

## Food Packaging Regulation And Marketing in the Enlarged Europe

BY JEAN-PHILIPPE MONTFORT, MAREK LYSY  
AND ANNA GERGELY, PH.D.  
(KELLER AND HECKMAN LLC)

This article reviews the food-contact legislation in place in the new Member States that joined the EU on May 1, 2004<sup>1</sup>. It reviews the status of the implementation of the EU food-contact Directives in the enlarged EU, as well as the legislation in place in each of the new Member States on issues that are not yet harmonized at the EU level.

### Adoption of the 'Acquis Communautaire'

As a prerequisite to joining the EU, the new Member States had to adopt the full body of legislation in place in the EU (the so-called "acquis communautaire"), including all EU Directives on food-contact materials. The

continued on page 7

## EU Developments Could Threaten France's Unique Insurance System for Temporary Entertainment Industry Workers

BY FRÉDÉRIC CHHUM  
(DEPREZ DIAN GUIGNOT)

Since the 1960's, France has applied a discrete employment insurance system for temporary workers in the fields of motion pictures, broadcasting and live entertainment which continues to the present day and stands out as an exception within the European Union. A likely consequence of this anomaly is France's strong position in the motion picture and live entertainment industries on both a European and a global basis.

From a legal standpoint, so-called "intermittent workers in the entertainment business" provide technical or artistic performance on a fixed-term con-

continued on page 2

### IN THIS ISSUE

#### *Packaging Expansion Issues*

With 25 countries now EU members, the fragmentation of food-contact legislation in Europe has become even more widespread principally because the new states, like the old states, maintain national provisions in areas that are not fully harmonized. Multinationals will continue to be challenged until the EU speeds up the harmonization process.  
*Page 1*

#### *Employment French Entertainment*

The unique insurance system in France covering temporary employees in the powerful entertainment industry could be threatened by pending changes in EU legislation, particularly by directives on services and the plan for a European Constitution that could challenge the validity of government subsidies.  
*Page 1*

#### *Regular Features Brussels Gazette*

- Data Transfers
  - Patent Information
  - Immigrant Plan
  - Auto Competition
  - Diesel Incentive
  - US-EU Dialogue
- Page 3*

#### *EU Briefs*

- Aircraft Manufacturers
  - Court Decision
  - REITs
- Pages 13, 14 & 15*

## French Entertainment from page 1

tract and, in the event of becoming unemployed, receive compensation for up to two-thirds (243 days) of a year under the terms of an employment insurance agreement, recently amended and dated January 1st, 2004.

**In France, live entertainment, motion pictures and broadcasting constitute a full-fledged economic sector.**

However, this generous unemployment insurance coverage could be in jeopardy with the passage of several EU draft directives and the draft European Constitution, according to experts, or at the very least the legitimacy of the French government's subsidies to the entertainment industry could come into question.

### Entertainment a Vibrant Sector

In France, live entertainment, motion pictures and broadcasting constitute a full-fledged economic sector, generating some €22 billion or about 1.2 percent of national GDP and creating half as much again in added value, according to a report by Jean-Paul Guillot dated November 29, 2004, entitled *Pour une politique de l'emploi dans le spectacle vivant, le cinema, et l'audiovisuel*.

Of the €22 billion, French households account for 60 percent, exports and advertisers account for 25 percent and subsidies from vari-

ous levels of government account for 14 percent the Guillot report calculates. Annually, the French spend up to 63 billion hours watching either television programs, movies or live shows. In comparison, they spend only 34 million hours at work (Guillot Report).

Undoubtedly helping to maintain France's position as a major global player is its number one ranking in Europe in terms of government subsidies awarded to the motion pictures and broadcasting business (about €500 million in 2002. This compares with €190 million in Germany, €60 million in the United Kingdom, and €52 million in Italy, according to Korda/Oea).

### 300,000 Direct Salaried Jobs

France's entertainment sector generates about 300,000 direct salaried jobs, which includes 100,000 artists and technicians falling under the "intermittent workers in the entertainment business" definition. Of these, 50,000 are "long-term" artists and technicians. The remainder include workers from various backgrounds such as artists, plastic specialists, journalists, entertainers, art teachers and authors, salaried employees in the press, publishing, broadcasting and entertainment businesses (Guillot Report).

This sector also indirectly generates tens of thousands of jobs in various sectors including tourism, hotel industry, transportation, publishing, advertising, construction and security.

### Growth Outpaces French Economy

In the past ten years, the entertainment sector has grown twice as fast as the French economy,

continued on page 11

## EUROWATCH®

Published by WorldTrade Executive, Inc.  
(ISSN 1063-6323)

### EDITORIAL STAFF

PUBLISHER: Gary A. Brown, Esq.; MANAGING EDITOR: Alex McCallum;  
CONTRIBUTING EDITORS: George Cassidy, Scott P. Studebaker, Esq.;  
BUSINESS MANAGER: Ken Parker; COPY EDITOR: Dana Pierce

*EuroWatch* is published twice monthly, except once in August and December, by WorldTrade Executive, Inc., PO Box 761, Concord, MA 01742 USA. Tel: (978) 287-0301; Fax: (978) 287-0302. Email: [info@wtexec.com](mailto:info@wtexec.com). Website: [www.wtexec.com](http://www.wtexec.com). Subscriptions: \$879 per year; \$929 non-US addresses.

Unauthorized reproduction in any form, including photocopying, faxing, image scanning, or electronic distribution is prohibited by law. Copyright © 2005 by WorldTrade Executive, Inc.

# Brussels Gazette

## Key Developments at the Heart of the European Union

### New Clauses Approved for Data Transfers to Non-EU Countries

The Commission has approved a new set of standard contractual clauses that businesses can use to ensure adequate safeguards when personal data is transferred from the EU to non-EU countries. The new clauses, submitted by a business coalition, will be added to those already available under the Commission's June 2001 decision

Use of standard contractual clauses is designed to offer companies and other organizations a straightforward means of complying with their obligation, under the 1995 EU Data Protection Directive, to ensure "adequate protection" for personal data transferred outside the EU.

The business coalition, which is led by trade associations under the auspices of the International Chamber of Commerce, negotiated the new standard contractual clauses with the Commission and the committee of EU data protection authorities (the "Article 29 Working Party") over the last three years.

Some of the new clauses, such as those on litigation, allocation of responsibilities or auditing requirements, are considered to be more business-friendly. But the Commission insists that they provide for a similar level of data protection as those of 2001 and, to prevent abuses, the data protection authorities are given more powers to intervene and impose sanctions where necessary. The new set of clauses will be reviewed in 2008.

Contractual clauses are not necessary to transfer data to Switzerland, Canada, Argen-

tina and the UK territories of Guernsey and the Isle of Man, whose own regimes are recognized by the Commission as offering adequate data protection. Neither are they needed for transfers to US companies adhering to the "Safe Harbor" Privacy Principles issued by the US Department of Commerce. For transfers to other countries, standard contractual clauses are one of a range of means employed to ensure appropriate data protection.

**For transfers to other countries, standard contractual clauses are one of a range of means employed to ensure appropriate data protection.**

The Commission is also discussing further data protection methods for inclusion in the Data Protection Directive such as, for example, "Binding Corporate Rules" that consist of codes of conduct instead of model contracts for the transfer of personal data to third countries.

More at: [http://europa.eu.int/comm/internal\\_market/privacy/modelcontracts\\_en.htm](http://europa.eu.int/comm/internal_market/privacy/modelcontracts_en.htm).

### EPO Launches New Online Service for Patent Information

The European Patent Office has launched a "one-stop-shop" for access to

continued on page 4

*Brussels Gazette from page 3*

information on patents. The service called Register Plus, is free of charge and provides bibliographical, procedural, legal and file information on patents. Capabilities include following the patent application process for particular submissions, and finding information on other patent applications belonging to the same patent family.

More at: <http://www.epoline.org>.

## Skilled Immigrant Plan Proposed by Commission

The European Commission has unveiled a plan to attract high-skilled immigrants needed to rejuvenate Europe's ageing workforce and faltering growth rates. It's the first time the EU executive has proposed common rules governing migrants, and it comes at a time when anti-immigrant sentiment is rising across the continent.

**Attracting more immigrants might not be a panacea, warned Gwynn Hacche, an economist from HSBC in London.**

The Commission wants to create a single permit system to make it easier for computer technicians, scientists and other technically-able workers to legally immigrate to the EU. In addition, the Commission would oversee a centralized database that would match companies with immigrants who want to move to Europe.

The reforms are "crucial in achieving the EU's aim of becoming the most competitive economy," said Justice and Home Affairs Commissioner Franco Frattini.

EU treaty law provides for national jurisdiction over migration. EU leaders agreed last year to set up a common asylum and immigration policy.

Frattini promised a formal proposal by the end of 2005, but the ideas won't become law until the end of the decade. European officials hope that will be in time to start attracting the Africans and Americans it will need to replace

the 40 million workers it is expected to lose by 2025, as the baby boomers retire and the next generation has fewer children. The International Labor Union has said the trends could spell a 22 percent drop in per capita gross domestic product by 2050.

The European plan is expected to face stern opposition from labor unions, who want governments to do more to protect jobs at home, instead of soliciting immigration, and from anti-immigrant political parties that can use the issue to score votes. But business says it needs laws like this one to survive in Europe. "If you don't let people into the EU, companies will have to go where the people are," said Adrian Vandenhoven, a trade advisor at Brussels-based business lobby group Unice.

Attracting more immigrants might not be a panacea, warned Gwynn Hacche, an economist from HSBC in London. "The problems of the eurozone and Europe aren't just about ageing." Europe needs to reform in other areas, too, he said, by reforming labor markets and cutting taxes. "There's very little progress in this area," said Hacche. (*Dow Jones*)

## More Action Sought in US-EU Financial Markets Dialogue

The US Securities Industry Association has urged the Bush Administration to support the US-EU Financial Markets Dialogue with a more pro-active strategy. In addition to continuing the US-EU Financial Markets Dialogue, SIA recommended: the placement of a Treasury attaché in Brussels; increasing inter-agency coordination, particularly utilizing State Department contacts in EU countries; continuing a formalized dialogue between the Securities and Exchange Commission and the Committee of European Securities Regulators on regulatory convergence; and, stronger congressional/parliamentary interaction.

The SIA also suggested that US and EU negotiators seek a forward-looking World Trade Organization financial-services agreement that commits countries to enhanced regulatory transparency and addresses specific trade barriers.

More at: [http://www.sia.com/2004\\_comment\\_letters/SIATransatlanticRelationship123104.pdf](http://www.sia.com/2004_comment_letters/SIATransatlanticRelationship123104.pdf).

## New Auto Group Formed to Stimulate Competition

The European Commission's top industrial regulator announced a plan to reduce red tape in the European car industry, but said he would not call into question rolling back plans to end the carmakers antitrust exemption.

Commissioner Guenter Verheugen said a working group called CARS 21 is being created and will include representatives from car companies, trade unions, environmentalists and consumer groups, as well as top politicians such as the German Economics Minister Wolfgang Clement and Italian Transport Minister Pietro Lunardi.

"Europe has a strong auto industry - but the situation is far from being rosy," Verheugen said at a press conference. He highlighted that labor productivity was a quarter lower than in the US and 30 percent lower than in Japan, while labor costs were over 10 percent higher than in Japan and almost three times as high as in South Korea

"I would like CARS 21 to develop concrete, brave and innovative ideas and recommendations on how we can win pole-position in the global car race," Verheugen said. The group will hold its first meeting in March and then two or three other meetings this year and submit proposals by the end of the year.

Verheugen said he already had decided to propose eliminating separate EU rules on how to classify vehicles, adopting instead UN regulations. "For industry, this means it can concentrate on one set of technical requirements," Verheugen said. Joining Verheugen at a news conference to announce the initiative was Volkswagen AG chairman Bernd Pischetsrieder who praised the initiative as a way of eliminating "misunderstandings" between the EU executive and carmakers.

"If we don't make our industry more competitive in costs, it is hard to see in 50 years time Europe having much of a car industry left," said Pischetsrieder. "We have to reverse the trend - that's the issue."

Both Verheugen and Pischetsrieder said the new group would not reverse tough new antitrust legislation. "We will not question existing competition rules," Verheugen insisted. He said the goal of the antitrust rules was to reduce car prices and added, "I would like to see consumer prices go down." (*Dow Jones*)

## Diesel Tax Incentive Proposal

A Commission paper published this month gives guidance to EU member states that wish to introduce tax incentives for diesel cars meeting stricter environmental standards than currently laid out in EU regulations. The guidance document comes after France and Germany unveiled plans last summer to introduce tax incentives for cleaner diesel cars.

**The guidance document comes after France and Germany unveiled plans last summer to introduce tax incentives for cleaner diesel cars.**

The paper recommends setting the tax incentives limit at 5 mg/km of particulate matter. With current technology, this value can only be met by equipping diesel cars with filters. The 5 mg/km value represents a reduction of 80 percent compared to the limit of 25 mg/km that became mandatory from January 2005 under the "Euro 4" emission standards, the Commission has indicated. It said the value is primarily aimed at avoiding a fragmentation of the internal market as member states look to introduce new national tax incentives.

The value, which is only indicative, is published as the Commission is brushing up its proposal for the next stage of emission limits ("Euro 5") which would come into force in 2010.

## New Automobile Insurance Bill Gets Parliamentary Go-Ahead

The European Parliament passed an automobile insurance bill increasing minimum compensation payouts for accidents.

The car bill also makes it easier for European consumers to obtain motor insurance when studying or working for short periods outside their home country, and allows them to take advantage of cheaper vehicle prices in neighboring countries by requiring insurers to grant short-term insurance cover for vehicle imports.

continued on page 6

*Brussels Gazette from page 5*

In addition, the new law is designed to stimulate competition among insurers by giving consumers easier access to their claims' records, thereby enabling them to shop around and find the cheapest policy quote.

Under the law, accident victims will be insured for at least €1 million, compared with only €350,000 now. Property damaged by cars would be covered by at least €500,000, up from €100,000 now. The minimum insurance amounts will be revised automatically every five years according to the European Index of Consumer Prices.

**Stavros Dimas said: "I am concerned at the high number of Court judgments that have not been respected by France."**

The new rules target mainly southern European countries - Greece, Portugal, Spain, Ireland and Italy. Many Northern European countries, led by Sweden and Finland, already have unlimited cover for accidents. Also under the law, pedestrians and cyclists will be designated as accident victims and motor vehicle insurance will have to cover their personal injuries. EU

countries now have two years to apply the law.

## **Commission Pursues France for Failure to Respect Environment Rulings**

The European Commission has decided to pursue legal action against France in six separate cases where France has failed to comply with judgments of the European Court of Justice. These cases concern EU laws on nature conservation, public access to environmental information, water protection, waste and genetically modified micro-organisms.

France could face fines if it fails to bring its laws and practices into line. According to the Commission, by not correctly implementing the European environmental laws in question, France is hindering efforts to conserve Europe's wealth of plant and animals species and undermining initiatives to better manage risks to the environment and human health.

Environment Commissioner Stavros Dimas said: "I am concerned at the high number of Court judgments that have not been respected by France. Acting on Court judgments quickly and effectively is vital not only for the environment but also to demonstrate that Member States take their European commitments seriously." □

## **PRACTICAL EUROPEAN TAX STRATEGIES**

WorldTrade Executive, Inc. also publishes *Practical European Tax Strategies*, a monthly report on how leading-edge companies are reacting to changes and developments in European tax practice. Topics covered include:

- Coordinating tax results with financial accounting rules
- Choice of entities for your European transactions
- Using tax incentives to boost your bottom line
- Dealing with tax authorities in major European countries
- Tax issues for European acquisitions and joint ventures
- Tax planning for the cross-border grouping of companies
- Managing tax issues for lease payments and royalties
- Ways to handle transfer pricing issues
- Use of tax treaties in structuring your ventures

*\$787 per year US addresses, \$837 non-US addresses*

*Published by WorldTrade Executive, Inc.*

*Ph: (978) 287-0301*

*Fax: (978) 287-0302*

*Email: info@wtexec.com*

## Expansion Issues from page 1

Framework Directive 89/109/EEC (which has been replaced by the Framework Regulation, effective Dec. 3, 2004) and the Plastics Directive 2002/72/EC, as amended, are therefore in place in all the Member States.

Importantly, no transition periods were granted to any of the "new" Member States that would enable any such countries to deviate from the EU food-contact legislation for a temporary length of time. Thus, for materials that are subject to EU legislation, the regulatory status in these countries is the same as it was in the "old" Member States prior to enlargement (and still is today).

Companies often question whether they should review the implementation of the EU Directives in each Member State and the answer to that question becomes even more relevant in the enlarged Europe as the review of 25 sets of implementation provisions would obviously represent a considerable task. In our opinion, this work is largely unnecessary. Indeed, although the EU food-contact legislation has been adopted in the form of Directives that require implementation in national law to be effective, these Directives in practice are so detailed and prescriptive that they leave little room for the Member States to do anything other than to fully adopt the EU text verbatim.

Even if a country implemented a given Directive incorrectly, the doctrine of "direct effect" would still allow a company to rely on the provisions of the Directive to market its products in that country, regardless of the exact status of the local text<sup>2</sup>.

Finally, because the laws in place in the new Member States have been reviewed, and sometimes amended as part of the Enlargement process, one could even expect that they are probably more consistent with the Acquis than the corresponding regulations of some of the "old" Member States.

Therefore, while a detailed review of national implementation rules may reveal some gaps that a company could possibly use to its advantage in a given country, for practical reasons most companies wishing to market their products throughout the EU can simply consider that all the EU food-contact Directives are fully in place in all 25 Member States and that they must be relied upon fully.

## Regulations in the Non-Harmonized Areas

In adapting their national law to EU food-contact legislation, some of the new Member States have maintained some national provisions in areas that are not fully harmonized, *i.e.*, in areas for

which EU legislation does not regulate all of the provisions involved.

Here again, the situation is no different between the "new" and "old" EU, because all Member States may and do maintain or adopt national laws in non-harmonized areas. However, the novelty of the Enlargement process and the necessary legislative changes made in the new Member States to adapt to it, make it likely that few if any persons or companies know exactly what are the national requirements for food contact materials in the new Member States.

While general safety principles and labeling provisions applicable to all food-contact materials have been adopted under the Framework Regulation, EU food-contact legislation remains largely un-harmonized. In particular, there is no specific EU legislation in place for materials such as paper and board, metals and alloys, can coatings, elastomers and rubber, *etc.*

Even with plastics materials--by far the most regulated area in the food-contact field-- there is much room for national legislation regarding additives, colorants, catalysts, and other substances. Also, EU regulation still does not regulate multi-layer and composite materials made of plastics and other materials, such as recycled materials for food-contact use.

In the old EU, only about half of the Member States have in place legislation adopting the EU Directives (Denmark, Ireland, Portugal, Luxembourg, Sweden and the United Kingdom), while the other half have maintained or adopted specific legislation covering plastic additives, paper and board, rubbers and other materials, either by means of binding legislation (in Austria, Belgium, France, Italy, Spain, and the Netherlands, and to a lesser extent in Finland and Greece), or non-binding legislation (as in Germany).

**In the old EU, only about half of the Member States have in place legislation adopting the EU Directives.**

A review of the legislation in the new Member States shows a comparable situation. Indeed, some of these countries have maintained national lists of plastic additives, colorants and the like, as well

continued on page 8

**Expansion Issues from page 7**

as legislation in other areas, such as can coatings, paper and board (the Czech Republic, Slovakia and Slovenia), while other have not (Estonia, Hungary, Latvia, Lithuania and Poland).

**These same countries have in place approval processes for food-contact materials containing unlisted plastic additives.**

Following is a summary of the main features of the legislation in the new Member States as they relate to plastics and other food-contact materials.

### Plastics Legislation in the New Member States

Two main features emerge from a review of the plastic legislation in the new Member States:

First, most of the countries reviewed (*i.e.*, all new countries except Malta and Cyprus) have transformed the incomplete EU list of additives of Plastics Directive 2002/72/EC into a strict positive list of the additives that can be used in these countries, to the exclusion of all others. This is the case in all the countries reviewed, except Hungary. In doing so, they have anticipated the future

adoption by the EU of a positive list of additives sometime after 2007.

Of course, the positive lists of additives in these countries are not "final." As the European Commission adopts new Directives amending the Plastics Directive to list new food-contact additives, these new Directives will be implemented in these countries as well by means of an amendment to the positive list and permitting use of the new additives there as well. Unlike traditional positive list countries (like France or The Netherlands) that have their own positive list in addition to the EU list of additives, in the new countries only the EU listed additives can be used even if that list, at the EU level, is considered incomplete. This also means that none of the many additives that are listed in the specific national lists in the old EU are listed on the new Member States' positive lists and can therefore not be used in these countries.

Second, these same countries have in place approval processes for food-contact materials containing unlisted plastic additives (and other substances). As described more fully below, the nature of these procedures is different from the procedures in the "old" Member States, in particular because they lead to the individual approval of the product or material of the applicant, and not to an amendment of the legislation that would allow the use of the substance at stake by all interested parties.

<b>NON-HARMONIZED NATIONAL PROVISIONS ON FOOD-CONTACT MATERIALS IN THE EIGHT NEW EU MEMBER STATES</b>										
<b>I. Specific Provisions Related to Plastic Materials</b>										
<b>COUNTRY</b>	<b>CZECH REPUBLIC</b>	<b>ESTONIA</b>	<b>HUNGARY</b>	<b>LATVIA</b>	<b>LITHUANIA</b>	<b>SLOVAKIA</b>	<b>SLOVENIA</b>	<b>POLAND</b>	<b>CYPRUS</b>	<b>MALTA</b>
<b>Positive list of additives</b>	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	?	?
<b>Positive list of colorants in plastics</b>	No	No	No	No	No	No	Yes	No	?	?
<b>II. Specific Provisions Related to Other Materials than Plastics</b>										
<b>COUNTRY</b>	<b>CZECH REPUBLIC</b>	<b>ESTONIA</b>	<b>HUNGARY</b>	<b>LATVIA</b>	<b>LITHUANIA</b>	<b>SLOVAKIA</b>	<b>SLOVENIA</b>	<b>POLAND</b>	<b>CYPRUS</b>	<b>MALTA</b>
<b>Metal articles</b>	Yes	No	No	No	No	Yes	Yes	No	?	?
<b>Paper and paper board</b>	Yes	No	No	Yes	No	Yes	Yes	No	?	?
<b>Rubber and silicones</b>	Yes	No	No	Yes	No	Yes	Yes	No	?	?
<b>Glass</b>	Yes	No	No	No	No	Yes	Yes	No	?	?
<b>Textile</b>	No	No	No	No	No	Synthetic textile only	Yes	No	?	?
<b>Wood and cork</b>	Cork only	No	No	No	No	Yes	Yes	No		



## EU Finalizes Framework Regulation on Food Contact Materials

The European Union's new Framework Regulation covering materials that are intended to come into contact with food (Regulation (EC) No 1935/2004) was published in the *Official Journal of the European Union* on November 13, 2004, and became effective December 3, 2004.

The new regulation repealed the former "Framework Directive" (Council Directive 89.109/EEC and provides the basic legislation governing the use of all food-contact materials in the European Union. The new Framework Regulation differs from the previous Framework Directive in several important respects:

It imposes new requirements relating to the traceability of food-contact materials. As has been the case with food and food additives, the new regulation requires stricter standards for the traceability of materials used in contact with food at all stages of the supply chain. The regulation establishes the principle of the "traceability" (Article 17) of food-contact materials and articles at all stages of their manufacture, processing and distribution, by requiring that all business operators be able to identify the materials and articles received from and supplied to the previous and next operator in the chain. The regulation does not specify how this objective would be achieved and leaves this to the operators themselves.

It provides that requirements for food-contact materials at the EU level may be set out as regulations as well as directives. Providing for the possibility of issuing regulations for food-contact materials has the advantage that regulations (as opposed to directives) become immediately effective after they are adopted by the Commission and do not need to be transposed into Member State law.

It sets forth definitions for active and intelligent packaging materials as well as certain requirements for the use of these materials in the EU. Namely, the Framework Regulation calls for these materials to be the subject of a specific directive governing their use, and the Regulation sets forth labeling requirements and mandates that their use must not mislead the consumer. A new provision for a specific directive on active and intelligent packaging materials has been proposed by the European Commission.

It also codifies the authorization procedure for the review and evaluation of new food-contact materials, including a new requirement that the European Food Safety Authority shall review a petition for a new material within 6 months (with a possible extension for an additional 6 months, provided that an explanation is provided to the petitioner, the Commission, and the Member States).

Finally, the Framework Regulation requires that materials and articles be accompanied by a "written declaration stating that they comply with the rules applicable to them" and that "appropriate documentation" to be made available on demand to demonstrate such compliance (Article 16). *(By Devon Wm. Hill, Keller and Heckman LLC)*

**The new regulation requires stricter standards for the traceability of materials used in contact with food at all stages of the supply chain.**

continued on page 10

## Expansion Issues from page 9

The contrast is even greater with respect to colors and coatings. About half of the countries reviewed have positive lists or other requirements for colors and plastic coatings (the Czech Republic, Slovakia, and Slovenia), while the others have no such requirements. The situation in Hungary is slightly different. Although no non-harmonized provisions are enacted in a legal instrument, the National Institute for Food Safety and Hygiene (OETI) insists that German recommendations on non-harmonized food-contact materials be followed, while for colorants in plastics, that the French positive list be followed. The question then is whether, like in Germany, industry's behavior will make these recommendations into quasi-legal requirements.

**For virtually any food-contact materials, companies potentially are faced with 25 sets of different national requirements.**

Finally, as far as could be determined, there are no specific requirements in the new Member States on catalysts, polymerization production aids and other categories of substances not (yet) specifically regulated at the EU level. No specific provisions on multilayer materials have been found in any of these countries.

## Regulations on Other Food-Contact Materials

In addition to adopting the EU food-contact legislation, the Czech Republic, Slovakia, Slovenia and, to a limited extent, Lithuania have enacted specific rules on materials that are not harmonized at the EU level. In the Czech Republic, Slovakia and Slovenia, there are specific provisions on metal articles, paper and paperboard, rubber and silicones, glass and cork. Additionally, Slovakia and Slovenia have specific requirements for wooden materials and textiles. Lithuania imposed certain analytical criteria applicable to rubber, paper and paperboard. Interestingly, Slovenia also has comprehensive legislation on cookware.

## Conclusion

While the Acquis Communautaire on food-contact materials is now in place throughout the

25 Member States, there remain large areas of that legislation that are still not subject to EU harmonized rules. This also means that, for virtually any food-contact materials, companies potentially are faced with 25 sets of different national requirements applicable to their products. Even if the actual list of countries with specific national requirements is about half that figure, the situation may change as countries adopt new rules, thereby requiring companies to follow the development of the national rules in all 25 EU Member States. This would be very difficult, if not impossible, for many companies.

This requires EU authorities to make increased efforts to complete the harmonization in the food-contact area as soon as possible, and to ensure that the principle of mutual recognition effectively serves to allow food-contact materials to benefit from the single enlarged EU market. □

## Endnotes

<sup>1</sup> On May 1, 2004, ten new Member States joined the European Union (EU). These countries are Poland, Hungary, the Czech Republic, Slovakia, Slovenia, Estonia, Lithuania, Latvia, Malta, and Cyprus. The accession of these new countries into the EU brings the total number of Member States to 25.

<sup>2</sup> It has been recognized on several occasions by the European Court of Justice that Directives, although in principle not directly applicable in the Member States unless adopted into their national legal order, can be relied upon by private individuals or companies should that Member State fail to implement (correctly) the provisions at stake, provided that the provisions of the Directive are (1) unconditional, (2) sufficiently precise, and (3) contain rights which individuals are able to assert against the state. However, the direct effect doctrine does not function in the reverse order, i.e., the provisions of a non-implemented directive cannot be enforced by the failing state against private individuals and companies.

Jean-Philippe Montfort is a partner at Keller and Heckman who heads the Brussels office's food packaging and chemicals practices (including mainstream chemicals and pesticides). Tel: +32-541-05-74, E-mail: montfort@khlaw.be.

Reprinted with permission of PackagingLaw.com, sponsored by Keller and Heckman LLP. Copyright © 2004 Keller and Heckman LLP. All rights reserved. For requests or information, contact PackagingLaw@khlaw.com.

## **French Entertainment from page 2**

with television, shows and video particularly strong. The ready availability of financing has helped to propel this growth which has met equally strong demand from French households where spending on entertainment, according to the French Ministry of Culture, has doubled in the last 20 years. Industry experts anticipate this growth will continue and, should government subsidies remain unchanged, the rate is expected to reach at least five percent per annum.

## **A Unique Employment Insurance System**

Entertainment workers in France find an employment insurance system that is sensitive to the temporary nature of many of the industry's jobs and provides very comprehensive protection compared with other countries

The insurance coverage for unemployed workers comes in the form of allowances that are paid after specific eligibility requirements are met (in line with schedules VIII and X of the general Employment Insurance plan). The justification is the discontinuous character of the work combined with what is considered a special contribution to France's cultural wealth, its reputation and its visibility abroad.

This Employment Insurance plan is financed by a contribution rate of 10.80 percent (a combination of seven percent for employers and 3.8 percent for salaried employees) of the gross salaries of the technicians and artists. This general plan covers many different types of professional work, and absorbs any deficits resulting from the claims of "intermittent workers."

However, the "intermittent workers" sector has been in crisis for ten years now, due largely to a doubling in the number of recipients and to growing corruption, and the deficit in 2002 alone totaled €828 million. An attempt to resolve the problem was made by amendments to the plan, which took effect Jan. 1, 2004, and included more stringent eligibility requirements.

## **New Eligibility Requirements**

In order to benefit from employment insurance, "intermittent workers in the entertainment business" must now meet the following requirements:

**General Requirements.** The applicant must be involuntarily deprived of employment, be actively seeking one, be physically capable of working, be registered as a job seeker and reside on French territory.

**Specific Requirements.** In the case of "intermittent workers in the entertainment business", it is also required that:

- The applicant perform work specifically described in the list of recognized jobs, through a temporary work contract with a motion picture or broadcasting company, or have been employed by any type of industry, through a temporary work contract, as an entertainment artist.
- An "entertainment technician" (technicien du spectacle) or an "entertainment artist" (artiste du spectacle) must have worked at least 507 hours during the course of a 304 day reference-period (319 for artists) before the end of the last work contract.

In order to determine the completion of the required 507 working hours, only the work periods as a technician or an entertainment artist performed during the course of the 304 or 319 day reference-period preceding the end of the work contract will be taken into account, affiliation requirements are determined by adding these completed working hours together in accordance with schedules VIII and X.

**The insurance coverage for unemployed workers comes in the form of allowances that are paid after specific eligibility requirements are met.**

Periods during which the contract is suspended, or where professional training or teaching is provided, must also be taken into account when verifying affiliation to the plan. However, this is true to a certain extent and there are limitations to time periods performed in a European Union member state, in the European Economic Area, or in Switzerland and to the activities pursued by entertainment artists within the EU, the EEA, or Switzerland.

## **Qualifiers Eligible for 243-Day Compensation Period**

As soon as "intermittent workers in the entertainment business" meet the eligibility requirements, they may receive employment insurance compensation for a 243-day period. Since Jan. 1,

**continued on page 12**

## **French Entertainment from page 11**

2005, this compensation consists of a daily allowance equaling: 19.5 percent x referential daily salary) + (0.026 x number of hours worked during the reference period) + €10.15.

The amount of the daily allowance may not be less than 1/30th of 75 percent of the SMIC (*i.e.* the French minimum wage) calculated on a 35 hour/week basis. This corresponds to €27.26 (as of Jan. 1, 2004) and is capped at a maximum of 75 percent of the reference daily salary, *i.e.* €112.01.

**Germany and Italy have enacted rules that cover all temporary workers regardless of industry.**

The daily allowance is paid out following the deferral of a seven-day compensation period and a waiting period.

The compensation ends following completion of the 243 day allowance-period. Afterwards, "intermittent workers" can apply again if they meet the same requirements.

## **French Entertainment Insurance - a Special Case**

Regulations in other EU member states do not feature the same level of protection for individuals working in their own entertainment industries.

In Spain and Belgium, the special nature of entertainment jobs is taken into consideration, but on a limited scale. In Belgium, for example, artists acting as interpreters (whether as a singer, a musician, a comedian, etc) are generally counted as salaried employees qualify to be covered by the insurance plan.

In Spain, artists and musicians for motion pictures, theaters, radio and broadcasting are included in the general employment insurance plan. Some distinction is made, however, for them concerning criteria for establishing income levels to determine insurance amounts.

Germany and Italy have enacted rules that cover all temporary workers regardless of industry. In Germany, artists are often independent workers and may not, because of their status, claim employment insurance. Entertainment professionals who are salaried may benefit from the traditional employment insurance plan which qualifies them if their weekly work exceeds 15 hours and they receive a

minimum compensation of €325.

In Italy, production-related technicians usually qualify for the general employment insurance plan, with full coverage granted after two years. The allowance corresponds to 40 percent of the average salary.

## **Will the French System Survive EU Scrutiny?**

There are some adherents of the French system who fear that the draft directive on working time will raise serious questions about France's "intermittent workers" employment insurance plan (*Culture and the European Rule*, *Le Monde* dated November 28-29, 2004). Our own view is to be cautious about this interpretation.

On the other hand, there is probably more substance to concerns that the drafts for a directive on services and for a directive on public services could question the subsidies (the highest in Europe) awarded by the French Government to the motion pictures industry or other subsidies earmarked for cultural purposes.

In addition, government subsidies to the motion picture and television industries could come under scrutiny if the plan for a European Constitution is finalized and implemented. Indeed, the draft Constitution states that cultural subsidies are incompatible with the internal market unless they change the trade and competition playing field in favor of the common interest. □

---

*Frédéric Chhum is an associate at the law firm of Deprez Dian Guignot in Paris with a practice that encompasses both French and international employment issues. He is the author of « L'intermittent du spectacle, les nouvelles règles après la réforme de 2003 » edited by LexisNexis. Tel: + 33 1 53 23 80 00, E-mail: chhum@ddg.fr.*

**For a complete listing of all WorldTrade Executive's publications, visit our web site at: [www.wtexec.com](http://www.wtexec.com)**

## Aircraft Manufacturers

### US and EU Agree to Seek Compromise Over Aircraft Maker Subsidies

The US and European Union took a step back from the brink of a potentially huge and damaging trade war by agreeing to start negotiations on eliminating subsidies to aircraft makers.

The two sides have been arguing in the World Trade Organization since October and were two days away from the deadline for launching a full WTO trade case. Had either side taken that step, the battle over subsidies to Europe's Airbus and Chicago-based Boeing Co. would have been the largest case handled by the WTO.

Instead, the US and EU agreed to begin three months of intensive negotiations on eliminating subsidies to both companies. Both sides agreed to avoid making new government aid commitments to the manufacturers during the talks and to avoid calling for litigation in the WTO unless the talks break down.

They also agreed to leave current government aid programs to the plane makers intact, including several billion euros in European assistance granted over recent years to Airbus to develop its giant, two-deck A380. An EU official said neither side expects the negotiations to affect recent decisions by Boeing and Airbus to launch their newest planes.

The talks will be difficult, however, and the fight could flare again. The two sides still have starkly different positions on what government aid should be allowed and even disagree on whether Airbus's planned A350 model, a competitor to Boeing's new 7E7, is eligible for aid.

Such different positions will be difficult to reconcile. But the two sides had become convinced they both could lose if the WTO struck down their web of aid to their manufacturers. "We need open warfare on this issue like we need a hole in the head," said EU trade commissioner Peter Mandelson. Both sides' subsidies "would have been struck down" under a WTO verdict, he said.

The effort to compromise comes as the US and EU are trying to repair relations damaged by disputes over the war in Iraq and a number of trade fights. President Bush plans to visit Europe in late February, and a new WTO dispute "might have cast a pall over the president's visit," Mandelson said.

While the two sides say they want to eliminate subsidies to the industry, the complexities of the disputed areas of government funding likely make that goal impossible. What Boeing and Airbus say they seek is a system to define, limit and monitor government aid that the other receives.

If the talks falter, officials said the sides could

extend them or return to battling at the WTO. US trade representative Robert Zoellick cautioned that "there is much work to be done if we are to be successful in negotiating an ultimate agreement." The initial agreement came after a weekend meeting in Washington and discussions over several days between Mandelson and Zoellick.

Easing each company off its aid is a delicate task. While Airbus and Boeing each is concerned about subsidies to the other, both also are worried about other countries with aviation aspirations. Brazil, Canada, China, Japan and Russia subsidize their national industries and could shake up the duopoly Boeing and Airbus hold in the large jetliner market.

**The two sides had become convinced they both could lose if the WTO struck down their web of aid to their manufacturers.**

So Boeing and Airbus will want to ensure they have a level playing field but also that they don't restrict themselves so much on accepting government support that they can't respond to upstarts. If an agreement is reached, the goal would be to extend its terms to other countries with aerospace industries.

Airbus and Boeing welcomed the announcement, made in Brussels and Washington. Boeing president and chief executive Harry Stonecipher in a prepared statement applauded the "good faith displayed by both governments." Airbus parent European Aeronautic Defence & Space Co. said resolving the differences "through constructive discussion rather than through legal recourse" has "always been preferable." EADS owns 80 percent of Airbus, and Britain's BAE Systems PLC holds 20 percent.

A US trade official said the agreement to negotiate was a "validation" of the WTO process, as well as a signal that the Europeans are taking the talks more seriously. When the issue first arose last year, the official said, "we didn't agree on the goal of ending subsidies, much less how to get there."

The talks will aim "to establish a list of different kind of subsidies affecting either of the two companies and to then to reach agreement on which form of subsidy should be prohibited" or permitted, said EU spokeswoman Claude Veron-Reville. (*Dow Jones*) □

## *Court Decision*

### **European Court of Justice Rules on Public Procurement Issue**

*C-26/03*

*Stadt Halle, RPL Recyclingpark Lochau GmbH v Arbeitsgemeinschaft  
Thermische Restabfall- und Energieverwertungsanlage TREA Leuna, January 11, 2005.*

The award of a public service contract to an undertaking with partly private capital, regardless of the percentage of the holding, does not constitute an in-house operation exempted from the Community public procurement rules, according to a judgment by the European Court of Justice.

In addition, the obligation of the Member States to ensure that effective and rapid remedies are available against decisions of contracting authorities extends also to decisions taken outside a formal procedure, in particular their initial decisions on whether or not to initiate a public procurement procedure provided for by Community law.

Stadt Halle (the City of Halle) asked RPL Lochau, a company in which the majority of the capital is held indirectly by Stadt Halle and the remainder by a private company, to draw up a plan for the construction of a thermal waste disposal and recovery plant for its residual urban waste, without formally issuing a call for tenders.

At the same time it decided, again without issuing a call for tenders, to enter into negotiations with RPL Lochau with a view to concluding a contract for the management of that waste.

TREA Leuna, a company which was likewise interested in providing those services, contested the decision of Stadt Halle before the competent administrative authority. The authority considered that, contrary to Stadt Halle's arguments, the application was admissible, since even in the absence of an award procedure the decisions of the contracting authority ought to be subject to review. It also considered that because of the private shareholding there could be no question of an in-house operation to which the Community rules in the field of public procurement did not apply. The Oberlandesgericht Naumburg, hearing the appeal brought by Stadt Halle, stayed the proceedings and referred a number of questions to the Court of Justice of the European Communities in this connection.

The Court of Justice ruled that the judicial protection provided for by the relevant provisions of Community law<sup>1</sup>, namely the obligation of the Member States to ensure that effective and rapid remedies are available, extends also to decisions taken by contracting authorities outside a formal award procedure and decisions prior to a formal invitation to

tender. That is the case in particular for their decisions on whether or not to initiate a public award procedure laid down by Community law.

Not amenable to review, however, are acts which constitute a mere preliminary study of the market or which are purely preparatory and form part of the internal reflections of the contracting authority with a view to a public award procedure.

By contrast, where the expression of the will of the contracting authority has passed that stage and is capable of producing legal effects, that expression is open to review. Thus, where a contracting authority decides not to initiate an award procedure because in its view the contract in question does not come under the relevant Community rules<sup>2</sup>, such a decision constitutes the very first decision amenable to judicial review. Review is available, in any event, against the entering into of specific contractual negotiations with an interested party.

The Court also ruled that, where a contracting authority which intends to conclude a contract for pecuniary interest relating to services coming under Directive 52/90 with a company legally distinct from it, in whose capital it has a holding together with one or more private undertakings, it must always, regardless of the percentage of that holding, apply the public award procedures laid down by that directive. Otherwise, there would be interference with the objective of free and undistorted competition and with the principle of equal treatment, since an award without a call for tenders would offer a private undertaking with a capital presence in the undertaking in question an advantage over its competitors. □

---

#### ***Endnotes***

<sup>1</sup> Council Directive 89/665/EEC of December 21, 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts (OJ 1989 L 395, p. 33), as amended by Council Directive 92/50/EC of June 18, 1992 relating to the coordination of procedures for the award of public service contracts (OJ 1992 L 209, p. 1), itself amended by European Parliament and Council Directive 97/52/EC of October 13, 1997 (OJ 1997 L 328, p. 1).

<sup>2</sup> Such as Directive 92/50, see preceding note.

## REITs

## Significant Expansion of REITs in EU Anticipated

Legislation on real-estate investment trusts and large portfolio sales are likely to dominate the European real-estate landscape in 2005. In particular, legislation aimed at introducing REITs in two of Europe's most important markets, Germany and the UK, is being closely tracked because neither government has decided how to go about it.

Investors in both markets have lobbied hard for REITs because they will inject liquidity into the real-estate market, making it more tax efficient. REITs, which are likely to be publicly traded, will also open up commercial real-estate investment to smaller investors.

REITs own properties, such as hotels, apartments or office buildings, and pass on rental income to shareholders. REITs are already established in markets such as the US, France, Belgium and the

Netherlands. The US is home to the biggest REIT market, with a total market capitalization of about \$290 billion (€222.17 billion). REITs have been popular with investors. The stocks of US REITs, companies owning real estate or mortgages that must pay out at least 90 percent of their taxable income in the form of dividends, delivered total returns of 41 percent in 2004, up from nearly 37 percent in 2003.

The German Finance Ministry is expected to reach a decision later this month on whether it will give REITs the green light. It is widely expected that the government will approve REITs, although it is likely to impose a number of conditions, which could include foreign-ownership restrictions.

"REIT legislation will make the industry more flexible," says Fraser Hughes, research director at

continued on page 16

## EUROWATCH BOARD OF ADVISORS

**Paul Allaer, Esq.**

Thompson, Hine & Flory P.L.L., Cincinnati, OH

**Joan Sylvain Baughan**

Keller and Heckman, Washington, DC

**Stuart N. Brotman**

Harvard Law School, Cambridge, MA

**Alec J. Burnside**

Linklaters, Brussels, Belgium

**Donald Cuneo, Esq.**

International House, New York, NY

**Donald C. Dowling, Jr.**

Proskauer Rose, New York, NY

**Gary N. Horlick, Esq.**

Wilmer Cutler Pickering Hale and Dorr LLP, Washington

**Robert D. Hormats**

Goldman, Sachs & Co., New York, NY

**Gary Hufbauer**

Council on Foreign Relations, New York, NY

**Stephen Kon**

S.J. Berwin & Co., London, England

**Velia Leone**

Studio Santa Maria, Rome, Italy

**Carina Levintoff, Esq.**

Bureau Francis Lefebvre, New York, NY

**Alan L. Madian**

LECG and Lafayette Capital Corp., Washington, DC

**Alexander Marquardt**

Kramer Levin Naftalis & Frankel LLP, Paris, France

**Homer E. Moyer, Jr., Esq.**

Miller & Chevalier, Washington, DC

**Terence Roche Murphy, Esq.**

Murphy & Associates, Washington, DC

**Giovanni Nardulli**

Gianni, Origoni, Grippo & Partners, Rome, Italy

**Angus Phang**

Willoughby & Partners, Oxford, England

**Daniel J. Plaine, Esq.**

Gibson, Dunn & Crutcher, Washington, DC

**Douglas E. Rosenthal, Esq.**

Sonnenschein Nath & Rosenthal, Washington, DC

**Jean Savigny**

Keller and Heckman, Brussels, Belgium

**Melanie Thill-Tayara**

Salans, Paris, France

**Lode Van Den Hende**

Herbert Smith, Brussels, Belgium

**Eduarne Navarro Varona**

Uría & Menéndez, Brussels, Belgium

## REITs from page 15

the European Public Real Estate Association, who notes that German REIT legislation will probably be passed more quickly than in the UK. That could be good news for many open-ended real-estate funds in Germany, which have had some problems accurately valuing their properties recently, as REITs could provide a vehicle to solve some of their issues.

But, unlike the UK government, the German Finance Ministry hasn't provided draft legislation detailing the potential structure of its REITs, according to Dr. Florian Schultz, a partner at law firm Linklaters Oppenhoff & Radler in Frankfurt. "I am optimistic that the government will agree to REITs, although the crucial and difficult point is the tax concept for a German REIT -- the market is demanding a REIT with several tax benefits, whereas the ministry has sent clear signals that it will not support legislation that will lead to a reduction in [its] tax payments," he says.

In the UK, as the government stalls on the legislation, investors are moving their real-estate holdings offshore to reduce their tax payments. Last year saw an increase in the number of listed UK property trusts domiciled in the Channel Islands. "The bottom line is that the more vehicles that go offshore, the less tax the government will receive," says Hughes. "Ultimately, the government is encouraging an 'unregulated' offshore real-estate investment market."

The UK offshore real-estate market has grown to about €20 billion, or roughly €29 billion, from about €1 billion in 1998. Tax received in 1998 from the UK-listed property sector was about €350 million, which fell to about €200 million in 2003, largely because of privatizations and companies moving properties into

offshore vehicles. "If this continues, by around 2008, I imagine there won't be much of a listed market to tax in the UK," says Hughes.

Deutsche Bank AG's head of European real-estate research, Peter Hobbs, agrees. "Within the UK, the government faces considerable tax leakage through the creation of many offshore private real-estate investment vehicles," he says. "The introduction of REITs will be a major factor enabling the government to slow or reverse this trend." The German government doesn't face this problem as there is no offshore real-estate market.

The second big trend in 2005 is likely to be large residential divestitures in Germany and corporate asset sales throughout Europe. According to Hobbs, the UK government alone is reported to be planning a €30 billion outsourcing of assets. In Germany, a number of federal and local governments plan to sell and lease back real-estate portfolios. The French government recently said it intends to dispose of €1.5 billion in real-estate assets over the next three to four years.

There were already a number of large residential transactions in Germany in 2004. In December, German steel giant ThyssenKrupp AG sold its residential real-estate group for €2.1 billion to a consortium comprising Morgan Stanley and Corpus-Immobilien-gruppe, based in North-Rhine Westphalia. Earlier in the year, opportunity fund Fortress Immobilien AG acquired Gagfah, a health-ministry housing corporation, from German public pension fund BfA for €3.5 billion. "There remain significant opportunities for government and corporate owners to monetize their assets because institutional investors remain interested in secure income yield," says Gordon Black, Heitman's managing director of international private equity in London. "We believe that there should be robust activity during 2005."

Both corporate and government real-estate portfolio sales -- and often lease-backs -- dominated the European real-estate scene in 2004. "Last year was an interesting year for opportunity funds as there was very little investment in direct property transactions," says Chad Pike, Blackstone Group managing director and head of European real estate. "The weight of money from private individuals and institutions meant that private-equity players focused more on very large, complicated corporate situations."

There has also been a big increase in competition for large sale/lease-back deals in Europe over the past five years, which looks set to continue into 2005, according to Edward LaPuma, chief investment officer at New York-based investment firm W.P. Carey & Co. (Dow Jones)

### Subscribe Today to EuroWatch®

\$879 one year/US delivery     \$929 one year/non-US delivery  
(One year consists of 22 twice monthly issues)

Mail your order to:

WorldTrade Executive, Inc., PO Box 761, Concord, MA 01742 USA  
 or place your order by fax at: (978) 287-0302 or phone: (978) 287-0301

Credit Card # \_\_\_\_\_

VISA Mastercard American Express Diners Card

Expiration Date: \_\_\_\_\_

Signature \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Company Name \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_

State/Country \_\_\_\_\_ Zip \_\_\_\_\_

Telephone \_\_\_\_\_

Fax \_\_\_\_\_