



Tuesday, October 21
9:00 am-10:30 am

410 The Rise of European National Law: Compliance Challenges and Practical Tips for In-house Counsel

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Faculty Biographies

Thomas Daemen

Thomas Daemen is a senior attorney in Microsoft's legal and corporate affairs group in Seattle.

Prior to joining Microsoft, Mr. Daemen worked in Brussels for many years, where he helped a wide range of companies navigate the European Union's legal and political maze and launch products and services across the region. With legal degrees from Europe and the United States, Mr. Daemen is both an English Solicitor and a US qualified lawyer.

Mr. Daemen also has extensive litigation experience, with a particular emphasis on intellectual property and antitrust issues. A frequent speaker and author on cross-border compliance challenges, Mr. Daemen co-teaches EU/US comparative law as an adjunct professor at the University of Washington School of Law.

Pamela Henderson

Pamela Henderson is corporate counsel for privacy for T-Mobile, a wholly owned subsidiary of Deutsche Telekom, in Seattle.

Prior to entering the telecommunications industry, Ms. Henderson was corporate counsel and compliance officer for Capital One Financial, a global financial services / credit card company, and also implemented the compliance program for a regional Children's Hospital. Prior to going in-house, Ms. Henderson represented a broad range of companies on privacy, security, and compliance legal issues.

Scot Rogers

Scot F. Rogers is associate general counsel of F5 Networks, Inc. in Seattle.

Prior to joining F5 Networks, Mr. Rogers was general counsel of Xpediate Consulting, a software and consulting company catering to the healthcare industry. Mr. Rogers began his legal career as a commercial litigator with Jenkins & Gilchrist in Dallas, and has over 14 years of experience managing complex legal transactions and litigation for businesses, both in private practice and as an in-house attorney.

Mr. Rogers is an adjunct faculty member at Seattle University School of Law where he teaches a legal writing course in drafting commercial agreements. Mr. Rogers also serves on the board of directors of the Northwest Children's Fund where he is corporate secretary and a member of the executive committee.

Mr. Rogers received a BA from the University of Texas at Austin and is a graduate of Southern Methodist University's Dedman School of Law, where he served on the Law Review.

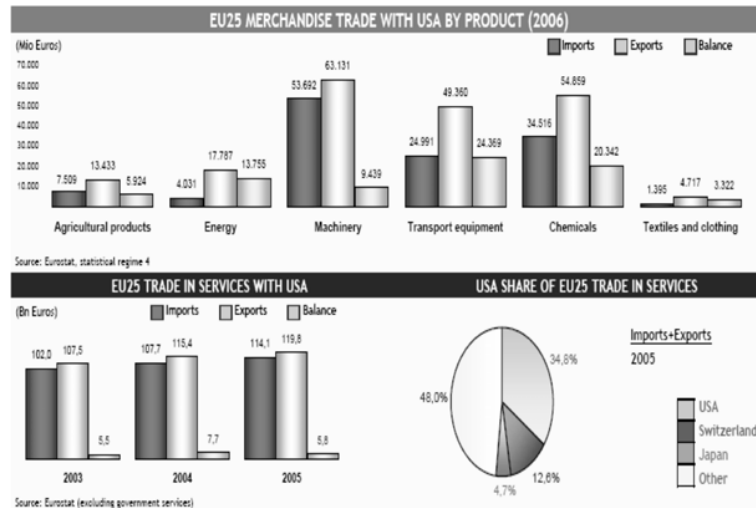
Background and Overview

Thomas Daemen

The importance of trans-Atlantic trade

Just the facts:

- 2008 (Jan-May): US exports \$117B/imports \$154B
- 2006: US/EU economies = 60% of global GDP
- Average daily trans-Atlantic trade: \$1.7B
- With more to come (see Morgan Stanley tax report; €/ \$ rate)



Why does Member State law increasingly matter in a harmonized EU?

It matters for a number of reasons, including:

- “Completion” of internal market
- Regulatory modernization
- EU level deregulation
- Private regulatory enforcement / “Americanized” litigation
- And much more...

Why does Member State law increasingly matter in a harmonized EU?

“I’m not against regulation at European level, but we are no longer in the heroic era of Jacques Delors, completing the single market with a new piece of legislation every day.”

*José Manuel Barroso
President
European Commission (2004-2009)*

Now what?

Practical challenges

- The EU-level initiative is the beginning of the story; don’t forget the final chapter
- That said, Brussels is not about to disappear
- Significantly increases compliance costs and complexity
 - *E.g.*, research complexity
 - *E.g.*, corporate practice harmonization complexity

Practical tips

- Regularly assess strategies driven by EU-level mandates
- Evaluate in-house legal/organizational structure
- Evaluate outside counsel partnerships/geographic reach
- Recognize complexity in budget/headcount allocations

Case Study: F5 Networks, Inc.

Scot F. Rogers

EU Environmental Legislation

- EU leads the way in environmental regulation targeting products as opposed to the traditional focus on facilities or operations
 - WEEE (2002/96/EC)
 - RoHS (2002/95/EC)
 - EuP Directive (2005/32/EC)
 - REACH (Regulation (EC) No 1907/2006)
 - Packaging Directive (94/62/EC)
 - Battery Directive (2006/66/EC)
- Costs of compliance are significant
- Presents special challenges for small U.S. law departments with no local staff

Directive v. Regulation

- Challenges with disparate implementing regulations and compliance schemes
 - 27 different possible regulatory requirements and enforcement schemes
 - B2C v. B2B
- The WEEE Example
 - WEEE sets criteria for the collection, treatment, recycling and recovery of waste electrical and electronic equipment
 - Effective 13 August 2005
 - Member States were supposed to have implementing legislation for the WEEE Directive in place by August 2004
 - Some countries were slow to implement WEEE regulations making compliance impractical or impossible
 - UK, for example, didn't finally implement legislation until January 2007
 - Disparate registration and take back requirements and fees amongst the member states

Practical challenges

- The compliance challenges don't begin and end with the regulatory bodies. The more stringent requirements may come from your European business partners or customers.
- Costs can be significant and will reach well beyond the legal budget.
- Documenting compliance and "due diligence" activity can be burdensome.

Practical tips

- Stay ahead of the curve – last minute compliance initiatives won't work. RoHS compliance took years to implement.
- Establish an effective partnership with internal stakeholders.
- Find subject matter experts – don't be afraid to look beyond the traditional law firm for partnerships with specialized consulting firms.
- Take advantage of compliance "collectives."
- Carefully evaluate contractual requirements and allocation of responsibility with partners and vendors.

Case Study: T-Mobile

Pamela Henderson

The EU Data Privacy Directive – What is a US Company Doing Business in the EU to do??

- There are now three methods, or tools, for a non-European entity to receive data from Europe, not country-by-country, but company-by-company.
 - **Safe harbor;**
 - **Binding / model contractual clauses;**
 - **Binding corporate rules**
- > Additionally, Article 26(1) authorizes a number of other exceptions, or other ways legally to transmit personal data outside of Europe even to “third country” that fails to offer an “adequate level of protection”:
 - *The data subject has freely given consent;*
 - *The transfer is necessary (not merely convenient) for the performance of a contract between, or for the benefit of, the data subject and the controller;*
 - *The transfer is necessary or legally required on important public interest grounds, or for the establishment, exercise or defense of legal claims;*
 - *The transfer is necessary in order to protect the vital interests of the data subject; or*
 - *The transfer is made from a register...intended to provide information to the public.*

United States Corp. with European Parent – Special Considerations

- Special considerations for a company that provides a service which is considered an integral part of the U.S. infrastructure (i.e., telecommunications, etc.)
 - “Foreign government ownership” considerations
 - Storage of Customer and Employee data considerations (inside v. outside the U.S.)
 - Limitation of data sharing
 - The European Union Data Privacy Directive
 - Prohibits sending personal data to any country without a level of data protection considered “adequate” by EU standards, unless covered by a safe harbor
 - Covers all processing (including collection) of data re. personally identifiable individuals
 - **Key fact:** these issues are all governed by (frequently divergent) national implementations of EU-level mandates

Other Important Privacy Considerations for Companies Doing Business in Europe

- Data Breach Laws
 - U.S. has 43 different State Statutes v. European Laws
- Services which touch on the sensitive area of privacy – look before you leap!
 - **Location Based Services**
The privacy of one’s location
U.S. v. European approach
 - **Behavioral Advertising**
Collection and use of data, for the purpose of targeted advertising
U.S. v. European regulations and direction