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## Reportage

### From Berlin to Lisbon... what's in store under the Portuguese Presidency

Glasses of *sekt* are being raised around Brussels to celebrate the conclusion of a dynamic German Presidency, which has no doubt been taxing for negotiators with its punishing schedule of meetings and debates. From July of this year, it will be time to start sipping a glass of port and ruminating on what a Portuguese Presidency will bring. Germany will be a hard act to follow, especially as Portugal will pick up the aftermath of the Treaty negotiations, potentially a poisoned chalice.

At the time of writing, the Treaty Summit conclusions are hot off the press, and many are taking time to reflect on the outcome. Already it is clear that there will be new institutional arrangements, a binding Charter of Fundamental Rights and changes to the voting rules in the sensitive area of justice. The United Kingdom is claiming a victory, having secured a derogation from the legally binding nature of the Charter of Fundamental Rights, and a gold-plated 'opt-out' for legislation in the area of criminal justice and policing.

The German Presidency was characterised by an unprecedented number of working groups in Brussels,

addressing issues with focus and drive. With significantly fewer resources at its disposal, the Portuguese Presidency may find it hard to keep up a similar pace.

However activity levels do not always reflect results. Portugal made a notable impact when last they held the Presidency, pushing through the Lisbon Strategy in 2000 in an attempt to address sluggish growth and low productivity in the EU. With perfect symmetry, Lisbon will be on the agenda again, as the first governance cycle of the Strategy ends in 2007 and Portugal will lead the EU in taking stock of its competitiveness and planning for the next 3 year cycle. The results to date have been good, with the EU finally giving the USA a run for its money in terms of competitiveness.

As part of the drive to continue to improve European competitiveness, Portugal will also find itself tackling a number of delicate, yet very significant issues: liberalisation of energy markets; postal services; and financial services included. In the fields of employment and company law, 'flexicurity' (the reconciliation of work obligations and family life) and the possibility of a single tax base for European companies have to be tackled. The latter particularly may require a few more glasses of port to help the negotiations on their way.

Portugal has very strong green credentials; it has the biggest solar energy generating plant in Europe and is committed to producing 45% of its domestic energy needs from renewable sources by 2010. It intends to press its EU partners to make further significant steps in this direction. High priorities are climate change, a strategy for dealing with water shortages and protection of biodiversity.

Portugal also intends to be active on the international stage, planning summits with China, Russia, Brazil and possibly Cuba. The Portuguese Presidency has stressed that it will not shy away from raising the EU's concerns about human rights in these meetings – a tough challenge for any country to take on. It will need and expect the full support of all of its European colleagues in meeting that challenge.

And finally let's raise a glass of *vinho verde* to Portugal's plans to improve the competitiveness of the EU's wine producers through the creation of a wine regime in the Common Agricultural Policy. Clear and simple rules will characterise this new wine regime, which will also focus on preserving the traditions of EU wine production. Good luck to the Portuguese Presidency!

### Fact Box Portugal

Population	10 million
Land mass	92,000 square kms
President	Anibal Cavaco Silva Social Democrat (President since 2006)
Prime Minister	José Sócrates Carvalho Pinto de Sousa (Socialist Prime Minister since 2005)
Minister for Foreign Affairs	Luís Filipe Marques Amado
Minister for Economy and Innovation	Manuel António Gomes de Almeida de Pinho
Minister for Justice	Alberto Bernardes Costa



- [Portuguese Presidency](#)



## Professional Practice

### MONEY LAUNDERING

#### Decision makers urged to get implementation right

The Law Society of England and Wales, through its Brussels Office, Anti-money Laundering Europe (AME) and the City of London Corporation recently convened a round table discussion in the European Parliament regarding the implementation of the European Money Laundering Directives. The event, hosted by Peter Skinner MEP and co-chaired by Law Society Chief Executive Des Hudson, provided an opportunity for representatives of the regulated sector to share their views on the practical effects of the Directives with members of the European Parliament, European Commission and Member States. The central focus of the event was the fragmented implementation of the Second Directive and how lessons learnt could assist the implementation of the Third. The event enabled the Law Society to present its case for the importance of the common law trust and explain why it is necessary for unique aspects of national legal frameworks to be properly taken into account. The Law Society was also able to highlight the competitive disadvantage likely to be suffered by Member States who do not fully implement the new reliance provisions. The discussion encouraged a greater focus on co-operation between law enforcement and the regulated sector, rather than an emphasis on coercive penalties. The deadline for transposing the Third Money Laundering Directive into national law is 15 December 2007.



#### WEBLINKS

- [Directive 2005/60 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing](#)
- [Report by the British Institute of International and Comparative Law \(BIICL\) Comparative Implementation of EU Directives \(II\) – Money Laundering](#)

### CODES OF CONDUCT

#### Cross-border service providers

The European Parliament's Internal Market and Consumer Protection Committee commissioned a report in November 2006 to examine the obligations of cross-border service providers. The report refers to EU initiatives that are sector specific and the overarching framework put in place by the new Directive on Services in the Internal Market. The Parliament is now in the process of drafting a resolution presenting conclusions on the findings. The draft report calls for the European Commission to draw up a voluntary code of conduct that has "a quality certification mechanism with an inbuilt dispute settlement system involving appropriate bodies in order to assist in simplified dispute resolution". The draft also calls on the Commission to propose a broad horizontal instrument that both strengthens consumer confidence in cross-border trade of services, and

harmonises the obligations of cross-border service providers. A vote will be taken on the report in late July and discussion in the plenary session in September.



- [European Parliament report on obligations of cross-border service providers](#)

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## LEGAL PROFESSIONAL PRIVILEGE Hearing in the Akzo Nobel case

The European Court of Justice heard the parties in the case of Akzo Nobel Chemicals Ltd and Akcros Chemicals Ltd against the European Commission (cases T-253/03 and T-125/03). The case examines the controversial topic of legal professional privilege for in-house lawyers and has attracted a number of international interventions, including: the European Company Lawyers Association, the International Bar Association, the Council of European Bars and Law Societies, as well as the American Corporate Counsel Association. The judgment is expected next year. For further information on the hearing, please contact the Brussels office.

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## One share, one vote

The Law Society of England and Wales is planning to host a round table event on the subject of "one share one vote", the topic of a recent European Commission study (see below). The round table event will be held on Thursday 12 July at Law Society offices in Chancery Lane, London. Officials from the Commission and a number of corporate governance experts will participate. If you would like to attend please send an email to [andrew.laidlaw@lawsociety.org.uk](mailto:andrew.laidlaw@lawsociety.org.uk).

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## European Court of Justice visit for trainees

On 21 June 2007 fifteen Brussels-based trainee solicitors from British and Irish firms participated in a visit organised by the Law Societies' Brussels office to the European Court of Justice in Luxembourg. The trainees were given a guided tour of the Court buildings, two informative talks from members of the Court's staff, and met with Judge Forwood. After a briefing on an agriculture appeal case, they attended part of the hearing itself. The group also enjoyed lunch and an informal question and answer session with Judge Schieman and

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## Law Reform

### COMPANY LAW

#### “One share, one vote”: study queries need for Commission action

The likelihood of a European Commission Recommendation setting out the “one share, one vote” principle has diminished after a study prepared for the Commission indicated that deviations from the principle had no effect on the economic performance or governance of European companies. Internal Market Commissioner Charlie McCreevy had previously stated his intention of having the principle accepted across the 27 Member States but he is now said to be keeping an “open mind” on the matter. He has indicated that the Commission will take time to reflect on the study before making any decision on how to proceed. The study, published on 4 June, examined some 450 listed companies, the regulatory framework in 16 EU and 3 non-EU jurisdictions and other empirical and academic evidence. An impact assessment will now be carried out by the Commission over the summer and any Recommendation should not be expected before November.



#### WEBLINKS

- [Report on the Proportionality Principle in the European Union](#)

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### CONSUMER PROTECTION

#### Time up for holiday rogue traders

Every year thousands of consumers from the UK and other European countries lodge complaints about being duped into signing up for holiday products. These reach their MEP, the European Commission, Government, consumer bodies and so on. Until now only certain timeshare arrangements have been caught by EU consumer protection rules. In June, the Commission proposed to update consumer protection legislation and extend its scope to products and activities such as discount holiday clubs, timeshare resale and exchange clubs. Such products had previously escaped regulation, and indeed certain timeshare products appear to be designed for that express purpose. Timeshare contracts of less than three years would be covered by the proposal. Fourteen-day withdrawal and product-specific information requirements would also apply. The proposal will pass to the European Parliament and Member States for adoption.



## WEBLINKS

- [Proposal for a Directive on the protection of consumer in respect of certain aspects of timeshare, long-term holiday products, resale and exchange](#)
- [Response of the Law Society of England and Wales to the Commission consultation on the review of the Timeshare Directive](#)

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## CIVIL LITIGATION

### Deal clinched on applicable law

The European Parliament and Member States finally reached a deal on the proposed Rome II Regulation in mid-May. This Regulation determines the applicable law for non-contractual obligations (torts and delicts). It is designed to improve legal certainty as to the law applicable in cross-border cases, applying as a general rule the law of the country where the damage occurred. Special rules apply in relation to matters such as product liability, environmental damage, intellectual property and industrial action. A special rule also now applies for multi-jurisdictional competition law cases. Defamation has been excluded from the scope of the measure. When assessing damages, courts are to give special consideration to the personal circumstances of victims of personal injury in a foreign country, particularly those injured in road traffic accidents. The Commission is to produce studies on these two latter issues by the end of 2008. While Justice Ministers took note of the agreement on 12-13 June, formal adoption will only take place after legal-linguistic checks are finalised. Parliament may adopt the text at its July plenary session. The Regulation will be formally adopted and published in the coming months and will come into force a further eighteen months after final adoption.



## WEBLINKS

- [Provisional text of the Regulation on the law applicable to non-contractual obligations \(Rome II\)](#)

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## CRIMINAL JUSTICE

### Suspended sentences, probation and alternative sanctions – an EU approach

France and Germany have put forward a proposal to allow people who have received a suspended sentence or other non-custodial sanction in another Member State to serve their sentence in their home country. The proposal seeks to fill a gap in the criminal legislative programme of the EU which is already considering similar solutions both for bail and custodial sentences. The proposal was debated by the Justice and Home Affairs Council and was generally welcomed by Justice Ministers, although much work remains to be done on the detail of the proposal. In particular the draft contains a provision requiring Member States to supervise all of the sanctions specified in a list to be contained in the legislation itself, regardless of whether the sanction in question exists in the Member State. This could create real practical difficulties if, for instance, a UK citizen



was sentenced to undergo a particular type of medical treatment by a court in the Netherlands and that type of treatment and supervision did not exist in the UK. The proposal has only just begun its progress through the EU legislative procedure. The Parliament will consider the proposal on 17 July with adoption scheduled for the plenary session in September.



## **WEBLINKS**

- **Initiative of the Federal Republic of Germany and of the French Republic with a view to adopting a Council Framework Decision on the recognition and supervision of suspended sentences, alternative sanctions and conditional sentences**

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## **CROSS-BORDER DEBT RECOVERY**

### **Small claims across borders**

With the increase in contact that the average consumer has with other countries in Europe and as a result of cheap travel, internet shopping, buying second homes etc, it is becoming more and more important that the remedies available for ordinary consumers keep pace. The EU has now addressed this issue in a very real and accessible way by securing final approval for a Regulation on Small Claims. The Regulation establishes a standard procedure to be followed when making a small claim in another Member State, using a set of simple forms which must be recognised without any further procedure in the Member State where the claim is being made. Importantly, time limits are set for the receiving court to deal with the claim, with a view to speeding up as well as simplifying the process. The procedure can be used for claims of up to €2000. There is no need for the parties to have legal representation and provision is made for the taking of evidence by a wider range of means including video or letter. The Regulation enters into force on 1 January 2009 and some additional minor changes to the rules of court may be required in the UK. The Regulation applies in all Member States except Denmark.



## **WEBLINKS**

- **Regulation of the European Parliament and of the Council establishing a European Small Claims Procedure**

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## **PROCEDURAL SAFEGUARDS**

### **Defence rights: EU fair trial rights proposal flounders**

When Justice Ministers met at their summit in Luxembourg last month they were forced to call a halt to the negotiations on the procedural rights proposal. Some Member States were dragging their feet on provisions that would ensure that defence rights would be respected to an agreed minimum standard throughout the EU. The rights in question are the right to legal advice (both before trial and at trial), and for foreign defendants, the right to interpretation and translation of essential documents free of charge. A last minute compromise

deal of a legislative initiative only in relation to cross-border cases was rejected by a group of Member States, including the UK and the Republic of Ireland. This renegade group argued that the European Convention of Human Rights and the Strasbourg Court were sufficient guarantees of these defence rights. Other Member States countered that the fact that the ECHR, a court of last resort, is creaking under the weight of its own case-law would suggest otherwise. It is not yet clear what will happen next: whether a certain group of Member States will go ahead with protecting these rights, under the procedure known as 'enhanced cooperation'; or whether the European Commission and future Council Presidencies will be able to proceed despite the objections, given the recent agreement on a revised EU Treaty.



- **Proposal for a Council Framework Decision on certain procedural rights in criminal proceedings throughout the European Union**

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## Viewpoint

### A lawyer's perspective on EU politics

"Laws are like sausages – it is better not to see them being made". Many participants in last weekend's European Council negotiations on a new EU Reform Treaty would no doubt agree with these comments, made - appropriately enough perhaps - by a former German Chancellor, Otto von Bismarck.

Tough negotiations, hard-won compromises and late-night deals are not only the stuff of European treaty-making but also of much European legislation. In particular, the increasing use of co-decision – now accounting for some 80% of European legislation – means that all-night conciliation sessions are a growing feature of the legislative process.

It is easy to be critical of this mixture of law-making and diplomatic and political negotiation; justifiably so where legal clarity suffers as a result. Promoting quality of drafting, on the basis of the principles already clearly established in the 1998 Interinstitutional Agreement, is clearly a responsibility of all those involved in the legislative process and a key element of continuing efforts to promote better regulation.

At the same time there remains something remarkable in the fact of 27 States addressing their differences by engaging on the detail of legal texts. However glib the much-repeated phrase may sound, the European Union really is a political order based on the rule of law. Debates about legal powers, legal principles and legal drafting are not just a matter of abstract theory but a very real factor in day-to-day decision-making. Legislation and legal instruments provide the vehicle for much of the EU's diverse agenda from agriculture to military operations. The Treaties themselves are not only the focal point for fundamental political debate but the framework for the Union's daily work.

This interplay between law, politics and diplomacy is by no means unique to the European Union. But it is hard to think of another area of international or domestic political activity where legal issues are so prominent and all-pervasive.



For the United Kingdom Government, commitment to EU law is a key part of its wider engagement with the Union – both in negotiations at the diplomatic level and in its domestic implementation of EU obligations. It is a strong supporter of the European Court of Justice and of measures to reinforce its work such as the new Staff Tribunal, effective fines and open, meritocratic judicial appointments. It has been at the forefront of recent initiatives promoting better regulation and improved implementation and, on the wider legal stage, EU guidelines on humanitarian law. Whatever the UK's position on the substance of a measure, there is no doubting the legal rigour with which it tackles the tasks of negotiation, drafting and implementation.

The UK Government equally values its close contacts with the Law Societies and their involvement the development of EU law. Much of this naturally focuses on contributing expert views on areas which impact directly on the work of legal practitioners. However other initiatives have been equally valuable - including producing clear, informative material explaining EU developments to the legal profession and the wider public and, with the UK Government and Bar Council, bringing together British lawyers from diverse areas of EU legal practice.

The last of these is particularly important, for the very success and variety of EU law risks dividing it into mutually incomprehensible worlds. Promoting dialogue between all those engaged in EU law – whether from the judiciary, academia, private practice, government and diplomacy, or the EU Institutions - is essential to ensuring that they can benefit from, and understand, each others' experiences and perspectives as both producers and consumers of EU law.

None of this will make necessarily EU law-making, like law-making elsewhere, any more edifying. The political process of squeezing the meat of diverse objectives into delicate legal skins is not always for the faint-hearted. But it should at least help in ensuring that the product is as palatable as possible.

## Biography



**Paul Berman** was Legal Counsellor and Head of the Legal Section at the UK Permanent Representation to the European Union in Brussels from September 2002 until May of this year. The views expressed are those of the writer and do not necessarily represent those of the UK Government.

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- [Report from the Commission "Better Lawmaking 2006"](#)

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The Law Society of England & Wales set up the Brussels office in 1991 in order to represent the interests of the solicitors' profession to EU decision-makers and to provide advice and information to solicitors on EU issues. In 1994 the Law Society of Scotland joined the office and in 2000, the Law Society of Northern Ireland joined. The office follows a wide range of EU issues which affect both how solicitors operate in practice and the advice which they give to their clients. For further details on any aspect of our work or for general enquiries, please contact us: [brussels@lawsociety.org.uk](mailto:brussels@lawsociety.org.uk)

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