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Reportage

The Future of Europe: consensus or compromise?

After months of negotiations, the text of the new "Lisbon Treaty" - the successor to the failed Constitutional Treaty - was finally agreed at the Informal Summit of the European Council in Lisbon in the early hours of 19 October 2007. Although, provisional agreement on the draft Reform Treaty had already been reached earlier in the month it was touch and go as to whether leaders would actually sign off on it. What with the Polish elections looming and the UK's Prime Minister under intense scrutiny the European media were poised for marathon negotiations. However, the reality appeared to be less dramatic and the majority of issues - such as the allocation of seats in the European Parliament - were settled early on. Moreover the UK government returned home with a series of "opt-in" compromises in the field of justice and home affairs triumphantly tucked under its belt.

Under the previous treaties, the UK and the Republic of Ireland secured a regime whereby they were able to make a decision whether to “opt in” to legislative proposals in key areas of Justice and Home Affairs policy - namely asylum and immigration, civil justice and family law - or not. When negotiations opened up again on the Reform Treaty the UK argued this arrangement should be extended to police and criminal justice matters dealt with at EU level. An interesting move given this was not something that was agreed in terms of negotiations on the Constitutional Treaty itself.

The new draft Treaty follows the model of its predecessor and abolishes the current three pillar structure with its different decision making procedures. The new “ordinary legislative procedure” will now apply to all areas of European Union law and policy. This means that the European Commission will propose legislation with the European Parliament and the Council having equal power to enact legislation - so called co-decision. Member States in the Council will reach agreement by a qualified majority. This is an innovation in the area of crime and policing matters which previously required unanimity - thus the removal of the national veto. This is one of the reasons that the UK sought to extend the “opt-in” privilege to this area of law. Moreover in the area of criminal law the European Court of Justice will now have full jurisdiction in this field rather than just the power to hear preliminary references. So, if the United Kingdom decides to “opt in” to a piece of criminal law legislation it can now be brought before the ECJ for failure to implement it in a correct and timely manner.

Whilst billed as a political success at home, the broader reality is that this perpetuates the patchwork of legal regimes and results in harsh political consequences. The “opt out” raises the question of the relevant procedure to be applied where the UK participates in a past measure but no longer wishes to be involved in any further procedure to amend or update it. The other Member States will now have the right to decide by qualified majority that the non-participation of the UK would make the amended provision inoperable and force them to withdraw from the measure as a whole. Any decision not to participate would have to be weighed against the consequences of potential exclusion.

The new “Lisbon Treaty” will be formally signed by Member States on 13 December 2007. It will have to be ratified by all 27 EU Member States and the aim is that it should enter into force on 1 January 2009. The political analysis in Brussels circles is that this new framework signifies a new phase in the development of the European Union and marks a shift from institutional debate to policy delivery. Only time will tell.



- **Documents approved at the Intergovernmental Conference of 18 October 2007 in Lisbon**



Professional Practice

ALTERNATIVE DISPUTE RESOLUTION Innovation in mediation in the EU

In an attempt to give some impetus to the draft Directive on mediation in civil and commercial matters, the European Parliament's Legal Affairs Committee held a public hearing on 4 October, at which innovative forms of mediation around the EU were discussed. Presentations were made on court-based mediation, e-mediation, business mediation, family mediation and community mediation. Of particular interest was the situation in Portugal and the establishment there of effective pre-trial mediation schemes in the magistrates' courts. The aim of the Directive is to encourage Member States to make mediation available on as wide a basis as possible with a view to reducing court backlogs and the costs of litigation in cross-border disputes. It provides that a court "may" refer a dispute to mediation or refer the parties for an information session on mediation; "must" encourage the introduction of codes of conduct for mediators and ensure that agreements reached in mediation can be made enforceable in court. However, given the slow progress in the Council it may be some time before the proposal is adopted.



WEBLINKS

- [Proposal for a Directive on certain aspects of mediation in civil and commercial matters](#)

E-JUSTICE Technological advances made in cross-border data exchange

"E-Justice" is a concept making its mark at European level. Proposals are in the pipeline which aim to improve exchange of information in cross-border civil and commercial matters and in criminal matters. Progress on this issue has been made under the Portuguese Presidency and it was one of the main points of discussion at the informal meeting of Justice and Home Affairs Ministers on 1-2 October. The main focus of the initiative is the creation of an "E-Justice portal", which will be a user-friendly system, allowing access by citizens and companies to services in other Member States. It aims to establish conditions for the networking of various judicial registers, including criminal records, insolvency, commercial and land registers. The European Commission is carrying out work in this area and in particular it acknowledges the potential use of this tool for the establishment a joint electronic platform for a European Payment Order.



WEBLINKS

- [Justice and Home Affairs Council discussion document](#)
- [Conclusions of the Informal Meeting of Justice and Home Affairs Ministers on E-Justice](#)

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TRANSPARENCY REGULATION

Parliament considers stronger rules

The European Commission is due to consult shortly on its proposed register and code of conduct for lobbyists. In principle, the work of lawyers dealing with the EU institutions could also be covered – something that is raising a number of concerns for the legal profession. The European Parliament held a public hearing on 8 October to examine lobbying in relation to its own work. Alexander Stubb MEP is leading the Parliament's work and heard views from a range of bodies involved in EU affairs and from the US experience (read his Viewpoint article below). It remains unclear whether Parliament will call for mandatory registration and financial disclosure or will create a common register with the other EU institutions. It would appear however that the current wide definition of "lobbying" will still catch some of the work of lawyers. It remains to be seen whether lawyers will be able to register when an obligation to disclose one's clients sits uneasily with professional obligations. Representatives of the Law Society of England and Wales met with Mr Stubb on 8 October to discuss these concerns.



WEBLINKS

- [The European Transparency Initiative](#)
- [Law Society of England and Wales' website on lobbying](#)
- [European Parliament website \(documentation from public hearing\)](#)

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PROFESSIONAL QUALIFICATIONS

New recognition of professional qualifications Directive in force

On 20 October, Directive 2005/36 on recognition of qualifications entered into force. This Directive repeals and updates the Diplomas Directive 89/48, and governs how professional qualifications, including legal qualifications, from one Member State are recognised and treated in another Member State. Although introducing major changes for other professions, no substantive changes are introduced that affect lawyers.



WEBLINKS

- [Directive 2005/36 on the recognition of professional qualifications](#)



Law Societies' News

Asian Conference marks 60th anniversary of the International Bar Association

The annual IBA Conference took place in Singapore on 14-19 October, marking the 60th anniversary of the Association. The conference was well attended by delegates from the Law Societies. Delegates participated in a range of meetings, including an open forum which brought together employees of all law societies and bar associations attending the IBA. This is an important conference, not only because it is an excellent opportunity to meet and exchange ideas with representatives from other jurisdictions, but it also offers opportunities to forge links between the UK and the Asian legal community.



WEBLINKS

- [International Bar Association Conference Programme](#)

Lord Mayor addresses Law Society of England and Wales conferences on visit to the Far East

Last month the Law Society of England and Wales organised a series of events to coincide with the Lord Mayor of the City of London's visit to the Far East. The Lord Mayor addressed two conferences hosted by the Law Society: a new lawyers' forum in Shanghai on professional development issues for new entrants to the Chinese and UK legal profession; and a seminar organised jointly with Korean Bar entitled "Korea and UK lawyers co-operating in an open world". These events follow a UK-China legal co-operation reception, held during the Lord Mayor's visit to China in September last year, which brought together the local alumni of British legal training schemes and the legal community in Shanghai.

Launch of International Division for the Law Society of England and Wales

The Law Society of England and Wales has valuable experience in promoting English law and legal practice in international markets and seeking out new opportunities for members. The Law Society's International Division is a new service tailored to law firms, solicitors and foreign lawyers seeking to develop their international business and build global networks and profile. Membership is open to all lawyers and law firms from all jurisdictions and will offer a host of benefits including: access to up-to-date market and country profiles and

other key intelligence; information on career development and event sponsorship opportunities; as well as the facility to network with lawyers from around the world at the click of a mouse.



- [Law Society International Website](#)

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CIVIL LITIGATION

Parliament considers collective redress

As the European Commission continues to examine the need to facilitate collective redress in the consumer and competition law fields, a conference was held in the European Parliament on 11 October. Experience from Portugal, Austria and Denmark demonstrated the range of ways in which similar consumer claims can be consolidated into a single action at national level, either through representative bodies or through the creation of groups. While a number of speakers warned against the excesses of the US system of class actions, most of them, except the business representatives, recognised the need to develop this field within the EU. Diana Wallis MEP noted that her work on the near collapse of Equitable Life convinced her of the need to improve the effectiveness of legal redress at the EU level. The EU's Portuguese Presidency is organising a two-day conference on this issue on 9 and 10 November.



- [European Commission website on consumer collective redress](#)
- [EU Portuguese Presidency website](#)
- [European Consumers' Organisation – conference documents](#)

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CIVIL LITIGATION

Attaching bank accounts across borders - MEPs want rapid progress

Debates this month in the European Parliament have been overwhelmingly in favour of the Commission's proposals to create a simple system for the automatic recognition and enforcement of bank attachment orders across borders. Although most Member States have national provisions allowing the attachment of bank accounts, the procedures for having such orders enforced in other Member States are cumbersome, slow and expensive and often allow a debtor to transfer funds out of the account before the order can be enforced. This month MEPs voted unanimously in favour of the creation of a simplified cross-border attachment regime in the EU and took account of many of the points fed in by the Law Societies. In particular, MEPs recognised the need for the creditor to justify clearly the request for an order and the need for there to be a careful balance

between the right of the creditor to recover the debt and the provision of adequate protection for the defendant.



WEBLINKS

- [Green Paper on improving the efficiency of the enforcement of judgments in the European Union: on the attachment of bank accounts](#)
- [European Parliament report on the Green Paper](#)

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COMPANY LAW

Commission drops company law proposals

Charlie McCreevy, European Commissioner for the Internal Market, announced on 3 October that he was abandoning proposals on two significant company law reforms: any initiative on "one share one vote"; and the proposed Directive on the transfer of a company's registered seat. In his address to the European Parliament, he said that the Commission did not believe that there was any need for the measures, although he did leave open the option of introducing them at a later date should existing legislation be shown to be insufficient. This move seems to represent a further slimming down of the Commission's designs on transforming company law at a European level, which ties in with its recently closed consultation on the simplification of company law. That said, despite an ongoing consultation on this matter, Commissioner McCreevy confirmed that he will publish a proposal for a European Private Company Statute early in 2008.



WEBLINKS

- [European Commission website on company law and corporate governance](#)

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CRIMINAL LAW

Justice Ministers see child protection as a priority

Child protection was high on the agenda at the informal meeting of Justice and Home Affairs Ministers in Lisbon on 1 and 2 October. Discussions indicated a strong political will in this area. Justice Ministers emphasised a need for co-operation between Member States and their national authorities to improve coordination in combating child abuse. They felt that it was necessary to implement concrete measures, such as a central register of missing children and the creation of an EU-wide child abduction alert. The European Commission has also indicated its interest in extending a "kidnap alert" system, which already exists in France, across the EU. It is anticipated that it will operate in a similar way to the Schengen Information System (SIS), sending an alert to all police stations around Europe.



WEBLINKS

- [Conclusions of the Informal Meeting of Justice and Home Affairs Ministers on child protection](#)
- [Justice and Home Affairs Council discussion document](#)

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CRIMINAL LAW

Judgment clarifies Community's criminal law competence

In a ruling on 23 October the European Court of Justice (ECJ) re-affirmed that there is competence under the EC Treaty for criminal law measures to be adopted when they are necessary for the implementation of Community objectives, such as the protection of the environment. However, the Court qualified this by confirming that such measures cannot set either the type or level of penalties to be imposed by Member States. With this judgment the Court annulled a Framework Decision, adopted by the Council of Ministers in 2005, which introduced criminal law sanctions in relation to ship-source pollution. The European Commission challenged the fact that the Framework Decision was adopted under provisions of the EU Treaty (police and judicial co-operation), rather than the EC Treaty. This ruling will have implications for recently proposed directives laying down criminal law measures in relation to environmental offences and breaches of intellectual property.



WEBLINKS

- [Judgment in Case C-440/05 *Commission v Council*](#)
- [Law Society of England and Wales position paper on the proposal for a Directive on criminal measures aimed at ensuring the enforcement of intellectual property rights](#)
- [Law Society of England and Wales position paper on the proposal for a Directive on the protection of the environment through criminal law](#)

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CONSUMER LAW

Consultation launched on the Doorstep Selling Directive

The "Doorstep Selling" Directive will be the next piece of consumer legislation to come under scrutiny, as part of the European Commission's overhaul of EU consumer law. A consultation was launched on a discussion paper on Directive 85/577 to protect the consumer in respect of contracts negotiated away from business premises (doorstep selling). The Commission invites responses on the functioning of the Directive, its scope and definitions. This move coincides with the publication of the Commission report on the outcome of the consultation on the revision of consumer acquis. The Commission will hold a follow-up stakeholder conference on this on 14 November. Also, at a seminar on "Consumer Confidence" held in the European Parliament on 17 October, Commissioner Kuneva reiterated her commitment to the 2007-2013 consumer strategy and stressed that the efforts made in reviewing each of the sectoral Directives should be complementary to the overall

review.



WEBLINKS

- [Discussion paper on the review of the Directive 85/577 to protect the consumer in respect of contracts negotiated away from business premises](#)
- [Report on the outcome of the public consultation on the Green Paper on the review of the consumer acquis](#)
- [Commission stakeholder conference on the review of the acquis](#)

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Viewpoint

Regulating the lobbyists

The European Parliament was a lonely place in the 1970s. It had virtually no powers and perhaps as a consequence no friends. At the time MEPs were happy if a lobbyist would pop by for a chat. All doors were open. Times have changed. Today the Parliament is an equal legislator with the Council of Ministers and consequently our corridors are packed with professionals wanting to influence decision-making.

In the 1970s there were around 400 lobbying organisations based in Brussels. Now the EU capital is the home of some 15,000 lobbyists. They represent more than 2,500 organisations, ranging from in-house company lobbyists to non-governmental organisations (NGOs), from international organisations and think-tanks to law firms. In addition, there are around 170 embassies and more than 200 regional offices representing specific national or regional interests in Brussels. To put it simply, if you are not represented in Brussels, you are probably not doing your job properly. Lobbying is one of the hottest topics right now in Brussels as both the European Commission and the European Parliament are setting new rules for lobbyists.

In the following article, I will address these key questions:

1. To get entry to the Parliament building, the lobbyists have to sign a code of conduct and join a voluntary lobby register. The Commission has no such register, but they are opening one in the spring of 2008.

Should the register be voluntary or mandatory? The question is rather academic. Even though the Parliament's register is not mandatory by law, it is de facto mandatory. A credible lobbyist has to be in the register. No register, no badge.

How about punishment for those who violate the code of conduct established in the register? Being kicked off the register is the only conceivable punishment in a voluntary regime. Again, if you want to be a credible lobbyist, this is a severe punishment.

2. Should the European Parliament have a common register with the Commission? In the beginning I was sceptical about the administrative feasibility of this proposal. Having thought about it long and hard, I do

think it is not such a bad idea after all.

3. Should there be financial disclosure? Again, in the beginning I was sceptical, but I have certainly warmed up to the idea. I do not think that money should be the only criteria, but I am sure we can come up with something broader and useful.

4. How should we define a lobbyist? I believe that anyone trying to influence on legislation is a lobbyist. I also believe that "all lobbyists were created equal". For me it does not matter whether you represent a trade union or the industry, a company or an NGO, a think-tank or a consultancy.

People who come to my office or send me information with the intent of influencing my position on a piece of legislation, are lobbyists. And this goes for lawyers and law firms as well. If you play ball, you need to stick to the same rules with everyone else.

Transparency is a two-way street. If we require transparency from lobbyists, then we should be more transparent ourselves. I have made a proposal which I call a "legal fingerprint". The idea is that each piece of legislation should include a footnote with all the different organisations and experts that the rapporteur heard or saw in the process of preparing the law. A simple gesture making the whole process more transparent. All received documents could be registered also. A good legislator listens to everyone and draws his or her own conclusions.

Lobbying, when done properly, is an essential part of a parliamentary process. The more transparent the system, the better. The clearer the rules, the less room there is for misunderstanding and populist anti-EU cheap shots.

Biography



Alexander Stubb is a Finnish Member of the European Parliament and sits in the Group of the European People's Party and European Democrats (EPP-ED). He is Vice-Chairman of the Committee on the Internal Market and Consumer Protection and rapporteur in the Constitutional Affairs Committee on the proposal for the development of the framework for the activities of interest representatives (lobbyists) in the European institutions.

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- **Commission Regulation on the application of Articles 87 and 88 of the EC Treaty declaring certain categories of aid compatible with the common market (General Block Exemption Regulation)**

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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

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