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Change and Uncertainty in the European Union - What Does it Mean for Business?

Discussion Summary

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At a recent breakfast event hosted at APCO Worldwide's Washington, D.C., headquarters office, Brad Staples, CEO of APCO's Europe, Middle East and Africa region, and Richard Bullard, director for public affairs in Brussels, gave an overview of the institutional changes taking place within the European Union. They also shared their insights into the implications of these changes for companies and organizations that regularly do business there.

This note provides a summary of their remarks and the discussion that followed.

Remarks by Brad Staples – CEO of APCO's Europe, Middle East and Africa Region

Institutional changes in the European Union began in June 2009 with the **7th European Parliament elections**. The elections were marked by:

- Poor turnout – around 60 percent of Europeans did not vote
- The European People's Party outperforming the Party of European Socialists
- Strong support for centre-right governments or coalition members and a poor showing for centre-left administrations
- Strengthened Eurosceptic and far-right parties
- An enhanced position for the Greens

The results reflect disenchantment with the handling of the financial crisis, especially by the left, and a greater disconnect between the general public and the European Union, as the relevance of the EU institutions – especially the European Parliament – is questioned. The elections also demonstrate a real growth in support for nationalist and even racist parties. Based on the Parliament election results, there is even more doubt and uncertainty about future enlargement of the European Union.

There is a challenging backdrop to the **appointment of a new European Commission president** in July or possibly October. Some of the issues being grappled with include:

- The possible extension of the current Commission's mandate through the end of this year
- The Irish Referendum on the Lisbon Treaty which heralds significant EU institutional reform
- Sweden assuming the EU presidency after a poor performance by the Czech Republic

The presidency intends to focus on:

- Climate change, energy and the environment, and reaching agreement at the Copenhagen Climate Conference in December
- Employment and competitiveness and a new post-2010 Lisbon Agenda
- The Eastern Partnership
- The Baltic Sea region
- Recession and recovery
- European transparency rules
- A possible H1N1 (swine flu) pandemic

The European Union has a number of critical challenges to address, and the coming months will see some very important policy and political discussions. In terms of what business can expect from a regulatory perspective going into 2010, the following items are worth signaling for attention:

1. **EU stimulus and recovery:** A package was presented in November 2008 which included a “targeted, temporary and timely fiscal stimulus” of €200 bn. However, €170bn is actually the combined amount put forward by EU Member States; the European Union portion is only €30bn. The European Union stimulus efforts, therefore, amount to just 1.5 percent of EU GDP, which many commentators have commented is too small. The short-term measures contained in the EU stimulus proposals aim to boost demand; the longer-term measures include infrastructural investment and support for the uptake of green technology.
2. **Lisbon Agenda:** The European Union failed to meet the goals set out in its so-called Lisbon Agenda to make the European Union the world’s most competitive, dynamic knowledge-based economy by 2010. The new Commission will need to consider the next steps for this strategy, the new incarnation of which is due to be adopted in 2010. New issues that the Commission will need to deal with include:
 - Global competition, not just competition with the United States
 - An aging workforce
 - Social inclusion
 - Migration
 - Climate change

The recovery plan is anchored to the Lisbon Agenda because many of the long-discussed reforms are now more pressing.

3. **Financial services regulation:** The European Union is moving forward a package of measures to create a functioning European single market in financial services to protect European Union consumers and to respond to the financial crisis. The European Commission has newly announced:
 - A financial market supervision package
 - A consumer rights directive
 - A capital requirements review
 - New insurance measures

There will be pan-European banking supervision, but regulators at a national level will have the final say. The United Kingdom, in particular, has resisted plans for a single EU-wide financial services watchdog. A **European Systemic Risk Council** will be created to monitor economic risks. The Council members will be drawn from the national banks but will only be able to make recommendations. A **European System of Financial Supervisors** will oversee national regulators and supervise banking, insurance, securities and pensions.

4. **Climate change:** The European Commission launched an aggressive programme to meet the EU's 20/20/20 goals to reduce CO2 emissions by 20 percent from 1990 levels, to increase energy efficiency by 20 percent and to have a 20 percent renewables share in the energy mix. The European Union will extend its overall emissions reduction target to 30 percent in 2020 based on 1990 levels if other developing countries agree to such an ambitious target. The European Union has a new emissions trading scheme, and there are measures under discussion to boost the energy efficient infrastructure and access to the energy grid for renewables.

In terms of the Copenhagen Summit on a post-Kyoto climate change agreement, Brussels wants to limit global warming to fewer than 2 degrees Celsius above pre-industrial temperatures, and to limit growth in emissions in the poorest countries to 15-30 percent of business-as-usual levels by 2020. The European Union also wants to set up a carbon market with rich nations by 2015.

5. **Competition policy:** In terms of EU competition policy, the following are the principal areas of focus:
- Ongoing review of state-aid policy and specific review of regional aid
 - Damages actions for breach of EU antitrust rules
 - A 4-year review of merger control rules – a draft Commission report is expected
 - The Intel decision and fine of \$1.44 bn
 - A wave of cartel cases and decisions
 - The airline industry and the pharmaceutical sector
 - The challenge for competition policy of a failing economy

It is worth noting that given the legal ambiguity in relation to the Commission's extended mandate, there could be a legitimacy deficit to decisions brought forward in late 2009.

6. **European Transparency Initiative:** The European Union has voluntary registration for lobbyists, which has been in place for 12 months. Those that have registered include agencies, some companies and a few think tanks. Law firms were excluded. The European Parliament and the Commission have been taking steps on transparency rules but the Council has not. With a new European Commissioner in charge of this portfolio, we may find an appetite for new mandatory rules to be brought forward.

Remarks by Richard Bullard – Director for Public Affairs, APCO’s Brussels Office

On the Lisbon Treaty:

The Treaty, if ratified, represents a major institutional reform of the European Union. It is designed to improve the efficiency of the operation of the institutions in an European Union of 27 Member States or more. However, practice has shown that the EU institutions may already be operating more efficiently since the “big bang” enlargement of May 2004 when the European Union enlarged to 25 Member States. The Member States have changed their behaviour and working practice to facilitate deal-making.

The Treaty of Lisbon would make the European Parliament a true “co-legislator” with the Council of Ministers and confirm its arrival as a full-blown Parliament, despite the legitimacy questions raised by the European elections.

The Treaty of Lisbon might finally help answer the perennial American question as to whom the U.S. president should call when he wants to speak to the European Union. A major innovation will be the introduction of a president of the European Council to chair meetings of the 27 heads of state and government and represent the European Union on the international stage. The idea is to give the European Union a figurehead and to begin to enable it to punch its weight diplomatically and globally, commensurate with its economic weight. However, this should in no way be confused with a role that is anywhere close to the U.S. president. The Treaty is vague on defining the precise role and much will depend on its first holder. The Member States are in a catch-22: they want someone with international standing but not someone they can’t control. This would make someone like Tony Blair a strong candidate, who is privately said to be interested, a controversial choice, as he would tick the first requirement but may wish to stamp his own authority on the position.

The Treaty does not bring many new powers to the European Union level as other recent EU Treaties have done. Instead, it confirms formally some of the powers that by recent convention have been exercised at the EU level, notably on climate change and trade.

On the European Parliament elections:

The 7th European Parliament elections marked a significant shift to the right as the European People’s Party (EPP) comfortably out-performed its traditional centre-left rival, the Party of European Socialists (PES). The rightward shift was reinforced by a strengthened mainstream Eurosceptic/free-market vote as well as gains for the far-right in 10 Member States. Significantly, the political organization of the Parliament means a diverse set of far-right parties are very unlikely to coalesce into a political group that would enjoy the benefits of Parliamentary offices and Secretariat support. The Greens, in line with greater public concern over climate change, gained significantly on their position in the previous Parliament. The Liberals (ALDE) retreated slightly as did the far-left. The anti-EU forces remained static overall, despite the

spectacular performance of some parties like UKIP, which truly upset the established political order in the United Kingdom.

The EPP does not enjoy an outright majority, and formal and informal coalitions will remain the *modus operandi* of the Parliament. The defining feature of the new Parliament and its coalition-forming will be the greater influence of the EPP relative to the PES. Yet the Parliament's final shape and complexion is not yet clear, and critical unknowns could still impact this central balance of power.

Overall, business can broadly expect a continuation of the Parliament's regulatory behaviour from the last Parliament. The reinforced mainstream right may provide a slightly stronger bulwark against the more regulatory and socially protective tendencies of the centre-left, particularly in the current economic environment, but the Parliament's position as friend of the environment/consumer is likely to continue. The eventual political alignment between the incoming Commission president, widely assumed to be José Manuel Barroso for a second term, and the Parliamentary coalition that backs him, may well go some way to determine whether the 7th legislature is more social market or social democrat-oriented. A right-leaning coalition would probably see Barroso steer a similar political course. A deal to secure PES support for Barroso's re-selection would likely see him steer a more socially-oriented course as the Socialists have increasingly agitated for over the last few years.

On EU stimulus funds:

Overall EU stimulus measures are much smaller than the U.S. funds made available. There is wide divergence of opinion amongst EU Member States on this matter. The Czechs and some other governments are pursuing tight spending and budget deficit management; some Member States have no room for manoeuvre. There is €200 bn in the EU stimulus package, but €170 bn is effectively Member State national stimulus package and only €30 bn is EU money. There are, however, spending opportunities and the financial crisis has flagged up many more existing EU funding opportunities for some companies that would never have considered looking at them before. There are also some very good opportunities in Central and Eastern European countries in particular.

On EU financial reregulation:

Regarding the European System of Financial Supervisors, the big question is whether they can really overcome national sovereignty. Commissioner McCreevy brought forward many proposals at the end of this mandate of the Commission, and it is reported that some policy-makers in the United States think the European Union is moving too quickly on some of these issues and that there should be tighter coordination with the United States and internationally.

Discussion

On **EU-U.S. Relations**:

Brad Staples commented that in terms of EU-U.S. relations, the summit in October 2009 is much anticipated. There is enthusiasm in Europe about a fresh start in relations and a new multilateralist approach from the United States. We are seeing a shared common governance agenda and approach to tax havens, as well as shared strategic concerns such as Russia and energy.

There are tensions between Europe and the United States when it comes to the lack of European commitment in Afghanistan, differences on the expansion of NATO, trade disputes such as “buy America” and the open skies discussions.

On EU **class actions** proposals:

Richard Bullard commented that the EU’s proposals to introduce EU-wide rules for consumer collective redress and for awarding private individual damages for infringements of competition law are still being formulated. It is worth noting, however, that law firms specialising in class actions are beginning to establish offices in the United Kingdom and elsewhere in Europe with a view to profiting from a new regulatory environment in Europe.

The European Union is looking to move forward with a “European-flavored” approach to class actions/private litigation, believing it can avoid the pitfalls of what are viewed as the “excesses” of the U.S. system. There is some skepticism as to whether this possible, and business as a whole is fairly wary of what the Commission has proposed. The Parliament and Council may make subsequent modifications.

Paul Shaw, vice president for EU-U.S. corporate affairs in APCO’s Washington, D.C., office, added that the current Commission had to change the tone of its agenda following the negative referenda on the European Constitution in France and the Netherlands. Since then, the Commission has worked to establish itself as a consumer champion – whether it be with high competition fines for such companies as Microsoft and Intel, the regulation on mobile phone roaming rates or the discussions about collective consumer redress and damages actions. The consumer-driven agenda is likely to persist under the next Commission.

On **health care policy** under discussion in the EU:

Paul Shaw said that in terms of the health care reform that is taking place in the United States, many European countries will be watching whether or not the United States introduces some kind of cost-effective research model similar to NICE in the United Kingdom.

There are also a number of health care initiatives coming down the line that will affect the industry. DG Competition is expected to release its long-awaited report of its inquiry into the **pharmaceutical sector** in July. It is expected that the report will call for new regulation for the sector and that DG Competition will continue to keep a close eye on the sector for some time to come. The EU institutions will also be looking to reach an agreement on the so-called **pharmaceutical package**. The Commission published new legislative proposals for information to patients (**direct-to-consumer advertising**), pharmacovigilance and counterfeiting of medicines. The most controversial is the information- to-patients proposal, with 24 of 27 Member States currently opposing the proposal. The institutions must also reach an agreement on a revision of the **Animal Testing Directive**. The new Commission is expected to review the **Medical Devices Directives** and the **Clinical Trials Directive**. In conclusion, there are many significant issues for the health care industry to pay attention to over the coming months and years at an EU level.

On **competition**:

Brad Staples and Richard Bullard commented that business expected to have an easier time from Commissioner Kroes, who sat on several business boards and was expected to be more attuned to them, but they were wrong. She has been tough on cartels, abuse of dominant position and most recently in forcing restructuring around bank bailouts. Some Member States are looking for greater scope for European champions, essentially a European industrial policy through competition policy. Transatlantic cooperation is likely to ratchet up now with this U.S. administration. The European Commission has enjoyed its status as the leading global antitrust enforcer, and there may be some competitive rivalry between the European Union and the United States.

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