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Reportage

Family Law - Parliament presses for better co-operation across borders

A joint public hearing on family law in Europe was held by the European Parliament's Legal Affairs and Justice and Home Affairs Committees on 11 September 2007. The hearing focussed on the enforcement of maintenance obligations, divorce and legal separation and the need to make progress on current legislative proposals in these areas.

Family law is traditionally an area reserved to Member States but has been on the European agenda for a number of years. As more people take advantage of their free movement rights and live, work and "marry" abroad - the consequence of a family breakdown in these situations usually involves complexity, cost and delay. This is a situation to which MEPs are keen to draw attention, not least due to the impact on citizens and their daily lives.

It has become clear that current rules are not effective in meeting the needs of individuals in cross-border family situations and the Parliament is clearly concerned about the failure to reach agreement on the proposals dealing with enforcement on maintenance obligations and rules on jurisdiction and applicable law in divorce. Genofewa Grabowska MEP is leading on this issue for the Parliament and she spoke of the difficulties arising when former partners emigrate for work and cease paying maintenance. She expounded the urgency of the legislation, given the fact that Poland has "lost" 2 million citizens in the last few years due to emigration.

In order to draw attention to this situation a number of international experts were brought together to debate the issue. The Law Society of England and Wales was represented at the hearing by an experienced international family law practitioner.

First up was the question of enforcement of cross-border maintenance obligations, and the panel considered both the EU proposal in this area and the parallel work going on in the Hague Conference on International Private Law. There was recognition that the EU Regulation should operate in harmony with the Hague provisions, but that it must also go beyond the scope of the new Hague proposals to ensure the best possible outcome for Europe's citizens.

Both proposals seek to create a streamlined system for claiming maintenance across borders. This could be achieved through co-ordination of central organisations in both the creditor's and debtor's countries of residence. This would allow exchange of information and for the authorities to obtain and transmit maintenance orders, to be accompanied by payment orders from an employer or bank

where necessary.

The second part of the hearing provided a forum for examining the proposed Rome III Regulation on applicable law and jurisdiction in divorce. This aims to hone the rules of jurisdiction already established by the Brussels II *bis* Regulation and make the law more user friendly for international couples in Europe. Rome III includes proposals relating to choice of court, applicable law and jurisdiction. A representative of the Portuguese Presidency of the EU, reported on the state of play in the Council of Ministers. Reiterating that the aim was not to try to change substantive family law, the Presidency confirmed its intention to achieve consensus between Member States on the content of the proposal.

It is worth noting that the UK has a right to decide whether to be bound by both pieces of legislation and has not yet chosen to opt in to either. The Republic of Ireland has chosen to be bound by the maintenance obligations proposal but not the proposal dealing with divorce.

Ultimately, Parliament's power to force the progress of this legislation is limited, as currently MEPs are consulted on family law issues and their views are not binding. They are, however, pushing for this measure to be dealt with under the co-decision procedure. The Council was unable to give such an assurance and so Parliament's power to control the progress and direction of the legislative process on this measure remains restricted.

The Portuguese Presidency has included both proposals in their programme for the coming months, indicating that some headway should be anticipated in this area.



- [Proposal for a Regulation on jurisdiction, applicable law, recognition and enforcement of decisions and co-operation in matters relating to maintenance obligations](#)
- [Proposal for a Regulation as regards jurisdiction and introducing rules concerning applicable law in matrimonial matters \("Rome III"\)](#)
- [Revised Preliminary Draft Convention on the international recovery of child support and other forms of family maintenance](#)
- [Preliminary Draft Protocol on the law applicable to maintenance obligations](#)
- [Council Regulation 1347/2000 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for children of both spouses \("Brussels II bis"\)](#)

The Brussels Office would like to thank Katie Rainscourt of Boodle Hatfield for her contribution to this article. The Law Society of England and Wales was represented by Andrea Woelke of Alternative Family Law.

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LEGAL PROFESSIONAL PRIVILEGE Opportunity missed on in-house privilege

On 17 September 2007 the European Court of First Instance (CFI) delivered its judgment in the case of *Akzo Nobel Chemicals Ltd and Akros Chemicals v Commission*. The case concerned the question of legal professional privilege and whether it extended to documents prepared by or communicated to the company's in-house lawyers in EU anti-trust cases. Akzo argued that communications to and from in-house lawyers should be treated in the same way as communications from lawyers in private practice. The CFI, however, followed the Commission's line of argument, finding that in-house lawyers do not enjoy the same degree of protection as they are bound by a contract of employment to their clients. This position corresponds with the European Court of Justice's last significant judgment on privilege in *AM & S Europe Ltd v Commission*, which found that in-house lawyers are not sufficiently independent due to their employed status. The Law Society of England and Wales has made clear its disappointment with the outcome in this case. It will continue its campaign to extend equal protection to all members of the profession.



WEBLINKS

- [Case T-125/03, Akzo Nobel Chemicals and Akcros Chemicals v Commission](#)
- [Case 155/79, AM & S Europe v Commission](#)

For more information on the outcome of the case please contact the Brussels Office at brussels@lawsociety.org.uk

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EUROPEAN TRANSPARENCY INITIATIVE Brussels hot topic: the lobbyists' register

Brussels is back in business after a quiet summer and the proposal for the lobbyists' register is top of the agenda. As Commissioner Kallas's team continues discussions with stakeholders, MEPs have also launched their own inquiries. Alexander Stubb MEP will host a workshop on Lobbying in the European Union for the Constitutional Affairs Committee on 8 October 2007 and Diana Wallis MEP is charged with the Legal Affairs Committee opinion. The Law Societies' Brussels Office is working with the European Commission to find an acceptable definition of lobbying that will be compatible with the existing rules governing the conduct of solicitors. We have supported moves to make the lobbying process open and transparent, but we are working to ensure that registration will not require solicitors to compromise ethical standards, such as client confidentiality. The Commission hopes to have the register up and running by the spring of 2008.



WEBLINKS

- [European Transparency Initiative website](#)
- [Response to the Green Paper on the European Transparency Initiative of the UK delegation to the Council of the Bars and Law Societies of Europe \(CCBE\)](#)

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PROVISION OF SERVICES ACROSS BORDERS European Parliament makes recommendations

Last month the European Parliament discussed the Lehtinen report on obligations in relation to cross-border service providers. The Internal Market and Consumer Protection Committee had previously commissioned a report in November 2006 to examine the obligations of cross-border service providers and Parliament's resolution draws conclusions from this. The Parliament has stated that a more uniform system of obligations for service providers is needed as the market in services becomes increasingly cross-border. The aim is to facilitate further the development of a seamless internal market for services. The resolution acknowledges that the Services Directive is being implemented at the moment. There was concern amongst the regulated professions, however, that the report called for codes of conduct to be drawn up by the Commission, whereas the Services Directive already encourages codes of conduct to be drawn up at a European level by professional associations. This confusion was eliminated as the amendment calling for codes of conduct was defeated in the plenary session.



WEBLINKS

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

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EU Civil Justice Day 25 October 2007 – Dispute Resolution Across Borders

To mark the EU's annual Civil Justice Day, the Law Society of England and Wales will be hosting in London a practical one-day seminar on new legislation dealing with a range of cross-border issues including debt recovery, mediation, collective redress and personal injury claims. As people move around more within Europe it is important that solicitors are aware of how to enforce their clients' rights when problems arise in another Member State. The event will be opened by the Master of the Rolls and other speakers include European Commission Director General Robert Madelin and experienced practitioners from the UK and other Member States. The emphasis of the day is on practical application and the aim is to provide solicitors with all the information that they need to be able to advise their clients on cross-border issues. The event will close with a reception hosted by Diana Wallis MEP to which all participants are invited.



- [Seminar information and booking form](#)

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Law Society of Scotland hosts European Chief Executives

The annual conference of the Chief Executives of the European Bar Associations took place on 13-16 September 2007. It was hosted for the third time by the Law Society of Scotland at Dalhousie Castle Hotel near Edinburgh. Delegates from 14 jurisdictions attended and a number of key issues were discussed including money laundering, the costs of court systems around the continent and challenges associated with operating in Europe's internal market. Fellow CEOs will have another opportunity to meet in October at the annual conferences of the International Institute of Law Association Chief Executives, which the Law Society of Scotland CEO, Douglas Mill, will chair. This event is to be held in conjunction with the International Bar Association in Singapore.

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Roundtable on criminal law competence of the European Community

Last month the EU Committee of the Law Society of England and Wales held a high-level roundtable to debate the question of the criminal law competence of the European Community. Hosted by Diana Wallis MEP, a number of experts, including the European Commission's top lawyer and a senior representative from the European Court of Justice, went head to head to debate whether Europe-wide criminal rules can be set down in Community law. Dubbed "Pillar Talk", the participants discussed the series of recent proposals introducing criminal sanctions in areas such as intellectual property, the environment and illegal immigration. With a number of national governments in attendance and representatives from the Houses of Lords and Commons, discussion soon turned to how detailed these rules could be before exceeding the Community's competence i.e. crossing a red line.

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Brussels Office News

This month, the Brussels Office said farewell to Jamie McDonald and Vicky Taylor, who recently completed their secondments, and welcomed David Cardwell and Joanna Shaw for their six-month seats. David is currently in his second year of a training contract with Shepherd and Wedderburn LLP, while Joanna joins the Brussels Office on secondment from Berrymans Lace Mawer in Manchester.

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CONSUMER LAW

Parliament calls for one set of rules

Consumers have traditionally been reluctant to make purchases in other Member States for fear of experiencing problems in enforcing their rights across borders. For this reason, a review of EU consumer protection legislation has been undertaken by the European Commission. The European Parliament adopted a resolution on this on 6 September 2007. Problems identified were the different rules applying to various sectors and the lack of information available in relation to pricing, returns policy, complaints and guarantees, which have led consumers to approach such transactions with caution. In order to address this situation, the Parliament favours an overarching piece of legislation, which will provide one central set of rules governing the various sectors of consumer protection, in addition to sector-specific directives. MEPs agreed that the legislation should start from the principle of full, targeted harmonisation and it should be of wide application, not just limited to cross-border transactions. This view backs the Commission's approach which seeks to afford an increased level of protection to the consumer.



WEBLINKS

- [Green Paper on the review of the consumer acquis](#)
- [European Parliament Resolution on the Green Paper on the review of the consumer acquis](#)
- [Commission Second Progress Report on the Common Frame of Reference](#)

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CRIMINAL LAW

Progress made on new EU data protection rules

Data protection rules concerning the exchange of information between Member States have been under discussion in the Council of Ministers for some time but recent developments at the Justice and Home Affairs Council on 8 September 2007 suggest progress is finally being made. The proposal sets down rules which will apply to situations where personal data is transferred between police or judicial authorities internationally. The aim is to bolster law enforcement through cross-border data exchange, while protecting the citizen's basic rights of freedom and privacy. The rules will only apply to cross-border exchanges, rather than govern domestic situations, and will allow transmission to third countries where certain criteria are met. Further issues are still to be decided, including limitations on purpose, rights of access and the ever contentious topic of time periods for retention of data. Yet, despite the controversial nature of these issues, the Council is optimistic that final agreement may be reached before the end of the year.



WEBLINKS

- [Proposal for a Framework Decision on the protection of personal data processed in the framework of police and judicial co-operation in criminal matters](#)

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COMPANY LAW

A European vehicle for SMEs?

The European Commission published a questionnaire on 20 July 2007 seeking views on the possible creation of a European Private Company (EPC) Statute. Similar to the 2004 European Company, future legislation could allow smaller companies to take on a European form. This could alleviate the need to create separate legal entities in different Member States and could help to streamline management or subsidiary structures. The questionnaire proposes various models, seeking to achieve a balance between the freedom for the founders of an EPC as to its design structure and the need for uniformity and legal certainty. The consultation closes on 31 October 2007. Questioned recently on this topic in the European Parliament, Commissioner Charlie McCreevy noted that there was still

not a consensus of views. The results of an online survey of practitioners on this issue, run by the Law Society of England and Wales, will be made available soon.



WEBLINKS

- [European Commission consultation on a possible Statute for a European Private Company](#)
- [European Parliament debate on the Statute for the European Private Company of 4 September 2007](#)

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EMPLOYMENT LAW

Sanctions against employers of illegal residents

The UK has failed to opt in to a proposal for a Directive providing for sanctions against the employers of illegally staying third-country nationals by the deadline of 13 September 2007. The UK can still opt to be covered by this legislation, once it is adopted, but will not be involved in the negotiations on it. Otherwise, the UK will remain outwith its scope. Given the strong similarities with measures already proposed in the UK, it remains to be seen where the UK's concerns lie, although "red tape" has been cited. The proposal aims to ensure that Member States have in place certain sanctions against employers of illegal residents, including criminal sanctions. Different to the UK proposals, the EU proposed sanctions include the possibility of exclusion from public contracts or state aids and of joint and several liability, in order to cover subcontractors. The proposal is due to be examined by Member States and the European Parliament over the coming months.



WEBLINKS

- [Proposal for a Directive providing for sanctions against employers of illegally staying third-country nationals](#)

To receive a copy of the position paper of the Law Society of England and Wales please contact brussels@lawsociety.org.uk

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INTERNAL MARKET

Solving cross-border problems without legal proceedings

This month marks EU Civil Justice Day and means that access to justice across borders is in the spotlight. Cross-border litigation is one route to dispute resolution across borders, but another option is at hand. SOLVIT has been working to help citizens and businesses in the EU to find solutions to problems of misapplication of EU law for five years. Whilst at first glance this may seem irrelevant to lawyers, it can often be a cost-effective first step to solving a cross-border problem without recourse to legal proceedings. Its recent successes include ensuring that a British anaesthetist, who was entitled to work in Spain under EU law, had his qualifications recognised when permission was refused by the Spanish authorities; and helping a Norwegian company to sell its bottled water in Malta, without having to meet any additional labelling requirements (SOLVIT works for EEA countries too). SOLVIT centres exist in all Member States and work with each other to find a solution within 10 weeks.



WEBLINKS

- [SOLVIT website](#)
- [UK SOLVIT centre](#)

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CRIMINAL LAW

Bail and probation at the top of the EU's criminal agenda

The Portuguese Presidency of the EU is pushing forward two measures which address custody both pre- and post-trial where an EU citizen is charged or convicted in another Member State. Non - nationals are often remanded in custody or given custodial sentences to address the risk of flight in situations where nationals would not be treated similarly. The proposals on the table would provide a means for bail to be supervised in the person's home country and for a non-custodial sentence to be served in the home Member State. The probation proposal is a top priority for the Portuguese Presidency whereas the bail proposal is rather more controversial, with work required to clarify the responsibilities of Member States and details such as the transfer mechanism. A debate in the Justice and Home Affairs Council on 18 September 2007 concluded with Member States requesting that the Commission produce a revised text. Work will start again in the working groups, once the new text is presented, and the issue will be on the Council's agenda in December.



WEBLINKS

- **Proposal for a Framework Decision on the European Supervision Order in pre-trial procedures between Member States of the European Union**
- **Proposal for a Framework Decision on the recognition and supervision of suspended sentences, alternative sanctions and suspended sentences**

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The Judicial Network Website – an under-used resource in civil and commercial matters

Have you ever needed to advise a client how to enforce a judgment in Poland or find out about the divorce procedures in Spain? It is not always easy to find the necessary information about the laws and procedures of another EU Member State in English and sometimes, finding out who to ask can be the most time-consuming part of the process. As citizens of the EU travel more and more, make contracts in other Member States, marry citizens from other European countries or buy property abroad, these problems are becoming more relevant to the work of all solicitors. The EU is increasingly involving itself in all kinds of every-day cross-border transactions and seeking ways to make the resolution of cross-border disputes easier for all concerned, including lawyers.

As part of that drive to improve accessibility of information, there is now a website which provides information on all the main subject areas that are likely to be useful to people contemplating legal action in another EU country – and it can be accessed by everyone using all the official languages of the EU. The website in question is that of the European Judicial Network in civil and commercial matters.

The word “judicial” is used here in the widest sense of “legal” and most commercial and civil matters, including family law issues are included within its scope. The website is managed by the European Commission, working closely with the Member States, and can be found [here](#).

The website is well designed and easy to navigate. On the left side of the screen there is a list of the 19 subjects covered, including legal aid, jurisdiction, service of documents, enforcement of judgments, small claims and default judgment procedures, divorce, parental responsibility and maintenance claims.

On the right side are the flags of each Member State. Navigation is very simple. If you want to know about the bankruptcy procedure in France the information can be found by clicking on “bankruptcy” and then the French flag or vice versa.

Say, for example that you needed to enforce a judgment in Spain. The website sets explains the procedure for enforcement, what type of enforcement measures can be taken and what assets can be subject to enforcement. Using the Civil Judicial Atlas section of the website, it is possible to identify the Central Authority which is the main contact point for cross-border issues, or the local court which would have jurisdiction.

The list of flags includes the EU flag and a map of the world. By clicking on one of the subjects and the EU flag you will find relevant information about EU law in that area and links to appropriate instruments. By clicking on the map, relevant information about international law and agreements will be displayed.

There is an added advantage for UK users as our pages have separate sections for our different legal jurisdictions. It is therefore an easy way to find out about the procedures in other parts of the UK. Someone from Carlisle can find out how to bring a small claim in the Scottish courts; someone in Belfast can easily find out about how to claim compensation for an accident that happened in England; and someone in Glasgow can learn about alternative dispute resolution in Northern Ireland.

Once you start to use the website you will discover that it is an extremely valuable tool. It is a great example of how the EU can bring added value to citizens and businesses who wish to obtain access to justice in another country. Save it in your favourites now!



WEBLINKS

- [Website - European Judicial Network in Civil and Commercial Matters](#)

Biography



Eral Knight is Contact Point for England and Wales of the European Judicial Network in civil and commercial matters.

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- [Council Common Position on the Directive on credit agreements for consumers](#)
- [Draft Guidelines on the application of Article 81 of the EC Treaty to maritime transport services](#)
- [New directions for practitioners issued by the Court of First Instance giving new guidelines on court procedure](#)

About us

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

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