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EACA Monthly Newsletter - April-May 2009

EU & National News

Politics & government












European elections: what it means for our business

The centre-right European People's Party will continue to be the biggest group in the next Parliament with 263 members, despite the departure of the 27 UK Conservative MEPs and the nine Czech Civic Democrats that are leaving the centre-right group. The socialists were confirmed as losers in each of the EU's biggest six states (Germany, France, the UK, Italy, Spain and Poland) and performed well only in Greece and Malta, where they are in opposition, and in Slovenia and Slovakia, where they are in government.

However the biggest loser is the European Parliament itself. Turnout touched a record low of 43.1 per cent. And it wasn't just because of "ungrateful" new member states such as Slovakia, which has joined the eurozone but could only manage a turnout of 19.6 per cent. There were record low turnouts everywhere from France, Greece and Italy to new member states such as Cyprus and Lithuania.

The table below reflects the latest update of the election results and indicates the number of seats by political group.

European Union	MEPs	
	+/-	Total
 EPP	- 25	263
 PES	- 55	162
 ALDE	- 20	80
 GREENS	+ 9	52
 GUE/NGL	- 9	32
 UEN	- 9	35
 EC	0	0
 Ind/Dem	- 4	18
 Non-attached	+ 64	94

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The major conclusions and implications for the advertising industry are the following:

The European People's Party's (EPP) clear majority & the Parliament's increased fragmentation

The centre-right forces are the clear winners of the elections which means the Parliament should be supportive of our industry. The new Parliament is also expected to agree to nominate José Manuel Barroso for a second five-year term at the head of the European Commission on 18-19 June which is also good news for the advertising business although the Parliament's increased fragmentation means that he could face a rebellion from MEPs opposed to his re-appointment.

The Alliance of Liberals and Democrats for Europe (ALDE) remain the third-largest political force

Amid growing uncertainty about future majorities in Parliament, the Liberals now see themselves as the kingmakers of any new majority in the new assembly. With 80 MEPs elected, the ALDE remains the third-largest political force in Parliament. Several liberal MEPs from the previous assembly proved to be precious allies (with a few notable exceptions) regarding the alcohol, obesity & information to patients debates in particular so their good score also augurs well for agencies.

The Greens' significant gain of seats

The European Parliament is getting greener and this should increase the number of legislative reports promoting eco-friendly economic development projects.

Advertising

EU



MEPs endorse ad labelling plan for energy-consuming products

On 5 May, the Parliament supported, with a clear majority, mandatory advertising requirements in the Energy Labelling Directive but rejected a move away from the well-known 'A-G' format.

Any advertisement promoting technical specifications of fridges, washing machines, ovens... should indicate the product's energy consumption, said the European Parliament.

The original proposal applied solely to white goods and required that this information be communicated through point-of-sale and company websites. However at committee stage the directive's scope was widened to cover advertising and anything defined as an energy consuming product.

The Energy Labelling Directive will be adopted under the Swedish Presidency in the Council.

Source: EACA

▶ Spain

Spanish government plans to progressively eliminate ads on state TV

At the beginning of May, the Spanish government approved a plan to ban advertising on the public broadcaster RTVE.

The Spanish government justified its decision by the strong fall in television advertising revenue. In 2008, advertising brought in 50% of RTVE's total budget. The rest came from government subsidies, but these were not enough to prevent a loss of 72 millions of euros.

RTVE would continue to receive state subsidies and the rest would be financed by commercial television stations and telecommunications companies if the law is approved by the Parliament.

The government plans to follow the French plan that is to reduce advertising during high audience hours at first and then totally ban it.

Source: EACA

▶ Data protection

▶ EU



Commissioner Reding claims citizens' privacy is a priority

On 14 April, the European Commissioner for Information Society and Media, Viviane Reding posted a video on her website in which she says that Europeans must have the right to control the use of their personal information.

She emphasized that the European Commission would take action whenever Member States failed to ensure that new technologies - such as behavioural advertising, RFID "smart chips" or online social networking - respected this right.

"European privacy rules are crystal clear: a person's information can only be used with their prior consent. We cannot give up this basic principle, and have all our exchanges monitored, surveyed and stored in exchange for a promise of 'more relevant' advertising! I will not shy away from taking action where an EU country falls short of this duty".

Commissioner Reding's video message is available at:

http://ec.europa.eu/commission_barroso/reding/video/text/message_20090414.pdf

Source: European Commission

European Commission launches eYouGuide

On 7 May, the European Commission launched a new online guide presenting consumers rights under European law. This eYou Guide aims at offering practical tips and information to consumers regarding their digital rights and covers broadband services, online shopping, music downloads, protection of personal data and social networking sites.

The eYou Guide reminds online shoppers they have the right to:

- Clear information about prices and conditions before making a purchase
- Decide if and how their personal data is treated
- Have goods delivered within thirty days of purchase
- A minimum "cooling-off" period of seven working days after purchase for consumers to change their mind
- Protection against rogue vendors, and unfair contractual terms and commercial practices.

At the same time, the European Commission Consumer Affairs and Information Society departments launched a "Digital Agenda" for consumer rights and identified 8 priorities areas for possible EU action:

- 1 - Combating spam
- 2 - Multi-territorial licensing regimes for online content
- 3 - Telling consumers what they can and cannot do with copyrighted songs, videos and films they download by ending the current fragmentation of laws on "private copying."
- 4 - Extending the principles of consumer protection rules to cover licensing agreements of products like software downloaded for virus protection, games or other licensed content.
- 5 - Guarantee that privacy policies linked to online offers are properly discovered and have fair contract terms
- 6 - Improve rules on e-accessibility to make it easier for disabled people
- 7 - Explore opportunities to strengthen confidence in online payments
- 8 - Set up a European system of trustmarks for retail websites that comply with best practices.

To see the guide, click [here](#)

Source: European Commission

To revise, or not to revise, EU data protection law?

On 19 & 20 May, the European Commission's Justice Directorate General organised a conference to discuss the European Directive on Data protection and whether or not it should be revised.

The Vice-President of the European Commission, Jacques Barrot said that Europe's 'much-admired' model for the protection of personal data should carry on providing the necessary protection in tomorrow's world.

The large majority of stakeholders stated that they did not wish to see the EU Directive on Data Protection revised and argued that it would be easier to implement the current legislation rather than creating new legislation that was likely to be confusing.

Within the session dedicated to "Profiling, Risk Assessment and Advertising", the speakers defended the idea that using data to better target consumers was a technique that had always been used to sell products and that targeting allows marketers to deliver relevant information to consumers and avoid irritating them.

However a recent study commissioned by the UK data protection authority demonstrated that no consensus has been reached on this issue yet. Indeed this study states that the Directive is showing its age and makes the following recommendations:

- the law should be clear about the outcomes it seeks;
- there should be stronger focus on the accountability of all organizations for safeguarding the information they handle;
- a more strategic approach to enforcement is needed; and
- improved arrangements are needed for the export of personal data outside the European area.

For more information on the European Commission conference, click [here](#)

To see the RAND study [click here](#)

Source: EACA

► **UK**

European Commission launches case against UK over privacy and personal data protection

The European Commission has opened an infringement proceeding against the UK after a series of complaints by internet users about the use of the "Phorm" behavioural advertising technology.

Phorm technology works by analysing customers' web surfing to determine users' interest and then deliver targeted advertising to users when they visit certain websites. In April 2008, the UK fixed operator, BT, admitted that it had tested Phorm in 2006 & 2007 without informing customers involved in the trial. BT carried out a new, invitation-base, trial of the technology in October-December 2008 which resulted in a number of complaints to the UK data protection authority and to the UK police.

The European Commission has written several letters to the UK authorities since July 2008, asking how they implemented EU law in the context of the Phorm case. Following an analysis of the answers provided by the UK, the Commission said it suspected the UK did not properly implement the EU rules ensuring the confidentiality of communications.

The UK has two months to reply to this first stage of an infringement proceeding.

Source: European Commission

► **Internet**

► **UK**



Inquiry launched to determinate Government's role in regulating internet traffic

On 23 April, the UK All Party Parliamentary Group on Communications launched an inquiry into what role the government should play potentially regulating internet traffic, including behavioural advertising and online privacy.

The public consultation invites the participants to answer the following questions:

- Can we distinguish circumstances when ISPs should be forced to act to deal with some type of bad traffic? When should we insist that ISPs should not be forced into dealing with a problem, and that the solution must be found elsewhere?
- Should the Government be intervening over behavioural advertising services, either to encourage or discourage their deployment; or is this entirely a matter for individual users, ISPs and websites?
- Is there a need for new initiatives to deal with online privacy, and if so, what should be done?
- Is the current global approach to dealing with child sexual abuse images working effectively? If not, then how should it be improved?
- Who should be paying for the transmission of Internet traffic? Would it be appropriate to enshrine any of the various notions of Network Neutrality in statute?

The consultation will close on 22 May and evidence session are planned to be held in Parliament on 15 and 17 June 2009. A final report is expected to be finalised in autumn.

Source: AEF

► **Obesity**

► **Global**

Third report of WHO on 'reducing marketing pressure on children' released



On 29 April, the WHO initiated 'European Network on reducing marketing pressure on children' released the report of its third meeting held in Ljubljana, Slovenia from 9-10 February 2009. The report gives an update on the work of the network and specifically the progress made by its two working groups on content and monitoring of regulation respectively and the drafting of recommendations for the regulation of marketing to children.

Working Group 1: Content of regulation

The working group 'Content of regulation' is led by Sweden. Its objective is to provide guidance on the content of a WHO marketing code focused on marketing of foods and non-alcoholic beverages to children. During the meeting, the following points were agreed:

- the "Recommendations for an international code on marketing of foods and non-alcoholic beverages to children" as drafted by Consumers International (CI) and International Obesity Taskforce (IOTF) would serve as a basis for any content related discussions;
- a system of nutrient profiling should be developed by WHO in line with population nutrient intake goals;
- restrictions in settings where children gather, including nurseries and schools will only apply to marketing communications for energy-dense, nutrient-poor foods high in fat, sugar or salt;
- although statutory legislation was considered to be most effective, it would be left to national authorities to choose whether to implement the code through statutory legislation or not.

Working Group 2: Monitoring

The Working Group 'Monitoring', led by Norway, continues to focus on the mechanisms to monitor changes of policies & regulations as well as the level of advertisement and marketing pressure. In this context, the following issues were agreed:

- it is crucial to obtain baseline data on marketing exposure before new policies and regulations are in place in order to be able to monitor the effect on marketing;
- the already existing data from the PolMark project should be used as baseline data for existing Policy and Regulation;
- national authorities should keep on working with sweeps as a monitoring tool for marketing exposure. Several different possible channels for sweeps were mentioned: TV, Internet and grocery stores, but also places where children meet, and every place where advertising is taking place.

The next network meeting is planned for 8-9 June 2009. At the next meeting, the WHO Headquarters will present the draft set of recommendations on the marketing of foods and non-alcoholic beverages to children.

Source: AEF

► EU

Banning advertising is "not a solution to fight obesity"

Within the framework of the campaign to designate the 16 May as the future European Obesity Day, the Liberal Romanian MEP Magor Imre Csibi gave an interview on what the EU should be doing to fight obesity.

Mr Csibi said that according to him, clearer food labelling, awareness campaigns and encouraging physical activities could help prevent an obesity epidemic in Europe.

He also underlined that banning advertising for high-energy food or creating a 'fat tax' were not appropriate solutions. He added that citizens need to be given information on the negative effects that excessive consumption of high-energy food has on health; that the Food & Drink industry needs to become more proactive and that misleading advertising for food products must be banned.

To see the full interview, click [here](#)

Source: EurActiv

► UK

Government outlines new goals for national obesity strategy

On 6 April, the UK Ministry of Health released a follow up report to the government's obesity strategy entitled 'Healthy Weights and Healthy Lives' released last year. The new report evaluates the progress made against the strategy and spells out new goals, including a renewed commitment to "reduce the exposure of children to the promotion of foods that are high in fat, salt or sugar."

In its report, the Ministry of Health "welcomes initiatives from industry to develop transparent codes of responsible marketing." Going forward, with regard to advertising to children, the strategy outlines the following steps:

- help consumers by providing them with clear calorie labelling when they are eating out and rebalance the marketing of food to children;
- set up an expert working group on sedentary behaviour, screen time and obesity to consider the latest evidence on the health risks of sedentary behaviour and advise on the implications for messages to families in this area by December 2009.

In particular, the strategy states that in 2009 there will be a focus on "developing a set of voluntary principles to underpin all forms of marketing and promotion of food and drink to children, particularly where established mandatory self-or co-regulatory regimes do not exist."

Source: AEF

► Pharmaceuticals

► EU



Member States adopt feeble attitude on information to patients

Following discussions at Council level, it was reported that several Member States did not express strong interest in the European Commission's Directive proposition which would allow information on medicinal products subject to medical prescription.

Although all interested parties - EU institutions, pharma industry, patient organisations & communications specialists - agree that patients need to be empowered and given access to simple & reliable information on prescribed medicine, the various discussions and hearings held in Brussels until now have consisted in sterile debates on whether or not the Commission was trying to introduce 'advertising in disguise'. EACA hopes that Member States will reconsider their positions in light of their citizens needs and that the new Parliament will discuss the proposal in a more constructive manner than it has in the past.

Source: EACA

European Court of Justice issues surprising ruling on advertising for a medicinal product

On 2 April 2009, the European Court of Justice (ECJ) rendered its judgment in the Damgaard case. The ECJ ruled that communication on medicinal products may constitute advertising, even if the person who disseminates the communication is independent from the company which markets the medicinal product.

Mr. Damgaard is a journalist against whom criminal proceedings were initiated in Denmark because of an alleged violation of the ban on advertising for an unauthorised medicinal product in Denmark. Mr. Damgaard argued that he was an independent journalist who did not have any financial interest in the company that produces the product and that his communication on the product did not constitute "advertising".

In its response to a preliminary question posed by the Danish court, the ECJ considered that the definition of "advertising" in Directive 2001/83/EC emphasises the purpose of the message, i.e. the promotion of the prescription, supply, sale or consumption of medicinal products. Such information however does not need to be disseminated in the context of commercial activity in order to be considered advertising.

The ECJ ruled that the dissemination by a third party of information about a medicinal product, including its therapeutic or prophylactic properties, may be regarded as advertising within the meaning of Article 86 of Directive 2001/83/EC, even though the third party is acting on his own initiative and is completely independent from the manufacturer or the seller of the medicinal product. However, it is for the Danish court to assess whether, in this particular case, the information disseminated by Mr Damgaard constituted a form of prohibited advertising.

To see full judgement of the court, click [here](#)

Source: ECJ