

## EU Law News

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

### Strengthening Investor Protection

#### Proposals on Packaged Retail Investment Products (PRIIPs)

On 29 April 2009, the European Commission published a Communication outlining proposals for a new horizontal legislative approach to replace the current sectoral approach to regulation of PRIIPs, such as investment funds, insurance-based investments and various types of structured products. This market was estimated at some €8 trillion in 2008. PRIIPs can offer considerable benefits to retail investors, but they are often complex and difficult for investors to fully understand, particularly with regard to their risks and costs. Recent stock market falls have underlined the need for investor information that can be trusted and understood. The proposals are part of an EU reform programme aimed at rebuilding confidence and delivering responsible financial markets for the future.

The new regulatory approach will focus on two key areas: firstly, the rules on the form and content of pre-contractual information about the product, and, secondly, rules governing the sales process for PRIIPs, such as the way product distributors conduct their business and the avoidance, management and disclosure of conflicts of interest in the sales or advice process. The Commission considers that the relevant provisions of the Markets in Financial Instruments Directive (MiFID) provide a good benchmark for the sale of all PRIIPs.

### Changes in Roaming Rules Take Effect

#### Lower prices for cross-border mobile use from 1 July 2009

Following a vote in the European Parliament in April, the new EU Roaming Regulation will become directly applicable law throughout all 27 EU Member States on 1 July 2009. The present cap for a mobile phone call made abroad will progressively drop from €0.46 to €0.35 per minute by July 2011, and from €0.22 today to €0.11 for mobile calls received while roaming abroad.

The new EU roaming rules will:

- Cap the price that consumers can be charged for sending a text message while abroad at €0.11 (excluding VAT), compared to a current average of €0.28.
- Substantially reduce data roaming charges (the cost of surfing the web or downloading movies with a mobile phone while abroad) by introducing a wholesale cap of €1 per megabyte downloaded, compared to an average wholesale price of €1.68 per megabyte. The wholesale cap will fall to €0.80 in 2010 and to €0.50 in 2011.
- Protect consumers from "bill shocks" by allowing customers to choose a cut-off mechanism once the bill reaches €50, unless the consumer opts for a higher limit. Operators will have until March 2010 to put these transparency measures in place.
- Further reduce price caps for mobile roaming calls.
- Introduce the principle of per-second billing after the first 30 seconds for roamed calls made and from the first second for calls received while abroad.

### Unbundling the Internal Energy Market

#### Third Energy Package is endorsed by Parliament

New legislation, effective in 2011, aims to give gas and electricity consumers more choice, more protection and lower energy prices while offering greater security of supply and fair competition on a level playing field. At the heart of the proposals is the concept of unbundling, i.e., separating the operation of gas pipelines and electricity networks from the business of providing gas or generating power. Member States will have to choose among three options: full ownership unbundling; independent system operator (ISO); or independent transmission operator (ITO). A new agency will be set up to work with national regulators to enforce unbundling across the EU. Cross-border trading and investment in energy will be encouraged. Sustainability will be enhanced through support for energy efficiency. Consumer protection will be enhanced.



## ECJ Decision on Trade Marks

### Owners can prevent resale of luxury goods by discount stores

Following a dispute between Christian Dior and Société Industrielle Lingerie (SIL), the French Cour de Cassation referred questions to the ECJ concerning the interpretation of the Trade Mark Directive. On 23 April 2009, the ECJ ruled in favour of Dior, holding that the proprietor of a trade mark can invoke the rights conferred by that trade mark against a licensee who contravenes a provision in a licence agreement prohibiting, on grounds of the trade mark's prestige, sales to discount stores. It must, however, be established that that contravention damages the allure and prestigious image which bestows on those goods an aura of luxury. The ECJ also ruled that a sale that takes place in disregard of a provision prohibiting resale to discount stores outside the selective distribution network may, for the purposes of the Directive, be considered to have taken place without the consent of the proprietor of the trade mark.

## Regulation of Credit Rating Agencies

### Tougher rules approved by European Parliament and Council

Under a new Regulation effective immediately, credit rating agencies will henceforth be expected to comply with strict standards of integrity, quality and transparency and will be subject to ongoing supervision by public authorities. The new rules include the following:

- Credit rating agencies may not provide advisory services.
- They will not be allowed to rate financial instruments if they do not have sufficient quality information on which to base their ratings.
- They must disclose the models, methodologies and key assumptions on which they base their ratings.
- They must differentiate the ratings of more complex products by adding a specific symbol.
- They will be obliged to publish an annual transparency report.
- They will have to create an internal function to review the quality of their ratings.
- They should have at least two independent directors on their boards whose remuneration cannot depend on the business performance of the rating agency.

## Cross-Border Payments and E-Money

### New legislation adopted by European Parliament

On 24 April 2009, the European Parliament adopted two legislative proposals revising the current rules governing cross-border payments and the conditions for issuing electronic money in the EU. The new Regulation on cross-border payments will apply from 1 November 2009, the final deadline for the transposition of the Payment Services Directive. Member States have to transpose the new E-Money Directive into national law by 2011 at the latest.

A fundamental change in the latter Directive concerns the introduction of proportionate prudential requirements facilitating market access to newcomers. This includes a reduction of initial capital from the current €1 million to €350,000 and new rules on the calculation of own funds. In combination with the abolition of the exclusivity principle, the new rules will make it easier for electronic money institutions engaged in other business activities, such as telecommunications, to develop innovative services into the payments market. The Directive sets high standards of consumer protection, both in terms of protection and redemption of consumer funds.

The new Regulation on cross-border payments in the Community extends the principle of equal charges for national and cross-border payments to direct debits, in addition to credit transfers, electronic payments (including card transactions) and ATM cash withdrawals, which are already covered by the current version of the Regulation.

*This publication has been carefully prepared but is intended for general guidance only. On any specific matter, reference should be made to the appropriate adviser.*

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