BRUSSELS REGULATORY BRIEF: WINTER 2024-2025

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EU Policy and Regulatory Newsletter

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ANTITRUST AND COMPETITION

European Commission Imposes a Total Fine of €5.7 Million for Restricting Cross-Border Sales

On 28 November 2024, the European Commission imposed a total fine of €5,737,000 million on a company active in the fashion industry and its largest licensee for breaching Article 101(1) of the Treaty on the Functioning of the European Union by restricting cross-border sales of the fashion brand's products, as well as sales of such products to specific customer.

SANCTIONS

Additional Clarity on Obligation to Ensure Sanctions Compliance of Subsidiaries

The European Commission has published clarifications on EU companies' obligation to undertake best efforts to ensure that also their non-EU subsidiaries do not participate in activities that undermine EU sanctions.

FINANCIAL AFFAIRS

European Supervisory Authorities (ESAs) Release Joint Report on Principal Adverse Impact Under Sustainable Finance Disclosures Regulation (SFDR)

The three EU financial supervisory authorities issued their annual report on the functioning of SFDR and the disclosure of principal adverse impacts by financial market participants.

European Commission Adopted Delegated Regulation Postponing Basel III Implementation

The European Commission adopted a delegated regulation postponing the applicability of Basel III funds requirements to 1 January 2026.

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ANTITRUST AND COMPETITION

European Commission Imposes a Total Fine of €5.7 Million for Restricting Cross-Border Sales

On 28 November 2024, the European Commission (Commission) imposed a total fine of €5,737,000 million on a company active in the fashion industry (Company), which received a fine of €2,237,000, and to its largest licensee (Licensee), which received a fine of €3,500,000, for breaching Article 101(1) of the Treaty on the Functioning of the European Union (TFEU).

Article 101(1) TFEU prohibits agreements and concerted practices that may affect trade and prevent or restrict competition within the European Union Single Market (EU Single Market). The Commission decision follows its investigation launched in January 2022 into alleged sales restrictions under licensing agreements for the production and distribution of the Company's products. The Commission's investigation was initiated following unannounced inspections (also known as “dawn raids”) conducted on 22 June 2021, at the premises of the Licensee.

The Commission found that, for more than 10 years, the Company and the Licensee entered into anticompetitive agreements and concerted practices in order to prevent other licensees from selling the Company's branded clothing both offline and online: (i) outside their licensed territories; or (ii) to low-price retailers (e.g., discounters) that offered the clothing to consumers at lower prices. The Commission stated that these practices prevented retailers from being able to freely source products in EU Member States with lower prices and artificially partitioned the EU Single Market. It also found that the ultimate objective of such coordination was to ensure that the Licensee benefited from absolute territorial protection in the countries covered by its licensing agreements. The Commission calculated the fine according to various factors, such as the serious nature of the infringement, its geographic scope, and its duration. Moreover, the Commission stated that, further to a claim for inability to pay the fine, it granted a reduction of the fine to one of the companies involved. This may explain why the Licensee's fine was higher than the Company's fine.

This investigation is in line with two other investigations into the fashion industry that the Commission launched with unannounced inspections in May 2022 and April 2023. Due to priority reasons, the 2022 investigation was closed in 2024 whereas the other investigation is still ongoing. The Commission's decision in the present case is consistent with its recent enforcement trends regarding price differences and territorial supply constraints impacting the EU Single Market. On 23 May 2024, the Commission imposed a fine on one of the leading manufacturers of chocolate, biscuits, and coffee products of €337.5 million for restricting cross-border trade within the EU Single Market. In addition, shortly after this decision, the Commission announced that it will launch an EU fact-finding investigation to assess perceived territorial supply constraints that could impact cross-border trade between the EU Member States. As it was the case with the energy and pharmaceutical EU sector inquiries, the Commission's sector inquiry into territorial supply restraints is expected to lead to enforcement actions and legislative measures aimed at tackling the identified barriers.

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SANCTIONS

Additional Clarity on Obligation to Ensure Sanctions Compliance of non-EU Subsidiaries

On 24 June 2024, the European Union adopted its 14th package of sanctions against Russia. A notable addition was made to Article 8a of Council Regulation (EU) No 833/2014, which introduced the requirement that EU operators "undertake their best efforts to ensure that any legal person, entity, or body established outside the [European] Union that they own or control does not participate in activities that undermine the restrictive measures provided for in [the] Regulation." A similar clause has been included also in the Belarus sanctions framework.

On 22 November 2024, the Commission published frequently asked questions (FAQs) to clarify the "best efforts" obligation. The Commission explained that EU operators will in principle be liable if they are aware of, and accept, that any non-EU entities that they own or control are undermining EU sanctions, since they cannot be considered as having undertaken their "best efforts" in ensuring compliance, i.e., undertaking all necessary, suitable, and feasible actions to prevent such undermining. However, the efforts requested should only be those that are considered "feasible", depending on the "nature… size and the relevant factual circumstances" of the EU operator, particularly the extent of "effective control over the legal person, entity or body." EU operators will not be expected to exercise control over their subsidiaries when they do not have a power to effectively influence the subsidiary's behavior. However, this will not apply if the loss of control was caused by the EU operator itself, such as due to inadequate risk assessments or unnecessary risk-prone decisions.

EU operators may be able to show they undertook their "best efforts" for example by establishing and operating internal compliance programs, regular sharing of compliance standards and adopting mandatory training and reporting requirements for all their subsidiaries.

The FAQs reaffirm the European Union's determination to broaden and strengthen the application of sanctions in order to hinder Russia's military action in Ukraine. Whilst the FAQs do not represent binding obligations, they are reflective of the Commission's intentions and could be relied upon by EU enforcement agencies. Operators are, therefore, encouraged to take a proactive approach to ensure adherence to compliance measures also by their non-EU subsidiaries.

FINANCIAL AFFAIRS

ESAs Release Joint Report on Principal Adverse Impact under SFDR

On 30 October 2024, the European Supervisory Authorities (ESAs) comprising the European Securities and Markets Authority, the European Banking Authority, and the European Insurance and Occupational Pensions Authority, published a joint report on principal adverse impact (PAI) disclosures under the Sustainable Finance Disclosure Regulation (SFDR).

The report examines the quality and compliance of disclosures provided by financial market participants, highlighting significant improvements in this area. Many firms have adopted clearer templates and methodologies for reporting adverse sustainability impacts, making their disclosures more accessible to investors. Best practices

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include the use of dedicated sustainability sections on company websites, explicit descriptions of actions taken to mitigate adverse impacts and detailed methodologies for data collection and indicator calculations.

However, the ESAs underline that smaller firms, which can voluntarily disclose PAI information, continue to lack full alignment with SFDR requirements. Common issues include vague or incomplete information, unclear methodologies, and a lack of quantifiable targets. The ESAs also identified several challenges in implementing and supervising PAI disclosures. Disparities in data availability, inconsistent methodologies, and resource constraints among smaller financial market participants limit the comparability and reliability of their disclosures.

To address these issues, the authorities have proposed several recommendations for both the Commission and national competent authorities, including reducing the frequency of ESAs' reports from annual to biennial or triennial frequency to allow more in-depth analysis, refining proportionality thresholds for mandatory disclosures to better reflect the size and impact of investments rather than employee counts, and enhancing supervisory tools such as technology-driven data analysis and targeted outreach programs.

In a related development, on 1 December 2024 the new Commissioner for Financial Stability, Financial Services and Capital Markets Union, Maria Luís Albuquerque, took office. President von der Leyen specifically tasked her to explore ways to promote a transparent categorization of financial products and services with sustainability features. During her mandate, she will therefore lead the review of SFDR, for which a public consultation was conducted in September 2023.

Commission Adopted Delegated Regulation Postponing Basel III Implementation

On 31 October 2024, the Commission adopted a delegated regulation amending the Capital Requirements Regulation and delaying the implementation of the Basel III reforms in the Fundamental Review of the Trading Book (FRTB) standards for calculating own funds requirements by one year.

The FRTB standards, developed by the Basel Committee on Banking Supervision, were introduced to improve the risk sensitivity and robustness of market risk frameworks for banks. These standards were transformed into binding calculation requirements for banks in 2024, however, with several global jurisdictions delaying their implementation, the EU faced competitive disadvantage risks for its financial institutions. The delegated regulation thus postpones the FRTB's application to 1 January 2026, while requiring institutions to continue reporting market risk exposures under pre-FRTB approaches until then.

The postponement also aligns related disclosure requirements, ensuring consistency while maintaining market discipline. Institutions will continue to disclose pre-FRTB market risk metrics during the transitional period to support transparency and investor confidence. The postponement underlines the Commission's strategic approach to balance prudential stability with global regulatory alignment.

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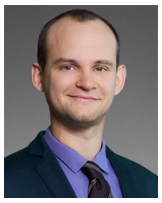

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