

# EU Briefing

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## What to Expect from the New European Commission

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*A special edition from the Brussels Office of Steptoe & Johnson LLP*

### Background

The European Union is on the move! Following an extended period of uncertainty, the Lisbon Treaty — which significantly amended the basic EU constitutional documents — was ratified by all 27 Member States and became operational on 1 December 2009. Ratification of the Treaty opened the door to revised and, it is expected, improved EU governance. A major change is the newly created position of president of the European Council, who will serve for a period of two and a half years, from 1 December 2009 to 31 May 2012, aimed at delivering greater continuity at the policy level. The first President, Herman Van Rompuy, was previously the Prime Minister of Belgium.

Another new position is that of High Representative of the Union for Foreign Affairs and Security Policy. Baroness Catherine Ashton (a UK national) has been designated senior EU foreign policy official.

Finally, the European Parliament has been endowed with enlarged powers on the passage of European legislation, introducing greater democracy in the decision-making process.

As of the writing of this note, the European Parliament is vetting the qualifications of the 27 Commissioners who have been nominated by President José Manuel Barroso to serve for a five-year period. The hearings have been tough, but it appears that the entire ticket, as it now stands, will be approved.

Although predicting the future is a hazardous endeavour, we believe that the shape and revised priorities of the new Commission will create real opportunities and challenges for our clients. The purpose of this briefing is to take an initial look at the proverbial crystal ball. Our focus here is on our Brussels office's core practice areas: **Environment and Life Sciences** (including consumer protection), **Competition, Financial Services** (including taxation) and **Trade** policies.

## I. Environment and Life Sciences

The EU has developed an extensive range of legislation concerning the environment, life sciences (including biotechnology, chemicals, food and feed, food contact materials, medical devices, and pharmaceuticals) and consumer protection. The complete lifecycle of product manufacturing, marketing, advertising and labeling, sales terms and conditions, use, and end-of-life waste treatment is highly regulated. This is reflected in the fact that four of the 27 EU Commissioner-designates have responsibilities for areas that directly concern this field.

### *Janez Potočnik (Environment)*

The Slovenian current Science and Research Commissioner Mr. Potočnik has pledged to ensure that **legislation falling within his new remit will be vigorously applied and enforced**. This is striking, given that the European Commission already brings more infringement proceedings against EU Member States for failure to apply environmental laws than in any other policy area. He plans to meet with the European Chemicals Agency (ECHA) early in his mandate to give a clear signal that **REACH** should be applied in full. On 1 June, he will receive a report from Member States on their experiences with the operation of REACH, and in the two years following he will consider revision and possible expansion of REACH's scope. Mr. Potočnik **refused requests to declare a moratorium on further legislation** in the chemicals field or in any other area of environmental policy, but he developed the view that **"the economy goes hand in hand with the environment"** and that green solutions would help to lift the EU out of its economic woes. The Commissioner called for policy on sustainable patterns of consumption and production to pursue a **zero waste** objective.

The expiry of the Sixth Environment Action Programme in 2012 should provide a further stimulus for new regulatory initiatives. For the rapidly emerging field of **nanotechnology**, Mr. Potočnik indicated that a safety-focused regulatory approach should be taken. This is a cross-sectoral issue, and the Commissioner stated that it will not be sufficiently addressed by REACH alone. In this respect, he is well aligned with the European Parliament's call for a Commission review of "all relevant legislation...to ensure safety for all applications" of nanomaterials by April 2011.

Other areas of particular concern included **biodiversity**, where the EU has undertaken to finalise a clear strategy during the Commissioner's first year in office, and **water** policy. Notable omissions from his presentation were the subjects of **genetically modified organisms** and **biofuels**, both of which have presented significant regulatory and political challenges for President Barroso's first administration and can be anticipated to be no less a focus in the future.

*John Dalli (Health and Consumer Policy)*

The current Maltese Minister for Social Policy, Mr. Dalli, has signaled that the underlying theme of his work would be “**patients first, consumers first**”. Greater **product labeling and information** will help to empower “well-informed” consumer choices on goods and services. He will also seek to focus on **prevention rather than cure** for issues such as alcoholism and obesity. There were perhaps some mixed signals as regards his views on the relationship between science and regulation, with guarded comments on the subjects of **genetically modified organisms, food safety, and cloning**. He intimated that it would be necessary “to ensure that the advice given [to policy makers] is independent”. A report on animal cloning was promised within a year, as well as a review of GM feed labeling. Commissioner Dalli will also aim to accelerate work on the **pharmaceuticals package** (concerning access to information, pharmaco-vigilance and fake medicines) and the **patient mobility** proposal.

*Connie Hedegaard (Climate Action)*

The creation of this new portfolio by President Barroso signals the EU’s focus on following through with its climate change promises. The responsibilities that Ms. Hedegaard will fulfil as Commissioner are a natural progression from her experiences as Danish Minister of Climate and Energy and, before that, of the Environment. Her stated goal is to make the EU the “**most climate-friendly region in the world**”.

**Shipping and road transport** vehicles will be particularly in her sights as a source of potential emissions reduction. She also called for the European **Emissions Trading** System and that emerging in the U.S. to be linked in some fashion, even if the allowances are not harmonised: “a global system with a global price for carbon”. **Nuclear energy** will remain an option (albeit not a renewable one, in her view) for the foreseeable future, and Ms. Hedegaard will focus on ensuring that safety remains a priority. She was emphatic that border **taxes** on goods from other regions with more modest climate change measures would not be the way forward, describing such an approach as the “lowest common denominator”.

*Máire Geoghegan-Quinn (Research, Innovation and Science)*

An Irish national, Ms. Geoghegan-Quinn has spent the last decade as a Member of the European Court of Auditors (which assesses the collection and spending of EU funds to ensure economy, efficiency, and effectiveness). This attention to detail will stand her in good stead when she assumes her new responsibilities as Commissioner. Her stated “**task will be to put research, innovation and science at the heart of EU policies**”. To this end, simplifying the bureaucracy that companies often face when **accessing EU research funds** would be a priority. She also underlined that a “**world of zero risk is a world of zero innovation**”, an encouraging sign for those developing new technologies.

## II. Competition

### *Joaquin Almunia*

Mr. Almunia, the new Competition Commissioner-designate from Spain, will move from Economic and Monetary Affairs to take over from Dutch businesswoman Neelie Kroes. Over the last five years, Ms. Kroes held the highly visible and powerful post of **Competition** Commissioner. Under her tenure, the EU competition enforcement agency digested the wide range of reforms that her predecessor, Mario Monti (1999–2004), had initiated. These include shifting **more enforcement powers to national competition authorities** in order to free up Commission resources to **prosecute more hard-core cartels** and anti-competitive practices by **dominant firms** across the EU.

Ms. Kroes' mandate has proved effective in that regard. She has **imposed ever-increasing fines**, sometimes well in excess of \$1 billion, on cartel participants and on firms abusing their dominant position (most recently Intel), and has increased **industry sector inquiries** (financial services, energy and more recently, pharmaceuticals). Ms. Kroes added reforms of her own, including the adoption of **tougher fining guidelines** and a cartel settlement procedure.

On paper, Mr. Almunia does not seem to share much in common with Ms. Kroes. In fact, **a parallel between Mr. Almunia and Ms. Kroes' predecessor, Mario Monti, would appear more appropriate**. Like Mr. Monti, Mr. Almunia is an economist. Both studied economics at prestigious universities in the United States. Both have had long political careers in their home state. Prior to taking over the competition post, each had a first tenure as Commissioner responsible for other important EU policies. In particular, under the Barroso I Commission, Mr. Almunia managed the economic and monetary affairs portfolio and gained much praise and respect for his handling of the financial crisis.

It comes as no surprise, therefore, that Mr. Almunia's hearing at the EU Parliament last week went very well. At the hearing, Mr. Almunia indicated that he would pursue **vigorous enforcement** of competition rules in Europe. He found that the level of **fines imposed on undertakings for cartel infringements was adequate**. He backed the Parliament's call for the implementation of an EU-wide framework for **collective redress**. Given the particular context of the financial crisis, Mr. Almunia's confirmation hearing mostly focused on how competition policy could be used to **prevent banks from returning to the practices at the root of the economic crisis**. Mr. Almunia emphasized that, under his leadership, his competition services would ensure that banks restructure their activities to guarantee a level playing field and to avoid that taxpayer money is used to encourage irresponsible behaviour.

As a result, we should see more continuation in competition policy rather than sweeping change from the appointment of Mr. Almunia as Competition Commissioner.

### III. Financial Services

#### *Michel Barnier (Internal Market)*

French centre-right Commissioner-designate Mr. Barnier will head one of the most important EU portfolios: the Internal Market and Services (including Financial Services). Mr. Barnier is currently a Member of the European Parliament and was Commissioner for regional policy between 1999 and 2004.

This experienced French politician put in an assured performance at his hearing that had several Members of the Parliament calling him “Commissioner” rather than “Commissioner-designate” by the end of the session. On **financial services**, Mr. Barnier quoted the classical liberal economist Adam Smith, noting that even he had said: “**The markets cannot work without rules, and they cannot work without ethics**”. In saying so, he clearly **distanced himself from** the current Internal Market Commissioner, Charlie McCreevy, who has been strongly criticized by some for his liberal views leading to a **lack of regulation of the financial services** during the financial crisis.

Mr. Barnier cited the need for financial services legislation in the following areas:

- **Prudential rules**
- **Derivatives market**
- **Market abuse directive**
- **Sanctions and short selling**
- **Solvency II**

Mr. Barnier also announced that he would spend considerable time on **international dialogue**, singling out China and the United States, to ensure that rules similar to the new European rules on financial supervision would be adopted in other countries.

#### *Olli Rehn (Economic and Monetary Affairs)*

Mr. Rehn, Finnish liberal Commissioner-designate for Economic and Monetary Affairs and current Commissioner for Enlargement, successfully fended questions from MEPs at his hearing on public finances and the EU’s new economic strategy — highly sensitive political issues for Member States.

In general, Mr. Rehn stuck to the well-polished briefings of his colleague, Joaquin Almunia, current Commissioner for Economic and Monetary Affairs. Questioned repeatedly **about what pressure he would bring on Member States to reduce their budget deficits**, Rehn restricted himself

largely to Almunia's line, that he had **confidence in the EU's stability and growth pact**. The pact requires Member States to impose deadlines on each other for bringing their deficits within 3% of gross domestic product.

Avoiding to be more specific, Mr. Rehn made three policy announcements for his mandate during his hearing:

- Presentation of a paper on how he plans to use new powers granted to the Commission under the Lisbon treaty
- Issuance of **formal warnings** to Member States that pursue irresponsible economic policies
- **Review of EU financing programs** (including those run by the European Investment Bank) with a view to their reform.

*Algirdas Gediminas Semeta (Taxation and Customs Union, Audit and Anti-Fraud)*

Mr. Semeta, the Commissioner-designate for **Taxation** and Customs Union, Audit and Anti-Fraud, is a distinguished Lithuanian economist, having served as his country's Minister of Finance. Mr. Semeta has experience on the Commission, acting as Commissioner for Financial Programming and Budget as of July 2009. His hearing was not considered as particularly successful, Mr. Semeta being judged too evasive.

Nonetheless, based upon his comments and the work of his predecessor, Laszlo Kovacs, several Commission initiatives are likely to emerge:

- Finalizing the **Savings Directive** will clearly be a priority. The system that has been put in place by the Directive favours **exchange of information over withholding taxes** at source on cross-border payments of interest. Mr. Semeta will attempt to convince two Member States that still prefer withholding taxes, Luxembourg and Austria, to move towards the full exchange of information.
- The Commission will gradually lead Member States towards an agreement on adopting a **Common Consolidated Corporate Tax Base** ("CCCTB"). The difficulty is that income tax measures still require the unanimous support of all 27 EU Member States.
- **Transfer pricing issues** are prominent in the world of international taxation. Mr. Semeta promises to be active in this area, particularly as regards transactions with low-tax jurisdictions.
- Mr. Semeta appears to favour a system of **carbon taxation** designed to reduce greenhouse gas emissions.

#### IV. Trade

##### *Karel De Gucht (Trade)*

Over the last several years, responsibility for **trade** between the European Union and the rest of the world has passed through several hands. Peter Mandelson from the United Kingdom occupied the Commissioner chair from Autumn 2004 until October 2008. Upon his exit, Catherine Ashton, also from the United Kingdom, took up the position until her appointment this winter as the High Representative of the Union for Foreign Affairs and Security Policy, and Vice President of the European Commission. Since Ms. Ashton's departure from DG-Trade, Benita Ferrero-Waldner from Austria has been holding down the proverbial fort until confirmation of the Belgian, Karel De Gucht.

Throughout his recent hearing, during which Mr. De Gucht answered a barrage of questions from MEPs, the Commissioner-designate was quite open and frank. In response to Member States' push, particularly France, for an **EU border tax on goods that are produced in third countries with weaker environmental standards**, Mr. De Gucht flatly stated his opposition, declaring that such a tax would likely set off an international trade war. However, he is interested in **removing tariffs on "green" goods and services**, although Mr. De Gucht thought it unlikely that this could be done under the auspice of the WTO. Rather, he plans to create a coalition of countries that would agree to such an approach.

The other area of particular importance touched on by Mr. De Gucht was **China's currency**. Mr. De Gucht has called the undervaluation of the renminbi (yuan) a "major problem". Stating a position similar to that of the U.S., Mr. De Gucht would like to see China revalue its currency, although analysts do not predict this happening any time soon.

Additional activities we can anticipate from Mr. De Gucht include:

- He will strive for the **Doha Round to conclude** this year or next year
- The **EU will not complete a free trade agreement with Columbia** unless the country resolves a number of human-rights issues
- He will push for the **ratification of the EU-South Korea free trade agreement**.

**Conclusion**

These broad highlights of the likely areas of focus of key Commissioner-designates will be refined as they assume their positions in the Barroso II Commission.

Companies will wish to examine in more depth the potential impact on their business of the described orientations and anticipate means of participation in the relevant policy debates to shape their regulatory and political environments.

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