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Newsletter, July/August 2010

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## EU Law News

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

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### **Council adopts restrictions on EU bank supervisors**

At the ECOFIN Council meeting in July, the Council adopted a political guideline for continuing negotiations with the European Parliament on the reform of financial supervision in Europe. In 2009, the Council already adopted a package of proposals to reform the European Framework for supervision of the financial system in the wake of the global financial crisis. The proposal involves the creation of a European Systemic Risk Board (ESRB) and three European Supervisory Authorities (ESAs) for the banking, insurance and securities sectors. The Council has now agreed to impose certain restrictions on the powers of the supervising bodies. The ESAs will only be able to override the national regulators where EU Law has been breached. There is pressure however, to get the ESAs up and running as they are due to supervise credit rating agencies.

Some national governments showed strong resistance to permitting the ESAs to question the discretion of the regulator or affect the day to day supervision of firms. The Parliament is divided on this issue. The Green party would have preferred more authority for the ESAs to be able to overrule the regulator when deemed necessary; others have applauded the reached consensus. The proposed supervision package will only come into force when the Parliament itself reaches consensus. If the package passes the vote in the European Parliament in September, the supervisory bodies should become active on 1 January 2011.

### **Commission proposes to revise existing gas supply legislation**

In response to the gas supply crisis between Russia and the Ukraine in 2009, the EU has proposed a regulation to prevent future gas supply disruption to the EU. The regulation aims to

ensure a more coordinated response to supply crises, and includes preventative actions and reactions to severe disruptions of supply, including common standards and infrastructure interconnections. The European Parliament's industry committee has now approved the agreement and stressed that the new rules will protect household supplies.

The rules require gas companies to guarantee supplies to the protected households in extreme conditions. In addition, within four years, Member States also need to ensure they can meet exceptionally high energy demands in case of gas infrastructure failure. The European Parliament is set to vote on the proposal in September.

### **Commission approves of joint venture between British Airways, American Airlines and Iberia**

The three airlines have offered commitments to the European Commission in response to the Commission's concerns that the planned joint venture between the parties would be in breach of EU anti-trust rules.

In September 2009, the Commission sent a Statement of Objections to the three airlines stating that the venture would take away the market pressure the airlines currently exert on each other as well as on other airlines, and thereby harm the consumer interests on six transatlantic routes. It would not be possible for their competitors to continue to exert an effective competitive force as their market share on these particular routes is relatively small and the barriers to entry, such as the lack of peak-time slots at Heathrow, are high.

The parties have now offered the Commission several solutions, among which is a commitment to make landing and take-off slots

available to competitors at Heathrow to enable the entry of new or the expansion of existing competitors on various routes.

The Commission has concluded that the commitments offered are a suitable remedy and has made them legally binding for a period of 10 years. In addition to approving the joint venture, the Commission has approved a merger between British Airways and Iberia after having concluded that the transaction would not significantly impede effective competition in the European Economic Area or in any substantial part of it.

### **New EU Genetically Modified Organism (GMO) proposals**

The European Commission has adopted a package of proposals overhauling the current Genetically Modified (GM) crop approval system. According to the Commission, the current recommendations allow too much leeway to the Member States to restrict the cultivation of GMOs in their countries. The plan opens the way to large scale GM cultivation in the EU and in particular in countries like Spain and the Netherlands, but at the same time allows countries to ban GM crops.

The new proposals contain two important elements. The first element concerns the coexistence of GM and non-GM cultivation; it allows EU Member States to set their own technical standards and thereby allow for both GM and non-GM fields, but also to establish GMO free areas. This element aims at preventing the unintended presence of GMOs in other food products; it could also prevent economic losses arising from GM traces in conventional and organic crops. The proposals will revise the 2003 Commission Guidance on National Co-existence Measures. The second element has a more restrictive nature and gives Member States the right to ban GM cultivation altogether for reasons other than those covered by EU health and environmental risk assessments. This proposal overhauls the 2001 Directive on the Deliberate Release of GMOs.

The plans triggered a wave of discussion in the EU. Critics fear the new rules will spark internal market disputes within the EU and question the legal basis of the proposals as they are deemed to

give rise to diversity between the Member States and, moreover, are contrary to the concept of a single market. The package of proposals needs to be approved by the European Parliament and a qualified majority of the Council before entering into force.

### **Commission reports on key barriers to efficient and fairer retail services**

The Commission has issued a report that analyses the dynamics of the European retail sector, through the sector's links to hundreds and thousands of suppliers and to the final consumer market and the resulting economic, social and environmental impact. The report has identified key issues that may harm the retail sector, such as:

- possible malfunctioning of the EU commercial property market
- slow growth of e-commerce
- possible unfair commercial practices in the supply chain
- lack of information and transparency on pricing and quality labels
- unsatisfactory functioning of the labor market, and
- lack of common assessment measures for environmentally friendly retail services across the EU.

Having defined these potentially serious barriers, the Commission now invites stakeholders to submit their views on the new systemic approach to internal market policy-making and on those problems that should receive priority. Responses should be submitted by 10 September 2010.

*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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