

EU Update

Legal Insights from Europe's Capital

October 2026 | Edition #5

*This monthly EU newsletter for TerraLex member firms has been put together by **Gecić Law's** EU Law practice in Brussels, staffed by partner [Anne MacGregor](#) and associate [Nina Raluca Bucătaru](#). The aim is to provide an overview of EU legislative and policy developments and other relevant insights likely to impact TerraLex firm clients globally who do business in the EU market of some 450 million consumers in 27 Member States.*

1. PRODUCER RESPONSIBILITY: SIMPLER RULES, BUT NOT FOR EVERYONE

Selling products across the EU can bring obligations that continue long after the sale. Under extended producer responsibility (EPR) rules, businesses placing certain products on the market are responsible for their products at the end of their life cycle, including the cost of collection and recycling.

Companies operating in several Member States often need to appoint an authorised representative in each country to meet national EPR requirements. EU lawmakers are considering a proposal to suspend this obligation, but discussions continue over which businesses should benefit.

Relief Limited to Smaller EU Businesses

On 5 October, the European Parliament's Environment Committee supported a temporary suspension of authorised-representative requirements for EU-based small and medium-sized enterprises (SMEs). The simplification measures apply to batteries, packaging, textiles, footwear, electronics and single-use plastics.

While the European Commission had proposed suspending these requirements for all EU-based companies until 2035, MEPs support limiting the suspension to SMEs. Larger EU companies and non-EU producers would still be required to appoint authorised representatives under the existing rules.

MEPs also propose that the suspension should end automatically once comprehensive circularity rules enter into force. This would provide SMEs with temporary relief ahead of the introduction of a more coherent European framework.

What the Suspension Covers

The proposed relief would allow qualifying EU-based SMEs to fulfil their extended producer responsibility obligations directly in each Member State, without the requirement to appoint an authorised representative.

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For instance, a Belgian SME placing batteries on the market in France and Germany could interact directly with national compliance systems, without incurring the cost of appointing a local representative. The SME would remain responsible for registration, reporting, and payment of waste management fees, and could continue to use service providers for support. However, the obligation to appoint a representative would no longer apply.

Non-EU producers, regardless of size, would not benefit from the proposed relief. If a US or Asian SME sells batteries directly to customers in the 27 EU Member States, it would still need to appoint an authorised representative in each country to manage registration, reporting, and fee payments. If the products are placed on the market through an EU importer or distributor, the EU-based business is generally considered the producer and assumes the EPR obligations. For non-EU SMEs, the distribution model may therefore have a greater impact than the proposed changes.

Next Steps

Parliament is expected to confirm the Committee's position during the 19–22 October plenary session. After confirmation, Parliament will be ready to start negotiations with the Council in order to reach a joint position on the file. The Council suspended its work on the proposals in June. It plans to revisit the issue during the upcoming review of EPR rules under the Circular Economy Act later this year.

2. KKR: MERGER CLEARANCE DOES NOT END SCRUTINY OF THE FILING

Companies seeking EU approval for a merger must give the European Commission accurate information about their businesses, contracts and markets. The Commission relies on that information to decide whether a deal can go ahead. If the information later turns out to be wrong, the Commission can return to the file, even years after the transaction has closed.

Questions Over a Cleared Deal

On 19 October, the Commission sent KKR a Statement of Objections concerning its acquisition of NetCo, Telecom Italia's fixed-line network business. The Commission cleared the roughly €22 billion deal without conditions in May 2024. It opened a formal investigation in July 2025, following complaints from other telecoms operators.

The Commission's preliminary view is that KKR, at least negligently, gave incorrect or misleading information about NetCo's existing long-term wholesale access agreements with

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those operators. This includes KKR's statement that the terms of the agreements would continue to apply because they could only be changed by mutual agreement. The Commission relied on that information when clearing the deal. KKR has said it stands by the accuracy of the information it provided.

Penalties for Inaccurate Information

Under EU merger rules, supplying incorrect or misleading information is an infringement in its own right, separate from the assessment of the deal itself. The Commission may impose fines of up to 1% of a company's total turnover, and negligence is sufficient. In 2017, the Commission fined Facebook €110 million on this basis in connection with its acquisition of WhatsApp.

The Commission can also revoke a clearance decision that was based on incorrect information for which a party was responsible, or that was obtained by deceit. Revocation is subject to its own conditions, however, and does not follow automatically from a finding that information was inaccurate.

What It Means for Deal Teams

The case highlights that merger filings need more than just accurate market shares and turnover data. The Commission also looks at how the business operates and what protections its contracts provide to customers. In this case, the key issue was whether access terms could be changed without the operators' agreement. Contracts that prevent such changes can give the Commission confidence that customers will stay protected after the acquisition, making it possible to approve the deal without extra conditions.

If the explanation is inaccurate, there can be liability even if there was no intention to mislead. Closing the deal does not remove this risk. In this case, the Commission began its investigation just over a year after the deal closed. This applies equally to non-EU acquirers, whose deals fall under EU merger control whenever the turnover thresholds are met.

Next Steps

A Statement of Objections sets out the Commission's preliminary view and does not prejudice the outcome. KKR can respond in writing and request an oral hearing before the Commission takes a final decision.

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3. AIR PASSENGER RIGHTS: A NEW RULEBOOK, WITH A YEAR TO PREPARE

Since 2004, air passengers in the EU have been entitled to compensation and assistance when flights are delayed, cancelled or overbooked. After 13 years of negotiations, the EU has now updated those rules, together with the rules on airline liability for passengers and baggage. Regulation (EU) 2026/2202 was published on 2 October and applies from 23 October 2027, giving the aviation sector a year to prepare.

Compensation and Claims

The revised framework keeps the existing compensation rules. Airlines had pushed for longer delays before compensation becomes payable, but the thresholds stay where they are. Passengers will remain entitled to between €250 and €600, depending on distance, when a flight arrives more than three hours late or is cancelled less than 14 days before departure. The Regulation also clarifies that arrival time is the moment the aircraft reaches its parking position.

The main change concerns how passengers claim. In a survey by the claims agency AirHelp, 79% of respondents were unaware of their rights, and airlines had informed passengers of them in only 40% of cases. Under the new rules, the burden shifts to the airline. Where a delay could give rise to compensation, the airline must contact passengers electronically within 96 hours, explaining their rights and how to claim. It must acknowledge each claim immediately and reply within 30 days, either by paying or by explaining why it refuses. Passengers will have nine months to submit a claim.

Rerouting, Baggage and Booking Practices

The Regulation also deals with several practices passengers have long complained about.

- Airlines may no longer deny boarding on a return flight because the passenger did not take the outbound flight.
- Fares including hand baggage must be shown by default when passengers compare prices, and a qualifying small personal item may be taken into the cabin free of charge.
- Families and passengers with reduced mobility will be able to sit with their companions at no extra cost.
- Where an airline fails to offer an alternative flight within three hours of a cancellation, passengers may book their own and recover up to four times the original fare.

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An International Compliance Issue

EU passenger rights apply not only to EU airlines and citizens. These rules generally cover all departures from the EU, regardless of the airline's nationality, and arrivals from outside the EU when operated by an EU airline. The Commission is expected to review within three years whether to extend the scope fully to non-EU carriers.

Airlines and travel businesses have until October 2027 to adapt their booking systems, customer communications and claims handling. Until then, the existing rules continue to apply.

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