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Reportage

All eyes on the Digital Single Market

On 6 May the Commission unveiled the Digital Single Market Strategy (DSM). Most of the contents of the Strategy were hardly going to be surprising; the Strategy has been preceded by several earlier **announcements** and even **leaks**.

What is clear is that the DSM Strategy will encompass a wide variety of issues. The initial aim is to ensure that consumers and businesses will have better access to online goods and services across the Union, and that the rules for online purchases are clarified. This means tackling geo-blocking in particular, as well as other forms of restrictions for consumer access to goods and services and finalising copyright reform. For the telecom industry the package will mean new initiatives on abolishing roaming fees, creating European platforms and perhaps a solution on net neutrality. Data protection reform is to be finalised and it may be widened to include other privacy related issues, such as the right to be forgotten. Finally, initiatives to build "data economy" will be introduced. Here the Commission sees the need for action in the ownership and access to data, in big data and analytics, cloud services, and in open data. This will most likely include not only proposals on availability and use of data but also on how to strengthen cyber security.

Due to the very wide areas of action and the range of invested interests involved, the European Parliament, the Member States, think tanks and industries have started to draft their positions and responses. Some Member States, including the UK, have published even their own **visions** on the DSM. Yet, most of the DSM initiatives are building on existing initiatives and frameworks. Therefore, the debate has familiar features. The discussion is really about openness, whether and to what extent it is possible to remove the barriers for the European digital services, be it in the form of geoblocking, net neutrality or the remaining roaming charges. As to the copyright reform and digital economy, this week the European Parliament Legal Affairs Committee (JURI) will debate and adopt decision on the controversial report by MEP Julia Reda on copyright reform. The

report has received 600+ amendments from the MEPs, and debate is already hot on whether and how to open the digital content. With respect to creating the European data markets, on the one end of the discourse there are demands for further digital or data sovereignty and building European platforms and responses to big American and multinational firms and service providers. On the other end, these demands are countered with arguments that this type of sovereignty is another form of protectionism and digital **mercantilism**.

The Commission wants to see that the reforms and new initiatives reflect the reality of the digital markets. Building a realistic policy means taking into account both the needs of the industries and the consumers. For example, with respect to geoblocking, and copyright, there is evidence that consumers have means to circumvent various digital blocks and barriers whereas industries want to protect the income from the customers. It would be the role of the Commission to draft initiatives which takes into account both interests. It remains to be seen how these issues will be shaped, as even the Commissioners themselves do not seem to be yet fully on the same page on these core **issues**.

Considering the complexity of the reforms to come, the Commission has also already promised that the Strategy will be a "living document," meaning that the proposals and initiatives will continue to take shape as the DSM is developed. What is therefore clear is that the unveiling of the Digital Single Market Strategy will answer some questions and give a timetable for the initiatives, but there is plenty of work still to follow. This means that there will be further assessments and consultations in the horizon.

Although the Digital Single Market is a European initiative, its implications will go well beyond the EU's borders. More and more is happening online: services, commercial transactions, art and culture, education, health or government to name but a few. This shift has profound consequences on how we see the future world of services, how we intend to regulate it and what challenges lie ahead. The choices made by the European policy makers will also shape Europe's relationship with its partners when it comes to accessing and regulating the EU markets and its operators.

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Excellence in International Legal Services award: nominations open

Nominations opened on 9 March for the Law Society's Excellence Awards, including the award for Excellence in International Legal Services. This is an excellent opportunity to demonstrate the contribution your firm is making around the world and to showcase innovation in the provision of international legal services.

More about the award:

The global legal services market is forecast to be worth £450bn in 2015. This category will recognise law firms with an innovative approach to the delivery of legal services in today's international marketplace. Whether exploring emerging markets or developing international networks to build your business, we want to hear how you are embracing the opportunities globalisation offers your firm and clients. This category is open to SRA-regulated law firms and foreign law firms who are members of the Law Society of England and Wales' **International Division**.

Nominations are now open for the **International Legal Services** award: [nominate here](#). Deadline: Friday 5 June.

Contact Donna.Evans@lawsociety.org.uk with any queries.

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Register now for the Law Society of England and Wales' annual International Marketplace conference on 1 July in London, this year focusing on law firms Going Global.

The international legal services market has ever increasing opportunities for law firms of all shapes, sizes and locations, from the biggest corporates to high street practitioners to firms outside the traditional legal hubs.

Industry experts and leading lawyers will share their insights on the global legal market, with panels on developing an international strategy and workshops emerging markets.

Registration

Please [register online](#). **Early booking fees before Friday 15 May 2015.**

International Division Members qualify for reduced rates. Find more [here](#).

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INTERNATIONAL TRADE

EU publishes its textual proposal for regulatory cooperation chapter (TTIP)

Following the ninth round of negotiations on Transatlantic Trade and Investment Partnership (TTIP), the EU published its textual proposal for the chapter on regulatory cooperation.

The **draft text** includes proposals to establish cooperation at both central and non-central level with the latter to include central authorities of a US State or central authorities of an EU Member State. The provisions of the chapter would not fall under the dispute settlement rules in the agreement. Instead, the EU suggested exploring alternative methods for resolving disputes, such as regular monitoring or reporting. From the point of view of professional services and members of regulated professions, Article 10 and 11 offer insight on how the EU views promoting regulatory cooperation at central and non-central levels, including mutual recognition of professional qualifications.

Regulatory cooperation is one of the most challenging parts of TTIP, both technically and politically. It is an attempt to make regulatory procedures and standards compatible but at the same time to maintain the standards of protection. It is highly anticipated by the representatives of business who expect less administrative and regulatory burden. At the same time, however, some civil society representatives and some political groups fear that this process may lead to lowering employment, health and safety and environmental standards in the EU.

Slow but steady progress in TTIP negotiations

The ninth round of Transatlantic Trade and Investment Partnership (TTIP) negotiations took place in New York from 20 to 24 April. After a slow down in 2014, the negotiations are back on track with both sides committed to give them a fresh start.

The areas that have seen the most progress in the negotiations include regulatory cooperation (both horizontal and sectoral). The negotiators also announced further talks on liberalisation of services. The Commission has not yet discussed the investment protection chapter and published its textual proposal only on 5 May.

On the US side, Congress introduced a bipartisan and bicameral bill for trade promotion authority (TPA), also known as fast-track, on 16 April. It is expected that the TPA will make it easier for the Obama administration to negotiate trade deals. The TPA also enables the president to send an agreement to Congress for a vote without amendment (provided that relevant procedures and negotiating objectives were met). Most importantly, however, the TPA will also demand more transparency from the US negotiators thus possibly enabling the European side to see what the American partners are tabling as proposals. It will also make it easier for the members of the US Congress to access documents relating to the trade negotiations. Looking ahead, it will be interesting to observe the outcome of the Parliament's vote on the resolution on TTIP. In recent votes on the Parliament's resolution on the dossier, six European Parliament's committees, including the legal affairs committee (JURI), voted against the investment protection provisions in the agreement. In addition, the committee responsible for drafting the Parliament's resolution, international trade committee (INTA), received 898 amendments which led to the committee vote being postponed to 28 May and the plenary vote scheduled for 8-11 June.

The tenth round of TTIP negotiations is planned for July.

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INTERNATIONAL TRADE

European Parliament gives opinion on ISDS

The 16 April was the deadline for the European Parliament committees to submit their opinions on the Transatlantic Trade and Investment Partnership (TTIP) agreement to the International Trade Committee (INTA). The committee is drafting the Parliamentary resolution on TTIP to be adopted in the plenary session.

Fourteen committees submitted opinions on TTIP, seven of which formed opinions specifically mentioning the Investor State Dispute Settlement (ISDS) mechanism. ISDS is a mechanism which provides investors with an alternative means to the domestic courts in order to seek compensation for damages caused by the decision of a host State.

Of the committees to submit an opinion on ISDS six committees, including Legal Affairs (JURI), Petitions (PETI), Constitutional Affairs (AFCO), Environment, Public Health and Food Safety (ENVI) and Employment and Social Affairs (EMPL), voted against the ISDS mechanism. The Legal Affairs Committee, whose opinion is particularly relevant when discussing ISDS stated that they oppose the mechanism as "other options to enforce investment protection are available, such as domestic remedies."

The only committee to submit a pro-ISDS opinion was the Agriculture and Rural Development (AGRI) committee who called for a reformed ISDS mechanism to be included in TTIP.

The INTA committee will now try and take on board the opinions given to them by the other committees and form a resolution on TTIP to be voted on by the INTA committee on 28 May. This resolution will then be voted on by the entire parliament in a full plenary session on 10 June.

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COURT OF JUSTICE OF THE EUROPEAN UNION

An EU bakers' dozen: 28 more CJEU Judges

On the 28 April the European Parliament met in Strasbourg behind closed doors to discuss the European Court of Justice's (CJEU) **proposed reform** of increasing the number of European Court of Justice judges by 28. This reform that has proven to be a controversial topic with the president of the CJEU Vassilos Skouris, who is in favour, and President of the General Court Marc Jaeger, who is against, clashing over the issue. Increasing the number of judges has been proposed as a solution to the problem of the large backlog of cases in the CJEU and excessive delays experienced by the parties involved.

In March 2011 the president of the CJEU asked for an increase of 12 judges to deal with the backlog. This was approved by the European institutions in principle. However requesting an increase of 12 judges between 28 Member States proved a difficult number to achieve a unanimous decision from the Council as only some Member States would be allocated extra judgeships. To deal with this problem in October 2014 the **Court submitted a new text proposing** a gradual increase in the number of new judges to 28 to provide every Member State with an additional judge and reach a final overall figure of 56 judges.

The cost, which is estimated at over €23 million a year, has drawn a large amount of criticism from opponents of the reform. Antonio Marinho Pinto MEP (Portugal, ALDE) has stated this to be excessive and wasteful. Furthermore there have been suggestions of alternate, cheaper solutions to the problem. President of the General Court Marc Jaeger has suggested that increasing the number of support staff in the CJEU would be a more appropriate solution.

The meeting on the 28 April was organised by the rapporteur on the dossier for the Legal Affairs committee, Antonio Marinho Pinto MEP, who strongly opposes the reform. In previous committee meetings he has been vocal about the fact that the current General Court judges had not been listened to when discussing increasing their number. As a result he invited Skouris, Jaeger and four CJEU judges, who are known to oppose the reform, to the meeting. Skouris refused to attend.

In this meeting the judges argued that the backlog was not as bad as it was made to appear and stated that there had only been a problem with a large backlog in 2010. However, since then improvements have been made and 80 percent of the backlog has been solved and the rest of the backlog is continuing decrease. As can be evidenced by this recent meeting the debate continues to cause controversy and the Brussels Office will monitor any new developments.

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TAXATION

Reporter charged over Lux Leaks

On 23 April the Luxleaks reporter Edouard Perrin was charged for his role in the taking of documents from accounting firm Price Waterhouse Coopers (PWC). This follows on from the charges brought against two PWC employees last December for their role in leaking the documents.

The Luxleaks revelations brought to light tax avoidance measures taken by over 300 of the world largest multinational corporations and played a key role in putting pressure on the European institutions to take action against tax avoidance schemes. Since the revelations the European Commission has vowed to get tough on tax and so on 18 March it published a communication on increasing tax transparency.

Following the charging of Edouard Perrin it can be argued that there is a great sense of injustice in the decision. This stems from the stark contrast between the illegality of leaking documents in the best interest of the public to highlight tax avoidance deals and the legality of the tax deals which are wholly against the public interest as they have starved Member State's of necessary income in recent times of austerity. It is therefore feared that a situation like this where journalists and whistleblowers are punished for exposing information in the public interest may set a dangerous precedent which could enable future unethical business practices.

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INTELLECTUAL PROPERTY

Hollywood directors yet to see the big picture

When Jean Claude Juncker, the President of the European Commission, revealed the [Work Programme for 2015](#) in December he made it very clear that the Digital Single Market (DSM) would be a priority. At the forefront of this proposal is the plan to modernise EU legislation on copyright and audiovisual media service.

The Commission will be presenting their strategy for the DSM including copyright reform on 6 May 2015. However, a draft copy of this strategy has been circulating which suggests that 'the Commission will propose legislative initiatives on simple and effective cross border rules for consumers and businesses' which will include, among other proposals, 'harmonised EU rules for online purchases of digital content'. The leaked document also states that the timetable for reform of the proposed copyright regime is Autumn 2015.

When the strategy has been revealed on Wednesday it contained proposals on geo-blocking, a technical restriction preventing online content being watched from another Member State, which Vice President of the European Commission Andrus Ansip [questions](#). It remains to be seen whether the Commission's proposal will go as far as ending this discriminatory practice or whether it will offer a softer approach by facilitating the portability of legally acquired content.

Concerns about a more cautious approach of facilitating portability were raised by Julia Reda MEP (Germany, Greens), a member of the Pirate Party, in her draft report on copyright reform and also during an exchange of views in the European Parliament with Mr Ansip. She questioned the actual impact that such approach would have in ending geo-blocking and she has argued that the vast majority of works are not available in the European Union for legal purchase. She cited ad supported platforms such as YouTube and tax funded platforms like BBC iPlayer as examples.

Addressing Ms Reda's point, the Vice-President confirmed that the proposals on portability are only the first step and not the solution. He stated that his aim was to create a win-win situation where customers are able to pay for better services and products and where artists are well remunerated for what they create. And therein lies the heart of the debate - the balancing of copyright reform, which would encourage competition, investment and help to unlock the single market, with measures that benefit rights holders. A press conference in the European Parliament saw Hollywood directors, among others, speak out about against pan European licences. They argue such a measure could lead to a less culturally diverse sector with smaller distributors struggling to compete against giant, non-European internet platforms in an EU-wide market.

In the exchange of views Mr Ansip addressed some of these fears, speaking out against the possibility of a pan-European license and stating that he is not trying to change the territorial business model. He made it clear that fair remuneration for creators is his aim and that for cultural diversity to be achieved cross border access is necessary. Time will tell whether this balance between creator and consumer will be struck. The JURI Committee will debate and adopt a position on Ms Reda's draft report on 7 May 2015.



WEBLINKS

- [Draft report on the implementation of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the](#)

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COMPETITION LAW

Vestager steps on the Gaz: Googling the recent developments in Competition Law

On 22 April 2015 the European Commission sent a Statement of Objections to Gazprom alleging that some of its business practices in Central and Eastern European gas markets constitute an abuse of its dominant market position in breach of the EU antitrust rules. A Statement of Objections is a formal step in Commission investigation in which the Commission informs the parties concerned in writing of the objections raised against them. In the Commission's view Gazprom is hindering competition by pursuing a strategy to partition the gas supply markets of eight Member States and by maintaining an unfair pricing policy in a number of these countries.

The decision to pursue Gazprom for market abuses needs to be seen in its political context. Some have argued that the Commission is playing a political game in an attempt to strengthen the negotiating position and impose additional sanctions at a time of tense relations between the EU and Russia (the Russian state is the largest shareholder of Gazprom) . The previous Commission began its investigation in 2007 into Gazprom. This came together with the launch of the Third Energy Package, which featured restrictions on ownership of gas pipelines and molecules. In 2011, in connection with the investigation, the Commission performed the **'biggest antitrust raid in the EU's history'**, in which documents and computers were seized in from Gazprom's offices. The Commission did subsequently open formal proceedings against Gazprom in August 2012, and the Commission prepared the statement of objections in 2013, but the Commissioner Joaquin Almunia did not bring the charges, because of the decline in East-West relations over Ukraine. The timing of official proceedings may therefore give the impression that the whole affair is steeped in political motivation. However Margrethe Vestager, the current Competition Commissioner, insists that this is not the case and **'all companies that operate in the European market – no matter if they are European or not – have to play by our EU rules'**.

If actions can speak louder than words then the Danish Commissioner's pursuit of US giant Google demonstrates that she believes in what she says. Following four years of unsuccessful settlement talks, Google was handed a statement of objections on the 15 April. At the present moment objections focus on one element of Google's operation, that is their online search engine which allegedly abuses its dominant position to favour its own price comparison service. In a **blog entry** on 15 April Google stated that they strongly disagree with the accusations levied against them and that they look forward to making their case. On the same day the Commission also launched formal proceedings into Google to investigate if the company's conduct in relation to its Android mobile operating system as well as applications and services for smartphones and tablets has breached EU antitrust rules.

Google and Gazprom have been given ten and twelve weeks respectively to reply or concede to the charges. If they fail to satisfy the Commission then the next stage is enforcement, which could lead to fines of up to ten percent of their turnover.

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DATA PROTECTION

I spy trouble for Merkel

Last month the Brussels Agenda reported on the information leaked by Edward Snowden revealing that the US National Security Agency (NSA) had tapped the phones of heads of state, including the German Chancellor Angela Merkel. At the time of this revelation Mrs Merkel was rightly outraged, saying that 'spying among friends is not at all acceptable'.

Embarrassingly, it has been revealed by German media that the Bundesnachrichtendienst (BND), Germany's foreign intelligence agency, has aided the NSA in spying on western European targets such as France, the European Aerospace business Airbus and the European Commission.

Germany's public prosecution office has begun a preliminary investigation into accusations that the BND violated laws by helping the United States spy on officials and firms in Europe. According to German news sources the BND have been helping the NSA for at least ten years, although others suspect that it began in

2002 after the events of 9/11.

The revelations raise questions regarding the extent of the surveillance, who had legitimised the work and whether policy makers were aware of what was going on. The scandal has understandably led the opposition Green and Left parties to demand more information about who knew what but it has also triggered a fierce debate in the grand coalition. Social Democrats Party (SPD) deputy Ralf Stegner has called for **'the current chancellery minister and his two predecessors to...answer questions as quickly as possible'**. He went on to say that either the Chancellery was totally unaware, and thus is incapable of overseeing the BND, or it lied to the Parliament and German public.

Thomas de Maiziere, the interior minister and Mrs Merkel's chief of staff between 2005-2009, will be called by MPs to give evidence before the parliamentary intelligence control committee on 6 May. He is accused of lying about the Chancellery having no information about Germans spying for the NSA.

Mrs Merkel has spoken out in defence of the cooperation between intelligence agencies and Government spokesman Steffen Seibert has said that the German Chancellor will gladly appear before the Investigative Committee if she is invited to do so by the Parliament.

Like the Snowden disclosures in 2013 this scandal shines light on the true extent of surveillance of both citizens and government officials by the US and other countries in the EU. These infringements on privacy are worrying considering the passage of the controversial intelligence gathering law in the French parliament on the 5 May. Among other provisions it authorises new methods of bulk collection of metadata, a development which may have serious consequences for the legal profession and legal professional privilege.

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Camino Mortera

Westminster Abbey: the drama behind Britain's relationship with the EU

The relationship between the UK and the European Union has all the ingredients for a good drama: there is love, hate, arguments, reconciliations and even an old French man. General De Gaulle would surely not be pleased with the present situation. As a foreigner, Britain's relationship with the EU has hardly troubled me. As a researcher focusing on Justice and Home Affairs, I found the UK's special arrangements in the area fascinating. They were the living proof that the EU was able to accommodate all its members, working on the basis of what jargon-lovers call 'variable geometry'. I must confess, outside JHA, my knowledge of Britain's approach to the EU was very much restricted to Sir Humphrey's memorable explanation in old-time British series 'Yes, Minister'. I moved from Brussels to London last October to find that, what I thought was just a clever line in a good TV show was, actually, much more than that: Britain's relationship with the EU was far more troubled than what I (and many of those working in Brussels) had imagined. The problems, as in any good drama, are of essence and very much linked to feelings. Being an island, the UK has historically feel somehow disconnected (and threatened) by the continent. And it has its reasons: for better or worse, the UK is one of a kind in many areas, from its legal system to its very own way of driving. The UK is a traditionally liberal country surrounded by rather interventionist states. Do not even think of suggesting that Brits should have IDs, too. So the UK has always feared that more European integration meant that Britain would lose its spirit, everything that makes it a great country. Until now, then, all the drama was based on these deep existential issues. But with the rise of anti-European party UKIP, and the outcome of the general elections being as unpredictable as it has ever been, the problems of essence (of policy) have become a problem of tactics (of politics).

David Cameron has been struggling for some time now - to please his Eurosceptic backbenchers and counter UKIP's rising popularity, he has been making more and more concessions on Europe. Some still remember how, as freshly elected leader of the Tories, Cameron withdrew the Conservatives from the EPP group in the European Parliament. This unprecedented move showed, very early on, that David Cameron was ready to do what it took to be Prime Minister, regardless of any strategic thinking on Europe. Fast forward ten years, and this has gotten even edgier: Cameron has offered to renegotiate UK's relationship with Europe, more specifically on free movement and migration. If he does not get what he wants, he has announced a referendum, to be held by the end of 2017. What is dangerous about Cameron's approach to Europe is that, in the words of Charles Grant, director of the CER, 'is all tactics and no strategy'. This lack of strategy makes very difficult to predict what the UK's relationship with Europe will look like in the short-medium term.

Labour is not a better option for pro-Europeans, at least in its current form: Ed Miliband has purposely stayed

away from the topic of Europe during the whole campaign. Knowing that migration is featuring prominently during electoral debates, Labour has also suggested that they will seek to renegotiate EU rules on access to benefits. Some fear that, if Labour win, a Tory party not constrained by power (and with a more Eurosceptic leader than David Cameron) will become much tougher on the EU and campaign for a *Brexit* by the next elections (in 2020). That would be catastrophic for the European cause. So as for now, all big parties are positioned against UKIP in that they want the UK to stay in Europe. Both Tories and Labour believe that a reform is necessary, but only the Tories have put forward the idea of a referendum if such reform is not achieved. In his 2013 Bloomberg speech, Cameron promised to campaign for a UK in Europe, should a referendum be finally held. It is not clear whether he will fulfil his promise.

The general mood in London is that, regardless of who wins, a referendum is now inevitable. Prospects are gloomy for the UK and Europe. I am hoping that the final chapter of this drama is still to be scripted and that it will include a happy ending. After all, we all want the UK and Europe to live happily ever after.

Biography



Camino Mortera-Martinez is a research fellow at the Centre for European Reform working on Justice and Home Affairs, with a particular focus on migration, internal security, criminal law and police and judicial cooperation. Camino holds a Master's Degree in Law by the University of Oviedo (Spain), an Exchange Diploma in Legal Studies by Cardiff University (UK) and a Master of Arts on EU Political and Administrative Studies by the College of Europe (Belgium), where she specialised in Justice and Home Affairs with a master thesis devoted to the influence of the SWIFT case on the politics and institutional structure of counter-terrorism policies in the EU. Camino Mortera-Martinez can be followed on Twitter at @CaminoMortera

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- **Banking and finance:**
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- **Banking and finance:**
An EU framework for simple, transparent and standardised securitisation 18.02.2015 – 13.05.2015
- **Enterprise:**
Call for data on ingredients: 'Styrene/Acrylates Copolymer (Nano)' and 'Sodium Styrene/Acrylates Copolymer (Nano)' in the framework of Regulation (EC) 1223/2009 of the European Parliament and of the Council of Cosmetic Products 25.5.2015 - 30.06.2015
- **Enterprise:**
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- **Enterprise:**
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• **Communications Networks, Content & Technology:**

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• **Climate Action:**

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Guidelines on the application of the specific rules set out in Articles 169, 170 and 171 of the CMO Regulation for the olive oil, beef and veal and arable crops sectors 15.01.2015 until 05.05.2015

• **Information request: Availability of short term export credit insurance for exports to Greece**

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• **Employment and Social Affairs:**

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19/02/2015 until 15/05/2015

Legislation coming into force last month

- Commission Decision (EU) 2015/715 of 30 April 2015 amending Annex I to Regulation (EC) No 715/2009 of the European Parliament and of the Council on conditions for access to the natural gas transmission networks
- Corrigendum to Commission Implementing Regulation (EU) No 908/2014 of 6 August 2014 laying down rules for the application of Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to paying agencies and other bodies, financial management, clearance of accounts, rules on checks, securities and transparency (OJ L 255, 28.8.2014)
- Commission Regulation (EU) 2015/703 of 30 April 2015 establishing a network code on interoperability and data exchange rules (1)
- Corrigendum to Council Decision 2013/744/EU of 9 December 2013 on the signing, on behalf of the European Union, of the Protocol to Eliminate Illicit Trade in Tobacco Products to the World Health Organisation's Framework Convention on Tobacco Control, as regards its provisions on obligations related to judicial cooperation in criminal matters, the definition of criminal offences, and police cooperation (OJ L 333, 12.12.2013)

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