

Europe

MARIE TEDESCO SCOTT, BRYAN YASINSAC, WOJCIECH BAGINSKI,
ANNA ENGELHARD-BARFIELD, NICOLAS ETCHEPARRE, LUCA CM MELCHIONNA,
JÖRG REHDER, ALEXANDER RITCHIE, ROSELYN SANDS, & MICHAL ZOLUBAK*

This article updates selected aspects of European Union law from 2014.

I. European Union Law

A. GERMANY-ÜBER IN GERMANY

On August 25, 2014, a Frankfurt court issued a preliminary injunction against the ride-sharing company, Über, for violating Germany's Passenger Transportation Act because Über was providing transportation services without mandatory insurance and licensing.¹ A taxi association sought the injunction because taxi drivers were losing business to Über.

Shortly thereafter, on September 16, the court revoked the preliminary injunction holding that, though banning Über in Germany was probably correct for violating the Passenger Transportation Act, the underlying matter was not "urgent" as is required for preliminary injunctions.² The taxi association had waited several months before filing the action against Über. Not surprisingly, this decision did not sit well with the taxi association, nor with taxi drivers.

Therefore, rather than filing another action against Über, two separate Frankfurt-based taxi drivers took measures into their own hands and ordered rides on Über. They subsequently sought their own injunctions against the respective Über drivers. Frankfurt courts issued preliminary injunctions against the individual drivers rather than against the corporate entity of Über.³ Taking action against the Über drivers was meant to scare other

* Marie Tedesco Scott (lead editor), Bryan Yasinsac (co-editor, student at Florida State University College of Law); and contributors Wojciech Baginski (Polish Geological and Mining Act Updates), Anna Engelhard-Barfield (Data Privacy in Europe: The Google Decision of the European Court of Justice), Nicolas Etcheparre (French Labor Law), Luca CM Melchionna (Financial Transactions Tax; Efficiency in Cross Border Transactions), Jörg Rehder (Germany-Uber in Germany), Alexander Ritchie (Germany-Munich Art Trove), Roselyn Sands (French Labor Law), Michal Zolubak (Polish Competition Regulation).

1. Resolution of the Frankfurt District Court; File Number 2-03 O 329/14 (Aug. 25, 2014)

2. Press Statement, Frankfurt District Court, Landgericht Frankfurt hebt einstweilige Verfügung gegen 'Uber' auf [District Court of Frankfurt Revokes Preliminary Injunction Against Uber] (Sept. 16, 2014) (Ger.).

3. Stefan Schultz, *Gericht verhängt erstes Verbot gegen Uber Fahrer* [Court Issues First Ban on Uber Driver], SPIEGEL ONLINE (Sept. 11, 2014, 04:24 PM), <http://www.spiegel.de/wirtschaft/unternehmen/uber-verbot->

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

480 THE YEAR IN REVIEW

drivers from associating with Über as they face fines of up to EUR 20,000 for each offense⁴ (and potentially up to EUR 250,000 if they should violate their respective preliminary injunctions).⁵

Confrontation is not new to Über. Über has already faced legal hurdles in various U.S. states and municipal jurisdictions as well as in specific cities in Europe and Australia. Though many of the arguments against Über relate to licensing, insurance, and safety, it is clear that taxi owners and drivers are concerned about their respective businesses and investments. For example, New York taxi medallions, which are necessary to drive a taxi in New York, fetch up to \$1.0 million and have increased in cost by 500 percent since 2004.⁶ These prices have flattened out in 2014; some believe that the introduction of ridesharing services such as Über is responsible.⁷

Like many other industries facing competition from the digital world, it seems that decades-old taxi regulations are in need of updating. According to Germany's Economics Minister, "possible amendments to existing regulations, [as they apply to] the digital world and users' changed mobility demands, are warranted."⁸ If nothing else, the competition is forcing taxis to improve their services. A taxi association in Berlin, for example, is offering courses to taxi drivers on how to be polite, how to hold the door open for customers, and how to keep taxis clean.⁹

B. GERMANY—MUNICH ART TROVE

The March 2012 arrest of Cornelius Gurlitt led authorities to a great cache of art, previously thought to be lost under the Nazi regime during World War II. Developments in 2014 have set off new legal issues concerning the handling of looted artwork. The decision to publicize collection items, and the agreement between the authorities and Gurlitt both highlight effective means of international cooperation as well as the potential to hinder future claimants. The Augsburg Administrative Court decided to permit the

fuer-fahrer-der-taxi-app-a-991000.html; see also *Klage eines Taxi-Unternehmers: Gericht stoppt weiteren Über Fabre in Frankfurt* [Action by a Taxi Company: Court Bans Another Uber Driver in Frankfurt], SPIEGEL ONLINE (Sept. 24, 2014, 07:19 AM), <http://www.spiegel.de/wirtschaft/unternehmen/uber-gegen-taxifahrer-gericht-stoppt-fahrer-a-993399.html>.

4. Personenbeförderungsgesetz [PBefG] [Passenger Transportation Act], March 21, 1961, BGBL. I at 241, § 61(2) (most recently amended on Aug. 7, 2013, BGBL. I at 3154) (Ger.).

5. Zivilprozessordnung [Civil Procedure Regulation], Dec. 5, 2005 BGBL. I at 3202; 2006, I at 431; 2007, I at 1781, § 890(1) (most recently amended on July 8, 2014, BGBL. I at 890) (Ger.).

6. Mark J. Perry, *NYC taxi medallion prices have flatlined for the last year following a decade of steady increases – the 'Uber effect'?*, AMERICAN ENTERPRISE INSTITUTE (Aug. 14, 2014, 11:02 AM), <http://www.aei-ideas.org/2014/08/nyc-taxi-medallion-prices-have-flatlined-for-the-last-year-following-a-decade-of-steady-increases-the-uber-effect/>.

7. *Id.*

8. Christian Schlesiger, et al., *Wirtschaftsministerium fordert mehr Wettbewerb auf dem Taxi-Markt* [Economics Ministry Demands More Competition on the Taxi Market], WIRTSCHAFTS WOCHE (Sept. 13, 2014), <http://www.wiwo.de/unternehmen/dienstleister/politik-diskutiert-uber-verbot-wirtschaftsministerium-fordert-mehr-wettbewerb-auf-dem-taxi-markt/10693642.html>.

9. Michael Franke, *Taxifahrer werden netter* (Taxi Drivers are Becoming Politer), FOCUS MAGAZINE (Sept. 22, 2014), http://www.focus.de/finanzen/news/qualitaetsoffensive-taxifahrer-werden-netter_id_4147844.html.

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

EUROPE 481

publication of images from the Gurlitt collection¹⁰ providing potential claimants and the international community the chance to review discovered pieces of questionable provenance.¹¹ This decision, due in part to the cultural importance of the works,¹² helped address the issues of transparency of the investigation and disclosure to the international community. The lack of transparency demonstrated initially by the German government¹³ was remedied in part by this decision. The efforts of the official government website¹⁴ to promote greater awareness and information support to potential claimants through continuous publication of newly contested works also aided in transparency efforts. The publication of this information has brought greater transparency to the provenance assessment process and greater accessibility for potential claimants.

In April 2014, Gurlitt reached an agreement with the German government in which objects of questionable origin would be turned over to the Schwabing Art Trove Task Force for review.¹⁵ Gurlitt agreed to follow the Washington Principles¹⁶ in regard to the collection, but the agreement gives the Task Force just one year to conduct their provenance research.¹⁷

When Gurlitt died in May 2014, the *Kunstmuseum* Bern became sole heir to the collection.¹⁸ While the Swiss museum is deciding whether or not to accept the collection,¹⁹ the agreement, which provided continued access beyond one year to works that remain in question, assumed they would remain in Germany. While it could be assumed the Swiss museum would cooperate with continued investigations, the terms of the agreement, applying only German law, do not make it a requirement and raise issues not only for future claimants but also the rights of alienation should the museum decide to accept the estate.

10. Gurlitt Case: 29 January 2014 Summary of Decision of Augsburg Administrative Court that the Contents of the Gurlitt Collection be Published, *LOOTED ART* (2014), <http://www.lootedart.com/QJ2EC3715461> [hereinafter *Gurlitt Collection be Published*].

11. *Koordinierungsstelle Magdeburg [Munich Art Trove]*, *LOST ART* (2014), <http://www.lostart.de/Webs/EN/Datenbank/KunstfundMuenchen.html>.

12. See *Gurlitt Collection be Published*, *supra* note 10.

13. Simon Schuster, *U.S. Pushes Germany to Reveal Hoard of Nazi-Looted Art*, *TIME* (Nov. 22, 2013), <http://world.time.com/2013/11/22/u-s-pushes-germany-to-reveal-hoard-of-nazi-looted-art/>.

14. See *Munich Art Trove*, *supra* note 11.

15. Gurlitt Case: 7 April 2014: Joint Press Release BKM, Bavarian Ministry of Justice and Christoph Edel, Lawyer for Cornelius Gurlitt, *LOOTED ART* (2014), <http://www.lootedart.com/QMWQYX761931> [hereinafter *Gurlitt Joint Press Release*].

16. BUREAU OF EUROPEAN AND EURASIAN AFFAIRS, U.S. DEP'T OF STATE, WASHINGTON CONFERENCE PRINCIPLES ON NAZI-CONFISCATED ART (Oct. 10, 2014), available at <http://www.state.gov/p/eur/rt/hlcst/122038.htm>.

17. See *Gurlitt Joint Press Release*, *supra* note 15.

18. Media Release, *Kunstmuseum Bern*, *The Gurlitt Collection* (May 07, 2014), <http://www.kunstmuseumbern.ch/en/service/media/media-release-2014/07-05-14-the-gurlitt-collection-1139.html>.

19. Media Release, *Kunstmuseum Bern*, *The Gurlitt Collection: The Kunstmuseum Bern Retains Legal Representation* (July 04, 2014), <http://www.kunstmuseumbern.ch/en/service/media/media-release-2014/04-07-14-the-gurlitt-collection-1187.html>.

SPRING 2015

PUBLISHED IN COOPERATION WITH
SMU DEDMAN SCHOOL OF LAW

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

482 THE YEAR IN REVIEW

C. FRENCH LABOR LAW

A law for the safeguard of employment (LSE) has significantly modified the French redundancy process.²⁰

This law was aimed at eliminating the uncertainty factor in the timing and costs of the mass redundancy process. Indeed, one of the key difficulties for employers in France has been managing the timeline of the Works Council process and its completion. This new law clearly defines the timeline for the Works Council process, which notably includes a legally fixed end-date—a pre-condition to implementation of a redundancy project.

Under the LSE, the role of the Labor Administration is now key; no redundancies can take place without its approval. Under the new law, both Works Councils and the Labor Administration must be presented with documentation explaining the project and make observations and proposals concerning the procedure or the social measures provided for by the redundancy plan (*Plan de Sauvegarde de l'Emploi*).

Moreover, the new process now gives the employer the option to either prepare these documents unilaterally or prepare them in negotiation with the unions. Negotiations are generally favored, given that the Labor Administration will be less strict regarding the contents of the redundancy plan.

The LSE also changes the jurisdiction of the French courts: an administrative judge—not a civil court—has jurisdiction, but only to challenge the Labor Administration's decision to approve or reject the project. Once the Labor Administration has given approval, the administrative judge should only verify that the process through which the redundancy plan was designed respects the law.

Recent case law has highlighted two interesting trends in the manner in which the French courts interpret this new law.

First, certain commentators feared that the French civil courts would be reluctant to hand over their jurisdictional powers to the administrative courts. However, decisions rendered over the past year prove that the French civil courts intend to apply the law to the letter.²¹

Second, most commentators feared that the courts would overstep the boundaries of their prerogatives. However, the decisions rendered by the courts over the past year show that the administrative judges merely verify that the legal process has been respected by the employer and do not question the contents of the plan.²²

The French Labor Administration recently published figures that highlight the success of the new law.²³ Approximately ninety-two percent of the redundancy plans submitted to the Labor Administration are approved. In addition, only seven percent of the non-ap-

20. Loi 2013-504 du 14 juin 2013 relative à la sécurisation de l'emploi [Law 2013-504 of June 14, 2013 on Security of Employment], JOURNAL OFFICIEL DE LA RÉPUBLIQUE FRANÇAISE [J.O.] [OFFICIAL GAZETTE OF FRANCE], applicable July 1, 2013; See also Roselyn S. Sands, *France - New French Labor & Employment Law Legislation Brings Significant Changes - Effective Date June 17, 2013*, THE INT'L EMPLOYMENT LAWYER (Aug. 7, 2013), <http://intemploy.blogspot.com/2013/08/france-new-french-labor-employment-law.html>.

21. See, e.g., Tribunal de grande instance [TGI] [ordinary court of original jurisdiction] Nanterre, Sept. 10, 2014, Cour d'appel [CA] [regional court of appeal] Versailles, Jan. 22, 2014 (Fr.).

22. Tribunaux administratifs [TA] [regional administrative court of first instance] Chalon, Feb. 11, 2014; Conseil d'État [CE] [highest administrative court] Marseille, Apr. 15, 2014; Tribunaux administratifs [TA] [regional administrative court of first instance] Strasbourg, July 8, 2014.

23. Ordinary parliamentary session (Jan. 29, 2014).

proved plans are challenged before the courts, whereas approximately thirty percent of previous plans were challenged. Only five to ten percent of these challenges are successful, reducing risks bearing on companies implementing redundancy plans.

In conclusion, the mindset regarding redundancies has changed. The new legislation aims at favoring negotiations between employees and their employer, and allows for faster and less risky implementation of redundancy plans in France.

D. POLISH GEOLOGICAL AND MINING ACT UPDATES

Polish regulations related to prospecting, exploration, and extraction of hydrocarbons were significantly revised and developed in 2014.

On August 1, 2014, Polish President Bronislaw Komorowski signed into law the Amendment to the Geological and Mining Act (the Mining Act Amendment).²⁴ Generally, the Mining Act Amendment will come into force on January 1, 2015. Among the many significant changes aimed toward accelerating and facilitating exploration of shale gas contained within the Amendment, the following should be noted:

- (1) Institution of a single concession covering prospecting, exploration, and extraction was introduced;
- (2) Concession will be granted for a period of ten to thirty years;
- (3) Simplification of the granting process for obtaining an environmental decision;
- (4) The National Mineral Energy Operator (NOKE) will not be created. However, control powers of the environmental inspection will be increased and the Ministry of Environment will retain control over the performance of the obligations of the entrepreneur under the concession.

In September 2014, in order to attract foreign investors, the Polish government issued for public consultation a project of a special bill regarding preparation and implementation of investments in prospecting, exploration, extraction, and transportation of hydrocarbons. The main aim of this special bill is to accelerate exploration of shale gas in Poland by making the administrative procedure easier and significantly faster, reducing the time from twelve months to approximately three months.

On August 25, 2014, the President of Poland signed the Act on the Special Hydrocarbon Tax;²⁵ it will come into force on January 1, 2016.

E. POLISH COMPETITION REGULATION

The latest developments in the Polish competition regulations were introduced by the amendment²⁶ to the Competition Act (Competition Act Amendment).²⁷ The new legislation was aimed at simplifying the merger control procedures and increasing the efficiency of the existing competition rules. The Competition Act Amendment was announced in

24. Ustawa z dnia 11 lipca 2014 r. o zmianie ustawy – Prawo geologiczne i górnicze oraz niektórych innych ustaw [Act of 11 July 2014, Amendment to the Geological and Mining Law] Dz.U. 2014 poz. 1133.

25. Ustawa z dnia 25 lipca 2014 r. o specjalnym podatku węglowodorowym, [Act of 25 July 2014, Act on the Special Hydrocarbon Tax], Dz.U. 2014 item 1215.

26. Ustawa z dnia 10 czerwca 2014 o zmianie ustawy o ochronie konkurencji i konsumentów oraz ustawy–Kodeks postępowania cywilnego [Act of 10 June 2014 on amendment of the Act on protection of competition and consumers] Dziennik Ustaw [Journal of Laws] [Dz.U.] 2014 No. 954 [hereinafter the Competition Act Amendment].

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

484 THE YEAR IN REVIEW

the Polish Journal of Laws on July 17, 2014 and will come into force on January 18, 2015. The Competition Act Amendment generally provides for the following changes:

- (1) Distinction between “simplified” and “extended” merger control procedures. The simplified procedure is a one-stage procedure designed for simple mergers. In such cases, the clearance decision should be granted in one month from the submission of the application. The extended procedure is intended for complicated concentrations. In these cases, the President of the Office of the Competition and Consumer Protection issues a decision pursuant to which the proceedings proceed to the extended stage. The time limit for the completion of the second stage is four months.
- (2) Additional incentives for undertakings that have already applied for the leniency procedure. These incentives are designed to notify the President of the Office of the Competition and Consumer Protection of the existence of other prohibited agreements. In such cases, the notifying undertaking may be granted a 30 percent reduction of the fine to be imposed for the first prohibited agreement and even a total exemption from fine in regards to the other prohibited agreements. In general, this leniency procedure will apply if the Office of the Competition and Consumer Protection does not have any information about the additionally notified prohibited agreement and the notifying undertaking is one of the parties.²⁸
- (3) Extension of the statute of limitation periods from one to five years for anti-competitive practices.

F. DATA PRIVACY IN EUROPE: THE GOOGLE DECISION OF THE EUROPEAN COURT OF JUSTICE

On May 15, 2014 the European Court of Justice (ECJ) issued a decision in *Google Spain SL v. Agencia Española de Protección de Datos*.²⁹

Therein, the ECJ held that “an internet search provider is responsible for the processing that it carries out of personal data that appear on web pages published by third parties.”³⁰

Thus, if following a search made on the basis of a person’s name, the list of results displays a link to a web page which contains information on the person in question, that data subject may approach the operator directly and, where the operator does not grant his request, [may] bring the matter before the competent authorities in order to obtain, under certain conditions, the removal of that link from the list of results.³¹

27. Ustawa z dnia 16 lutego 2007 r. o ochronie konkurencji i konsumentów [Act of 16 February 2007 on protection of competition and consumers] Dziennik Ustaw [Journal of Laws] [Dz.U.] 2007 No. 50, item 331 as amended [hereinafter the Competition Act].

28. Krzysztof Kanton and Katarzyna Karasiewicz, Immunity, Sanctions & Settlements, GLOBAL COMPETITION REVIEW (Oct. 29, 2014), <http://globalcompetitionreview.com/know-how/topics/79/jurisdictions/39/poland/>.

29. *Case C-131/12, Google Spain SL v. Agencia Española de Protección de Datos (May 13, 2014)*, <http://curia.europa.eu/juris/document/document.jsf?text=&docid=152065&doclang=EN> [hereinafter Google C-131/12].

30. Press Release, *Court of Justice of the European Union, No. 70/14, (May 13, 2014)*.

31. *Id.* ¶ 1.

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

EUROPE 485

This decision relates to and interprets the EU Directive 95/46/EC.³² The objective of the Directive is to protect the fundamental rights and freedoms of natural persons, particularly the right of privacy, but also the right to remove obstacles to the free flow of such data. The Court emphasized that an internet search provider automatically, constantly, and systematically collects data within the meaning of the Directive and processes data when it retrieves, records, organizes, stores, and discloses data.³³

During the first few weeks after the decision, Google received 70,000 deletion requests, including more than 12,000 such requests from Germany. The “right to be forgotten” has become a new buzzword and supporters of the decision have claimed a victory in the fight for self-determination and democracy. Meanwhile, opponents of the decision claim media censorship and the end of a free internet.

On May 16, 2014, German Minister for Economy and Energy, Sigmar Gabriel, published a full-page article in the *Frankfurter Allgemeine Zeitung* (FAZ) titled “Our political consequences of the Google Debate.”³⁴ Minister Gabriel announced that Europe would now, after the Google decision, find a solution to address the “information capitalism which calls into question the whole market economy system.”³⁵ He emphasized that “the Court restored the rule of law by stating that Google is not allowed to ignore European standards by storing and processing data outside of the EU” and that “Europe is standing for the opposite of the totalitarian idea to make every detail of human behavior, human emotions and human thoughts the object of capitalistic marketing strategies.”³⁶ Minister Gabriel has called for “serious consideration to decartelize Google.”³⁷

Heiko Maas, the German Minister of Justice, was quoted in a FAZ article of June 27, 2014 that he thought a forced break-up of Google should be explored, if Google continues to abuse its market domination.³⁸ Google searches are generally estimated to amount

32. Directive 95/46/EC, of the European Parliament and of the Council of 24 October 1995 on the Protection of Individuals with Regard to the Processing of Personal Data and on the Free Movement of Such Data, 1995 O.J. (L 281).

33. Google C-131/12, *supra* note 29, ¶ 28: “Therefore, it must be found that, in exploring the internet automatically, constantly and systematically in search of the information which is published there, the operator of a search engine ‘collects’ such data which it subsequently ‘retrieves’, ‘records’ and ‘organises’ within the framework of its indexing programmes, ‘stores’ on its servers and, as the case may be, ‘discloses’ and ‘makes available’ to its users in the form of lists of search results. As those operations are referred to expressly and unconditionally in Article 2(b) of Directive 95/46, they must be classified as ‘processing’ within the meaning of that provision, regardless of the fact that the operator of the search engine also carries out the same operations in respect of other types of information and does not distinguish between the latter and the personal data.”

34. Sigmar Gabriel, *Unsere politischen Konsequenzen aus der Google-Debatte* [Our political consequences of the Google Debate], FRANKFURTER ALLGEMEINE ZEITUNG (May 16, 2014), <http://www.faz.net/aktuell/feuilleton/debatten/die-digital-debatte/sigmar-gabriel-konsequenzen-der-google-debatte-12941865.html>.

35. *Id.*

36. *Id.*

37. *Id.*

38. *Maas erwägt Entflechtung von Google* [Maas is considering unbundling of Google], FRANKFURTER ALLGEMEINE ZEITUNG (Jun. 27, 2014), <http://www.faz.net/aktuell/politik/inland/justizminister-im-f-a-z-gespraech-maas-erwaegt-entflechtung-von-google-13014260.html>.

SPRING 2015

**PUBLISHED IN COOPERATION WITH
SMU DEDMAN SCHOOL OF LAW**

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

486 THE YEAR IN REVIEW

to eighty-five to ninety percent of all internet searches in Germany.³⁹ Minister Maas proposed to never store any data unless it was warranted for a specific reason, or *Anlass*.⁴⁰

On July 9, 2014, the German Monopolies Commission published its bi-annual expert report and proposed a “strengthened cooperation between data protection and competition government entities.”⁴¹ The Commission concluded that it was obvious that monopolies agencies had in the past primarily addressed competition problems which disadvantaged commercial internet providers and advertisers (primary market level), but that problems with access to users’ data (secondary market level) had only been addressed very indirectly.⁴²

The Commission further stated that the problem of excessive access to data required investigation in terms of competition policy and that the ability of users to deal with their data, or data sovereignty, in an autonomous manner needed to be strengthened.⁴³ The Commission expressly supported prompt passage of the European Data Protection Regulations from a competition policy perspective.⁴⁴ The new European Data Protection Law is slated to be adopted in 2015.

II. European Union Corporate and Financial Law

A. FINANCIAL TRANSACTIONS TAX

In April 2014, the ECJ dismissed an appeal brought by the United Kingdom against a decision of the EU Council of Ministers authorizing eleven Member States to use enhanced cooperation procedures in the area of Financial Transaction Tax (FTT).⁴⁵ After that Council decision, the European Commission adopted a proposal to issue a directive. According to the ECJ:

[T]he Court considers that the two arguments put forward by the United Kingdom are directed at elements of a potential FTT and not at the authorization to establish enhanced cooperation, and consequently those arguments must be rejected and the action must be dismissed.⁴⁶

A few weeks later, at the May 2014 Economic and Financial Affairs Council (ECOFIN) meeting, the European Finance ministers issued joint statements referencing the FTT. In particular, according to its press release:

The presidency took note of a joint statement by ministers of 10 participating countries and confirmed that all relevant issues would continue to be examined by national

39. German Monopolies Commission, Expert Report XX, Chapter 1, Current Problems of Competition Policy. Google, Facebook + Co - A Challenge for Competition Politics, (July 9, 2014), Subchapter 3, Data Access and Market Power, p. 63, ¶ 26.

40. *Maas is considering unbundling of Google*, *supra* note 38.

41. German Monopolies Commission, *supra* note 39, ¶ 58.

42. *Id.* ¶ 5.

43. *Id.* ¶ 6.

44. *Id.*

45. Press Release, *Court of Justice of the European Union*, No. 65/14 (Apr. 30, 2014), available at <http://curia.europa.eu/jcms/upload/docs/application/pdf/2014-04/cp140065en.pdf>.

46. *Id.*

experts. It noted the intention of participating countries to work on a progressive implementation of the FTT, focusing initially on the taxation of shares and certain derivatives.⁴⁷

Implementation of the FTT is slated to occur progressively beginning January 2016. The base of member states' cooperation remains the same as in the Commission's February 2013 proposal. According to that, the FTT will be harmonized across member states with a minimum tax assessed at 0.1 percent, calculated on transactions of financial instruments of all types (with the exception of derivatives which shall be taxed at 0.01 percent). The adoption of a harmonized FTT must be unanimous by all participating countries.⁴⁸

B. EFFICIENCY IN CROSS BORDER TRANSACTIONS

This past year's implementation of the Commission's Communication *Europe 2020: A Strategy for Smart, Sustainable, and Inclusive Growth*⁴⁹ plan saw the Council stressing the importance of a strong industrial base.⁵⁰ Inside this area, the business environment has been closely monitored in order to create a better regulatory framework. "[A]lthough there have been improvements in the EU overall, progress remains uneven. Inflexible administrative and regulatory environments, rigidities in some labour markets and weak integration in the internal market continue to hold back the growth potential of firms, especially SMEs."⁵¹

Within the corporate governance area, in April 2014, the Commission presented a first proposal to revise the Shareholder Rights Directive for listed companies (2007/36/EC).⁵² This proposal, based on Article 50(2)(g) and 114 of the Treaty on the Functioning of the EU, follows two Green Papers as a result of shareholder consultations for the enhancement of participation and transparency.⁵³ The focus of the proposal is on the behavior of corporate boards, assets managers, and cross-border proxy/voting advisers.

The proposal:

[R]equires the realisation of the following more specific objectives: 1) Increase the level and quality of engagement of asset owners and asset managers with their investee companies; 2) Create a better link between pay and performance of company directors; 3) Enhance transparency and shareholder oversight on related party transactions; 4) Ensure reliability and quality of advice of proxy advisors; 5) Facilitate

47. Press Release, Council of the European Union, No. 9273/14 (May 6, 2014), available at http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ecofin/142513.pdf.

48. *Id.*

49. Communication COM (2010) 2020 Final, http://ec.europa.eu/europe2020/index_en.htm.

50. Key areas: comparing Member States' performances, European Commission, http://ec.europa.eu/europe2020/making-it-happen/key-areas/index_en.htm.

51. *Industrial Policy, European Commission*, http://ec.europa.eu/europe2020/pdf/themes/11_industrial_policy_02.pdf.

52. Directive 2007/36/EC of the European Parliament and of the Council of 11th July 2007 on the exercise of certain rights of shareholders in listed companies, 2007 O.J. (L 184), available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:184:0017:0024:EN:PDF>.

53. See Corporate governance in financial institutions and remuneration policies, COM(2010) 284 final (Jun. 2, 2010), available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0284:FIN:EN:PDF>; see also The EU corporate governance framework, COM(2011) 164 final (Apr. 5, 2011), available at http://ec.europa.eu/internal_market/company/docs/modern/com2011-164_en.pdf.

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

488 THE YEAR IN REVIEW

transmission of cross-border information (including voting) across the investment chain in particular through shareholder identification.⁵⁴

The Commission presented a second proposal directed to facilitate the creation of companies with a single shareholder across the EU. Its goal is to enhance the process of establishing subsidiaries in other Member States because subsidiaries tend to have foreign parent companies as shareholders. “European small and medium-sized enterprises (SMEs) are the backbone of the EU economy: the 20.7 million SMEs produce 58% of EU GDP and account for 67% of all jobs in the private sector.”⁵⁵

Due to legal, administrative, and language barriers, SMEs encountered several obstacles expanding their operations in other member states, and as a result only around 2 percent of SMEs succeeded in setting up branches in other member states (in the form of a subsidiary, branch, or joint venture).

This proposal also aims to bypass the failed 2008 European Company Statute (SPE) proposal due to lack of unanimous member states’ agreement.⁵⁶ The Commission withdrew the SPE project and introduced some of its features in this single shareholder European company proposal.

In most cases, these subsidiaries are single-member companies, since the single member is a parent company that “wholly owns them.” More than 40 percent of all limited liability companies in the EU are single member companies. Facilitating the creation of single-member companies across the EU should make it easier for businesses to establish subsidiaries in other countries.⁵⁷

Finally, in October 2014, the Commission promoted a study to implement share ownership by company employees. The study analyzes various policy options to eliminate obstacles to employee’s financial participation in transnational company ownership.⁵⁸

54. *Id.*

55. Memorandum, Proposal for a Directive on single-member private limited liability companies – frequently asked questions, European Commission (Apr. 9, 2014), *available at* http://europa.eu/rapid/press-release_MEMO-14-274_en.htm?locale=en.

56. Press Release, “Think Small First”: A Small Business Act for Europe, European Commission (Jun. 25, 2008), *available at* http://europa.eu/rapid/press-release_IP-08-1003_en.htm?locale=en.

57. Proposal for a Directive on single-member private limited liability companies, *supra* note 55.

58. Inter-University Centre for European Commission’s DG MARKET, The Promotion of Employee Ownership and Participation (October 2014), *available at* http://ec.europa.eu/internal_market/company/docs/modern/141028-study-for-dg-market_en.pdf.