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EU Law News

A bi-monthly review of EU legal developments affecting business in Europe

Supervision of Financial Services Sector

New rules designed to avoid future banking crisis

On 9 March 2009, the European Parliament's Economic and Monetary Affairs Committee approved legislation to improve the transparency and supervision of the financial system and to provide for better risk management in the banking sector. If the proposed legislation goes ahead, Member States will have to require all credit institutions to report to the supervisory authorities on large-scale exposure. In addition to a retention rate of at least 5% of the total value of its securitised exposure, the originator would have to issue an "explicit and unconditional warranty" to prove respect for due diligence criteria. The establishment of a college of supervisors is envisaged as a temporary step towards a more integrated EU-wide system of supervision.

Other measures are likely to include a requirement for national authorities to apply a uniform reporting format and closer regulation of the market in credit default swaps, the most heavily traded derivatives in recent years. The aim is to bring the new legislation into effect from the beginning of 2011.

Mobile Phone and Telecoms Prices

European Parliament backs lower SMS and roaming charges

On 9 March 2009, the European Parliament's Industry Committee voted to support the proposals put forward by the European Commission to reduce consumer roaming charges for sending text messages and downloading data in the EU. The Commission has proposed a new Roaming Regulation that would cut the cost of sending text messages while roaming in the EU to €0.11 per SMS. It would also reduce the price for using mobile data services abroad and introduce transparency measures against "bill shocks". At present SMS roaming charges in the EU average €0.28 per SMS and are up to €0.80 in some countries.

Parliament favours a cap on inter-operator charges of €0.50 per megabyte of roamed data (half the rate proposed by the Commission). Finally, Parliament wants an obligation on operators to charge roamed calls by the second from the first second of a mobile call abroad. Since EU telecoms ministers have already endorsed all elements of the Commission's proposals, formal Council approval is expected soon. The new rules should come into effect on 1 July 2009.

Employment Law on Retirement Age

ECJ gives its judgment in the Heyday case (C-388/07)

The Employment Directive (2000/78/EC) outlaws discrimination on grounds of age with regard to employment and occupation. The UK charity Age Concern, acting via its Heyday offshoot, challenged the legality of the UK's legislation, arguing that the mandatory retirement age of 65 is contrary to EU law.

Ruling on 5 March 2009, the ECJ pointed out that the transposition of a Directive does not always require that its provisions be incorporated formally in express, specific legislation. However, in the absence of such precision, it is important that other elements, taken from the general context of the measure concerned, confirm legitimacy. Such elements include social policy objectives, such as those related to employment policy, the labour market or vocational training. By their public interest nature, those legitimate aims are distinguishable from purely individual reasons particular to the employer's situation, such as cost reduction or improving competitiveness.

The case now returns to the UK's High Court which has to decide on the following questions:

- whether the UK's mandatory retirement age is a "legitimate aim"
- whether the means chosen to achieve that aim are appropriate and necessary.

Cross-border Barriers to Online Shopping

The huge potential of internet trade is failing to materialise

Customer satisfaction with online shopping is higher than for retailing in general but the growth of internet trade is held back by practical and regulatory obstacles, such as language, problems with the inter-operability of postal and payment systems and lack of broadband penetration. From 2006 to 2008, the share of online shoppers among EU consumers increased from 27% to 33% but cross-border e-commerce hardly changed during that time. Only 7% of consumers currently buy cross-border when shopping online. And the gap is widening. Regulatory barriers that appear increasingly unjustified to consumers and business include consumer law, VAT rules, selective distribution law, intellectual property protection, and the national transposition of EU legislation on waste disposal.

On the other hand, producers of premium or luxury products, such as certain perfumes, must be protected against free riders who sell cheaply on the internet, taking advantage of the fact that producers have invested a lot of money in creating and building the brand.

The Commission is poised to "free up" the online market and has launched a detailed study of barriers to e-commerce. Its findings will be revealed in autumn 2009 as part of a wider report on the retail sector.

Monitoring the 2004 Microsoft Decision

Special ad hoc technical assistants to replace full-time trustee

In its 2004 Decision, the Commission found that Microsoft had infringed EU and EEA law by refusing to supply inter-operability information and by tying Windows Media Player with Windows. As a result, it imposed a fine and remedies aimed at bringing to an end the abuses in question. An independent trustee was appointed to ensure that Microsoft complied with the Commission's requirements.

However, the inter-operability information has since been documented by Microsoft and private enforcement provisions in Microsoft's licence agreements enable third parties to exercise their rights directly before national courts. Thus, the Commission no longer needs a full-time monitor/trustee and can rely on technical consultants when needed.

State Aid to the Banking Sector

New guidelines for the treatment of asset relief measures

Large amounts of public money have been pumped into the banking system in recent months as goverments have attempted to stabilise financial markets and restore confidence in financial institutions. In February 2009, the Commission announced new guidelines to cover fthe various forms of financial aid to the banking sector that have been used. The design of the asset relief scheme, be it asset purchase, insurance, swap, guarantee or hybrid models, is the responsibility of the Member State. However, their treatment from a state aid viewpoint is subject to uniform EU-wide assessment criteria, which should maintain a level playing field within the single market.

Commission approval for asset relief measures will be granted for a period of six months and will be conditional on the commitment to provide details of the valuation of the impaired assets, as well as a viability assessment and restructuring plan for each beneficiary institution within three months of its participation in the asset relief programme.

Basic principles include full transparency and disclosure of impairments prior to government intervention, valuation of assets based on real economic value rather than market value and adequate burden-sharing between shareholders, creditors and the state.

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