*

In respect of the pecuniary and non-pecuniary damage suffered by applicant No.9 (Kostas Kalisperas) the Court had found in 2010 (26 October 2010 was the delivery date of the partial judgment on just satisfaction) that the question of application of Article 41 of the Convention was not ready for decision - as was at the time for other applicants within the same case. Indeed, the Court now, with the hereby-commented judgment of 24 of May 2011, adjudicates conclusively and on the basis of both parties submissions: "Making its assessment on an equitable basis, the Court decides to award EUR 1,300,000 under the head of pecuniary and non-pecuniary damage".

II. *Ağnidis v. Turkey*

In this case, the applicants, Ekaterina and Evridiki Agnidis, are Turkish nationals who live in Istanbul. In 1987 they inherited real property from Apostol Agnidis, their husband and father respectively. The latter held Greek nationality and the contested property is located on the Princes' Islands, an archipelago of nine islands in the Sea of Marmara, to the southeast of Istanbul. Apostol Agnidis had himself been the legitimate heir of his father, Yorgi Agnidis since 1950.

In 1994, the Directorate of the Istanbul Legal Service challenged the validity of this inheritance, arguing that Yorgi Agnidis had died without leaving an heir and that the State Treasury was the only successor in title to the property. In 2000, the Turkish courts annulled the applicants' certificate of inheritance. As the commented judgment explains, the Turkish Courts based their decision on the fact that the applicants as Turkish nationals could not acquire real property in Greece by inheritance. Since the opposite was also impossible, the "condition of reciprocity" set out in Article 35 of the Land Code, was not met. After exceeding domestic remedies, the applicants lodged an application with the European Court of Human Rights on 27 February 2002.

In its Chamber judgment of 23 February 2010, the Court concluded that there had been a violation of Article 1 of Protocol No. 1 (protection of property) to the European Convention on Human Rights. It held that it had not been established that, at the relevant time, there was a restriction in Greece preventing Turkish nationals from acquiring a building by inheritance. The decision to annul the certificate of inheritance, based on the condition of reciprocity, had consequently infringed the principle of lawfulness.

The Court also found that the question of possible just satisfaction, under Article 41 of the Convention, was not ready for decision and reversed it. Consequently, on 24 May 2011 the Strasburg Court, recognising that Ms Ekaterina Agnidis and Evridiki Agnidis had status as heirs, decided that Turkey was to pay them an amount based, in particular, on the market value of the buildings in question in this case, and considered it reasonable to award them EUR 4,000,000 for all forms of damage. Applicants were also awarded EUR 11,000 jointly in respect of their costs and expenses.

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Internal Market and Payment Services

A Refresher on the e-Money Directive

Stratis G. Camatsos

The post-crisis financial sector reforms carried out at European Union level will have a major impact on payment service providers. The impact of Directive 2009/110/EC, the e-money Directive, on the taking up, pursuit and sagacious supervision of the business of electronic money institutions will be great, but yet to be seen, as EU Member States only implemented it on 30 April 2011 into their respective national laws.

Background

The first E-Money Directive was adopted to facilitate the development of the electronic payment industry. It was intended that the first E-Money Directive would create a clear and harmonized framework.

The Second EMD was adopted as the EU Commission considered that the first E-Money Directive did not sufficiently assist the development of the market for electronic money (e-money services). The Second EMD repeals the first E-Money Directive.

The new Directive builds on the foundation of the first one, reinforcing the regulatory regime, but introducing some new ideas; i) e-money institutions can engage in a wider range of payment-related activities, allowing them to compete better with payment institutions and banks in the payment space, ii) e-money institutions, such as payment institutions, will have to safeguard funds received in exchange for e-money, and iii) there are more detailed rules on the terms and conditions applicable to e-money.

Overview

As the volume of e-commerce has increased, the use and number of e-money and other internet based payment services have also increased. Regular users of e-commerce websites will have encountered services such as PayPal, Worldpay, Amazon Payments or Google Checkout. Broadly, internet payment services fall into two categories. First, there are services such as Google Checkout, which provide a payment processing solution whereby consumers submit their credit card details to Google, or the equivalent service, who then processes payments for goods and services on participating websites without the need for the consumer to resubmit their details each time. Second, there are services such as PayPal that enable consumers to create an account into which cash can be deposited and used as e-money to pay for goods and services bought online from third parties. Both types of services offer clear advantages in terms of efficiency for businesses and convenience and security for consumers. However, development of these types of services has been slow and competition has suffered because of this. Figures on the limited number of fully licensed electronic money institutions or on the low volume of electronic money issued demonstrate that electronic money has not yet really taken off in most of the EU Member States.

The EU's proposal in 2009 followed extensive consultation, which showed that current rules, dating from 2000, have hindered the take-up of the electronic money market, hampering technological innovation. The e-money industry has significant untapped growth potential. The EU believes that the new rules will accelerate the up-take of electronic money in Europe. These labeled modern rules will hopefully foster competition and innovation, while ensuring market confidence and a high level of

protection for consumers. In the long run, the EU hopes that it will be an important contribution to the broader objective of creating a Single Market for electronic payments. One can see why the EU feels this way since it believes that the revised rules will facilitate market entrance for new providers and contribute to developing an industry whose expected volume could reach up to €10 billion by 2012.

More specifically, e-Money Directive, which has been implemented into national legislation on 30 April 2011, seeks to address these issues so as to make it easier for new entrants into the e-money market. To address definitional uncertainties, the 2009 Directive defined e money as "electronically including magnetically, stored monetary value as represented by a claim on the issuer which is issued on receipt of funds for the purpose of making transactions … and which is accepted by a natural or legal person other than the electronic money issuer". The requirement that claims be stored on an electronic device has been replaced with the requirement that the claims are electronically or magnetically stored.

The Directive also attempts to reduce the regulatory burdens faced by new entrants. In particular, the initial capital requirement has been reduced to €350,000. In relation to supervisory and regulatory burdens, the regime applicable to e money issuers is now more closely aligned to the less restrictive regime applied to payment institutions under the PSD rather than that applied to credit institutions. Overall, it seems to provide more legal clarity and reduce the barriers for entry.

Data Security and e-Commerce

One issue that is still a worry is the data security of individuals' information that is stored by electronic service providers, especially credit card details. The e-Privacy Directive 2002/58/EC has introduced a mandatory data breach notification regime for the telecommunications sector. Pursuant to the e-Privacy Directive, telecommunications and internet service providers are required to report certain data breaches to their national regulator and to affected individuals.

This has become much more relevant after the now famous hack made on Sony, where hackers were able to get consumers' actual credit card numbers. They got them on the backend, by infiltrating Sony's supposedly secure databases. Most credit cards offer users a limited amount of protection from unauthorized charges, but the potential damage from having card data stolen can still be substantial. If for instance, you're in the habit of using a debit card for online transactions rather than a traditional credit card, the risk is huge.

Therefore, with electronic payments, fraud risk is most relevant for those steps of the processing chain involving authentication or identification. For payment instruments that involve the use of specific hardware (such as card readers), fraud risk is relevant if the hardware can be compromised or altered for illicit purposes. Data security risk is relevant for all activities involving the storage and transit of payment data that may be used for identity theft or for illicit authentication or authorization of payment transactions. Data security risk may result in fraud risk if exposed records are then used for illicit purposes.

Therefore, this concern among consumers is still quite prevalent in using electronic money service providers, so whether the e-Money Directive will have a direct effect on increasing usage of these payment providers through new technology and more competition, is still yet to be seen. Nevertheless, the data protection laws, such as the e-Privacy Directive need to work in line with harmonizing legislation, such as the e-Money Directive if the EU wants to increase competitiveness, innovation, and revenue in the e-money industry.

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The implementation of the e-Money Directive into national legislation was a long awaited one, as it addressed some of the gaps that the first e-Money Directive left unfilled in 2000. However, its effect will have to be seen in the near future, as the EU needs some time to see if the goals set out for its revised e-Money Directive will become a financial and competitive reality.

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Single Market

Towards a Highly Competitive Social Market Economy: the Single Market Act

Erika Sebestyn

"A fully robust and fully operational single market is the main vehicle for economic union,"[3] said the once Internal Market Commissioner Mario Monti. The adoption of the Single Market Act will be a remarkable way of commemorating the 20th anniversary of Jacques Delors' original single market programme at the end of 2012.

Background

The single market is one of the European Union's greatest achievements and a significant symbol of the European integration process. It aims to create free trade within the EU and encompasses many of the policy areas where the EU is most powerful, such as the single currency, the Schengen Convention or the European Customs Union. Although it has been developing ever since the European Community was founded, it needs to be renewed by a collective commitment at European level. In December 2010, the European Commission put forward 50 proposals in its Communication 'Towards a Single Market Act for a highly competitive social market economy'[4] to give new impetus to the single market. The contribution made by the single market is uncontroversial and it has created 2,75 million additional jobs and growth of 1,85% in the period 1992-2009. The Commission also estimates that by completing the single market would produce growth of about 4% of GDP over the next ten years. The action plan puts Europeans, businesses, in particular small and medium-sized enterprises, creativity and innovation at the heart of the single market in order to achieve sustainable and equitable growth and to remain competitive. Restoring confidence by making access easier to employment and lifelong learning and by improving public services to general interest is also a key factor in the Communication. A separate section is devoted to the governance of the single market and focuses on dialogue with civil society, evaluation, partnership approach and better implementation and enforcement of single market rules.

Public Consultation on the Single Market Act

In order to ensure the widest possible support and the best possible implementation of single market rules, the Act was discussed throughout Europe at institutional, national and local levels. The European Parliament gave the first response to the Commission's action plan, when in early April it passed three recommendations correspond to the three pillars of the proposed Single Market Act.[5] In the resolution on "Governance and Partnership" MEPs ask for faster end more efficient infringement procedures and for the better implementation of the single market directives. The second report on "A Single Market for Enterprises and Growth" urges the Commission to launch cross-border projects for energy, transport and telecommunication and to encourage online trading. The third recommendation on a "Single Market for Europeans" calls for the protection of social welfare rights and contains a variety of demands on banking, pensions and phone charges.

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[3] http://www.civitas.org.uk/eufacts/FSECON/EC1.htm (23.05.2011.)
[4] European Commission: Towards a Single Market Act
http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0608:REV1:EN:PDF#page=2 (23.05.2011.)
[5] http://www.europarl.europa.eu/en/headlines/content/20110324FCS16438/6/html/Relaunching-the-single-market (23.05.2011.)

Following the wide-ranging public debate, the Commission presented the final "Single Market Act: Twelve levers to boost growth and strengthen confidence"[6] and proposed the EU to adopt a key action for each lever by the end of 2012. If these key actions with the legislative proposals are adopted quickly by European legislators and properly transposed and implemented by Member States, they will significantly boost growth.

The key actions:

1. Making access to finance easier for 21 million European small and medium-sized companies.
2. Modernising the system for recognizing professional qualifications and securing full portability of pension rights.
3. Setting up a unitary patent protection and a unified patent litigation system in order to support research and innovation and protect intellectual property rights.
4. Facilitating Alternative Dispute Resolution for protecting relations between businesses and their customers.
5. Revision of the legislation on the European standardization system in order to boost the free movement of services.
6. Establishing a new European policy for energy, transport and electronic-communications networks.
7. Developing the digital single market and strengthening confidence in electronic transactions.
8. Facilitating the development of social investment funds.
9. Improving EU rules on energy taxation to guarantee consistent treatment of different sources of energy.
10. Enhancing social cohesion by improving the legislation on the posting of workers and improving fundamental social rights.
11. Simplifying the Accounting Directives to reduce the administrative burden for companies.
12. Modernising public procurement legislation in order to make procurement procedures more flexible and provide easier access for businesses

Conclusion

In spite of the progress that has been made and of the benefits generated by the single market, it is far from complete. The European Union cannot be described as a true single market due to certain reasons: (i) it does not have an integrated taxation system; (ii) the single currency is not used by every Member State, (iii) there are always opt-outs from rules; and (iv) the perfect operation of the single market cannot be achieved across an area with such different cultures and levels of wealth. Another controversial point is that the Act deals with matters of social policy, which liberal countries, like the UK, do not think the Commission should be focusing on. "The single market is less popular

[6] European Commission: Single Market Act
http://ec.europa.eu/internal_market/smact/docs/20110413-communication_en.pdf (24.05.2011.)

than ever, yet it is more needed than ever"[7], however, it is undoubtedly essential for European stability and helps ensure an open Europe.

[7] Mario Monti: A new strategy for the single market http://ec.europa.eu/bepa/pdf/monti_report_final_10_05_2010_en.pdf (24.05.2011.) p.20.