



REPORTAGE

Presidency priorities for 2008: Slovenia steps up to the mark

PROFESSIONAL PRACTICE

ALTERNATIVE DISPUTE RESOLUTION

Rules for mediation across borders soon to become a reality

TRANSPARENCY INITIATIVE

Commission launches consultation on lobbyists' Code of Conduct

PROFESSIONAL PRACTICE

Appeal due on in-house lawyers' privilege

LAW SOCIETIES' NEWS

LAW REFORM

FUNDAMENTAL RIGHTS

Charter of Fundamental Rights solemnly proclaimed in Strasbourg

EMPLOYMENT LAW

Failure again to agree employment law proposals

FAMILY LAW

Hague conclusions spark EU action in the area of family maintenance

CRIMINAL LAW

Justice Ministers reach agreement on key elements of probation proposal

TAXATION

Bumper month for tax measures

ENVIRONMENTAL CRIME

Parliament discusses green crimes

VIEWPOINT



Jim Murphy
The Treaty of Lisbon: the UK perspective

THE BRUSSELS OFFICE

Subscriptions/ Documents/ Updates

About us

LINKS

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The Law Society of Scotland

The Law Society of Northern Ireland

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To unsubscribe, please click here

[Back to Contents](#)

[Next Item](#)

Reportage

[Professional Practice](#)

[Law Societies' News](#)

[Law Reform](#)

[Viewpoint](#)

[Just Published](#)



Reportage

Presidency priorities for 2008: Slovenia steps up to the mark

As Brussels bids farewell to the Portuguese, whose Presidency ended in December, it welcomes Slovenia to the Presidential table, with the Slovenians trying their hands at the wheel for the very first time. While the Slovenians may be newcomers to the Presidency of the European Council, they will have more than enough on their plate as pressing employment, economic and energy matters confront them, all in the context of the ongoing saga of the ratification of the Treaty of Lisbon. With Member States hoping to have put their names to the new Treaty by the end of the year, there are more than a couple of potential headaches in store for Slovenia as it attempts the politically tricky task of steering Council policy over the next six months.

Having joined the European Union in 2004, Slovenia is the first of the "new" Member States to take on the Council Presidency and its Government has been working closely with the two previous Presidency Chairs – Germany and Portugal – to gain some insight into the workings of the Council and the major issues being dealt

with by its predecessors. The Slovenians and their successors, the French, together with the out-going Portuguese, form the first "team Presidency" under a new system aimed at allowing Member States, such as France, Germany or the UK, to pass on their experience to the younger states and achieve greater continuity in the programmes followed by successive Presidencies.

In terms of policy, using the discussions on climate change at the UN's Bali Meeting in December as a spur, the Slovenians are planning some intensive work to ensure that the Commission's comprehensive package on energy and climate change, due to be published later in January, is passed and implemented as soon as possible. With climate change making for a very hot political topic, any disruption to the EU's plans to push forward with major efforts to tackle this issue may well be seen as an outright failure on the part of the Presidency.

The Slovenians have also listed the Lisbon Strategy for growth and jobs as a priority for its tenure. They aim to put more resources into research and development, as well as improving labour markets, with the intention of helping small and medium-sized enterprises. Other priority areas for the first half of 2008 include issues within the justice and home affairs brief (including work on counter-terrorism and migration policy). The Schengen Agreement, abolishing border controls between Member States, gained nine new participants last December and the Slovenian Presidency intends to push hard for further integration of Member States' border controls, including sharing of data held by national border authorities. Slovenia also plans to develop Europol's remit by providing for the sharing of data on criminals and suspects between Member States.

Counter-terrorism is another area where Slovenia is aiming for progress and, although the UK had opted out of many of the EU's provisions on justice and internal affairs, the UK Government is enthusiastic about cooperation at EU level to combat terrorism across Europe. The Commission proposed a package of counter-terrorism measures last November, including making the provocation of terrorism a crime, and Slovenia looks set to support these proposals through pushing Member States towards agreement.

Another political hot potato – enlargement – features highly on the Slovenian agenda, and while the Slovenians have said that they strongly support further enlargement, there will be opposition from countries such as France to negotiations with Turkey, for instance. Other foreign affairs issues feature highly on the Slovenian agenda – perhaps a sign of the EU's growing confidence in relation to its common foreign policy. Kosovoan independence and the future of the Balkans are matters in which the Slovenian Presidency is certain to take a great interest.

Hanging over both the Slovenians and their successors, the French, in 2008 is the ratification process for the Treaty of Lisbon, signed last December. The plan is for all Member States to ratify the treaty before the end of the year, in order that the Treaty can enter into force on 1 January 2009. However, with Ireland obliged to hold a referendum, no-one is taking a 'Yes' vote for granted. While it is expected that the UK will probably be able to ratify the Treaty through Parliament, there will be some pretty tough debates for the Government as it goes through the parliamentary process.

Despite the tricky political issues facing the Presidency over the first half of 2008, Slovenia must be hoping that it can deliver an assured, decisive performance in Europe's driving seat – no mean feat – in order to give an object lesson to other "new" Member States in how to run a successful Presidency.

Population	2 million
Land mass	21,000 square kms

President	Dr Janez Drnovšek Liberal Democracy of Slovenia (President since 2002)
Prime Minister	Janez Janša Social Democrat (Prime Minister since 2004)
Minister for Foreign Affairs	Dimitrij Rupel
Minister for the Economy	Andrej Vizjak
Minister for Justice	Lovro Šturm



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[Previous Item](#)

[Back to Contents](#)

[Next Item](#)

[Reportage](#)

[Professional Practice](#)

[Law Societies' News](#)

[Law Reform](#)

[Viewpoint](#)

[Just Published](#)



Professional Practice

ALTERNATIVE DISPUTE RESOLUTION

Rules for mediation across borders soon to become a reality

We reported in the November issue of the Brussels Agenda that the European Parliament was pushing for progress on the draft Mediation Directive. The pressure paid off as the November Justice and Home Affairs Council finally reached political agreement on this proposal. Whilst the Directive may not have a significant impact in the UK, being restricted in its scope to cross-border mediation, it will ensure that UK citizens involved in cross border mediations have similar rights and protections as they do in the UK. In particular, the Directive will require Member States to ensure that mediation agreements can be declared enforceable in the Member States of both of the parties to the mediation and that rules on limitation and prescription do not prevent the parties from going to court if the mediation fails. The Directive will have to be implemented by Member States 18 months following adoption.



WEBLINKS

- [Political Agreement on a proposal for a directive on certain aspects of mediation in civil and commercial matters](#)

[Previous Item](#)

[Back to Contents](#)

[Next Item](#)

TRANSPARENCY INITIATIVE

Commission launches consultation on lobbyists' Code of Conduct

The European Commission opened a consultation on a draft Code of Conduct for lobbyists on 10 December 2007. This move comes ahead of the launch of its public register of lobbyists, expected in Spring 2008. The Code will provide a basic set of rules, which will govern the behaviour of lobbyists in representing their interests at EU level. On signing the register, lobbyists will be required to make a declaration to abide by the rules set out in the Code. The Code includes provisions such as: ensuring lobbyists identify themselves, any clients and the interests they represent; not trying to obtain information dishonestly; and not inducing EU officials to break their own staff rules. It is still unclear to what extent the work of lawyers will be governed by the proposed rules and what activities, if any, they will cover. The Law Society of England and Wales intends to submit a response to the consultation which will close on 15 February 2008, following which the Commission will publish a summary report on the results.



WEBLINKS

- [The European Transparency Initiative](#)
- [European Commission - Consultation on a Code of Conduct for Interest Representatives](#)
- [Law Society of England and Wales' website on lobbying](#)

[Previous Item](#)[Back to Contents](#)[Next Item](#)

PROFESSIONAL PRACTICE

Appeal due on in-house lawyers' privilege

Akzo Nobel has decided to appeal the decision of the Court of First Instance (CFI) of 17 September 2007 concerning its challenge of a Commission antitrust decision. Part of the ruling concerns the extent to which legal professional privilege (LPP) covers the advice and communications with in-house lawyers in such cases. The CFI upheld its previous case law, which stated that LPP does not cover the advice of in-house lawyers but only that of external lawyers and related communications. The Law Society of England and Wales held a meeting on 14 December to discuss the issue with a group of in-house lawyers specialising in competition law. A representative from Akzo Nobel also attended the meeting to outline the state of progress in the case.



WEBLINKS

- [Cases T-253/03 and T-125/03 Akzo Nobel Chemicals and Akros Chemicals v Commission](#)

[Previous Item](#)[Back to Contents](#)[Next Item](#)



Successful launch of International Division for the Law Society of England and Wales

The Law Society of England and Wales International Division was successfully launched at an event on 27 November in London. The 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.



WEBLINKS

- [Law Society International Division](#)

[Previous Item](#)

[Back to Contents](#)

[Next Item](#)

[Reportage](#)

[Professional Practice](#)

[Law Societies' News](#)

[Law Reform](#)

[Viewpoint](#)

[Just Published](#)

Law Society of England and Wales marks Human Rights Day

The Law Society of England and Wales marked International Human Rights Day on 10 December through a co-ordinated series of activities on the rule of law, focusing in particular on a number of partner countries in which fellow lawyers and the rule of law are under threat. Law Society President, Andrew Holyroyd, called upon Prime Minister Gordon Brown, in an open letter, to ensure that the British government and its EU partners keep international human rights norms and standards at the top of the EU-African Union summit (12/13 December). The Law Society of England and Wales recently launched an appeal to collect £100,000 by the end of last year to help the Law Society of Zimbabwe maintain its services for lawyers and society in Zimbabwe. In addition, a petition was presented to Gordon Brown at 10 Downing Street to condemn suspension of the rule of law in Pakistan, with 4782 signatures from bar associations, practitioner groups and individual lawyers in international jurisdictions.



WEBLINKS

- [The Law Society President's open letter to Prime Minister Gordon Brown](#)
- [The Law Society of England and Wales web-page on Zimbabwe appeal](#)
- [Law Society of England and Wales petition on Pakistan](#)

[Previous Item](#)

[Back to Contents](#)

[Next Item](#)

[Reportage](#)

[Professional Practice](#)

[Law Societies' News](#)

[Law Reform](#)

[Viewpoint](#)

[Just Published](#)

Departure of the Head of the Brussels Office

In January June O'Keeffe left as the Head of the Law Societies' Brussels Office, a post she occupied for more than seven years, in order to go and work in the EU institutions. Following June's departure, Julia Bateman will be the acting head of office until a permanent appointment is made over the coming months.

[Previous Item](#)

[Back to Contents](#)

[Next Item](#)

[Reportage](#)

[Professional Practice](#)

[Law Societies' News](#)

[Law Reform](#)

[Viewpoint](#)

[Just Published](#)

Law Society conducts fact finding mission in Rwanda

Representatives from the Law Society visited Rwanda to offer assistance from the legal profession in England and Wales and conduct a fact finding mission. The International Criminal Tribunal for Rwanda (ICTR) is currently trying genocide cases and crimes against humanity. However, the UN mandate for the ICTR comes to an end in 2008. After that, the jurisdiction for first instance cases will revert to the courts of Rwanda. Due to the conflict and genocide in 1994, the Rwandan legal system requires capacity building assistance, in several different areas such as legal aid, criminal and commercial courts. When the results of the fact finding mission are analysed, the Law Society will be inviting practitioners in England and Wales to provide the necessary assistance.

[Previous Item](#)

[Back to Contents](#)

[Next Item](#)

[Reportage](#)

[Professional Practice](#)

[Law Societies' News](#)

[Law Reform](#)

[Viewpoint](#)

[Just Published](#)



Law
Reform

FUNDAMENTAL RIGHTS

Charter of Fundamental Rights solemnly proclaimed in Strasbourg

Following the approval of the Charter of Fundamental Rights by the European Parliament in the plenary session of 29 November 2007, the Charter was signed and solemnly proclaimed by the Presidents of the European Commission, Council and Parliament at the European Parliament in Strasbourg on 12 December, the day before the signing of the Treaty of Lisbon. The Charter sets out for the first time in one place the fundamental rights from which every EU citizen can benefit. It includes "traditional" human rights, civil rights and social and economic rights, which are set out within the European Convention on Human Rights (ECHR). It also introduces new "modern" rights which do not exist in the ECHR such as the right of access to information and the protection of personal data. A Protocol on the application of the Charter clarifying the relationship between the Charter and UK law states that "The Charter does not extend the ability of the Court of Justice of the European Union, or any court or tribunal of Poland or of the United Kingdom, to find that the laws, regulations or administrative provisions, practices or action of Poland or of the United Kingdom are inconsistent with the fundamental rights, freedoms and principles that it reaffirms".



WEBLINKS

- [European Parliament approval of the Charter of Fundamental Rights](#)

EMPLOYMENT LAW

Failure again to agree employment law proposals

The adoption of new rules on agency workers and on working time seems to be a timeless activity in itself. The two proposals, which date respectively from March 2002 and September 2004, failed to be adopted at a Council meeting of EU employment ministers on 5 and 6 December. Reports from the Council meeting suggest, however, that the UK's opposition to the measures is becoming increasingly lonely. It is said that some last minute telephone diplomacy by UK Prime Minister, Gordon Brown, highlighting the fear of a backlash against the Treaty of Lisbon during its ratification, managed to delay adoption to a future meeting. The two sticking points are: the opt-out from the working time rules; and the length of the period after which agency workers are to be entitled to receive equal treatment. Agreement on working time will, however, need to take place over the next few months. The Commission reiterated its threat to take infringement action against all those Member States whose rules on on-call working time do not comply with the current Directive. It also undertook to withdraw the proposal and reconsider the issue if agreement was not reached promptly.



WEBLINKS

- [Latest Presidency proposal for a Directive amending Directive 2003/88 concerning certain aspects of the organisation of working time](#)
- [Amended proposal for a Directive on working conditions for temporary workers](#)

FAMILY LAW

Hague conclusions spark EU action in the area of family maintenance

The Convention on the International Recovery of Child Support and other Forms of Family Maintenance was concluded in the Hague on 23 November. The Convention will establish a system for the enforcement and recovery of maintenance obligations. The Convention is not yet in force and awaits ratification by signatory States and the European Union itself. The Convention will provide a new tool available to solicitors in the UK to assist them with the enforcement of maintenance claims, the use of which should be complementary to a similar measure proposed at EU level. Discussions on the EU proposal for a draft Regulation on maintenance obligations had been on hold pending the conclusion of the Convention, but now appear to be moving forward. The European Parliament adopted a report on the proposal for a draft regulation on maintenance obligations in its plenary session of 13 December and it is hoped that the agreement in the Hague will break the deadlock at European Union level in the Council. The UK has so far chosen not to opt in to the Regulation although it has the opportunity to opt in to the draft Regulation at the end of the negotiations.



- [Text of the Convention on the international recovery of child support and other forms of family maintenance](#)
- [Report on the proposal for a Council Regulation on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations](#)

[Previous Item](#)

[Back to Contents](#)

[Next Item](#)

[Reportage](#)

[Professional Practice](#)

[Law Societies' News](#)

[Law Reform](#)

[Viewpoint](#)

[Just Published](#)

CRIMINAL LAW

Justice Ministers reach agreement on key elements of probation proposal

The Portuguese Presidency made one last attempt to push through its proposal for a draft Framework Decision on probation and alternative sanctions, before the end of its six-month term. It appeared that the main stumbling block was in relation to the issue of dual criminality. At a meeting of the Justice and Home Affairs Council on 7 December, ministers were able to agree key elements of the "Probation" proposal, which will provide for the transfer of convicted offenders to their home country on request and the overseeing of sanctions by the receiving country. A list of alternative sanctions was agreed upon, including community service and treatment for drug addiction. In addition a list of 32 kinds of offences was drawn up where dual criminality will not apply, meaning that the receiving State should agree to receive the returning offender, even if their actions do not constitute a crime in the receiving country. This does not, however, place strong obligations on the Member States, who would be able to opt out of applying the provisions. The Slovenian Presidency aims to reach agreement on these proposals early this year.



- [European Parliament legislative resolution on the proposal for a Framework Decision on the European supervision order in pre-trial procedures](#)

[Previous Item](#)

[Back to Contents](#)

[Next Item](#)

[Reportage](#)

[Professional Practice](#)

[Law Societies' News](#)

[Law Reform](#)

[Viewpoint](#)

[Just Published](#)

TAXATION

Bumper month for tax measures

EU finance ministers reached agreement on a package of VAT (value added tax) proposals on 4 December, which relate to the provision of services. Once the rules come into effect in 2010, the place of taxation for services supplied to business customers will be the Member State where the customer is situated. For consumer services, it will continue to be that of the supplier. A "one-stop shop" arrangement will then allow suppliers to complete their VAT formalities for their EU-wide services in their home Member State. Exceptions will apply to certain sectors to reflect the place of consumption principle (such as restaurants) and a longer transition period until 2015 will apply in the telecoms, broadcasting and electronic services sectors. The Council also discussed a recent Communication from the Commission on the issue of combating tax fraud. It

invites the Commission to consider legislative proposals and report back on progress in studying the issue in 2008. Finally, new proposals were published by the Commission at the end of November relating to VAT and financial services. These seek to redefine what services will be exempt and would give businesses the option to apply tax to such exempted services”.



WEBLINKS

- **Conclusions of the Economic and Financial Affairs meeting, 4 December**
- **Commission Communication concerning some key elements contributing to the establishment of the VAT anti-fraud strategy within the EU**
- **Proposal for a Directive amending Directive 2006/112 on the common system of value added tax, as regards the treatment of insurance and financial services**

[Previous Item](#)

[Back to Contents](#)

[Next Item](#)

[Reportage](#) [Professional Practice](#) [Law Societies' News](#) [Law Reform](#) [Viewpoint](#) [Just Published](#)

ENVIRONMENTAL CRIME

Parliament discusses green crimes

On 19 December, the European Parliament's Legal Affairs Committee held a public hearing on proposed rules to harmonise Member States' criminal laws in relation to the protection of the environment. Discussions with national experts focused on a number of practical issues. These included: the probable need to change national laws as a result of the proposal; what criminal law and liability regimes are in place in Member States; the probable deterrent effect of harmonised rules; and the particular need to tackle cross-border environmental law breaches. Subsequent to the European Court of Justice's recent rulings in relation to the Community's competence to adopt such measures, participants debated how to ensure that, and assess whether, Member States' criminal laws met the standard of being “effective, proportionate and dissuasive”. Views varied on the need for harmonisation and the detail required. Scrutiny of the proposed Directive will continue within the Committee in 2008, as will the ongoing discussions between Member States in Council.



WEBLINKS

- **Proposal for a Directive on the protection of the environment through criminal law**

[Previous Item](#)

[Back to Contents](#)

[Reportage](#) [Professional Practice](#) [Law Societies' News](#) [Law Reform](#) [Viewpoint](#) [Just Published](#)



Viewpoint

The Treaty of Lisbon: the UK perspective

Last month the Treaty of Lisbon was signed by leaders of all twenty seven Member States of the European Union. With the detail of the Treaty agreed, 2008 provides an opportunity to put the institutional debate

behind us and push forward our thinking on how Europe can engage more effectively with an increasingly globalised wider world. To allow its Member States to remain globally competitive while doing all we can to promote a more stable, equitable and prosperous international community, we needed an EU, which was fit for purpose in the modern world. A Union with strong, efficient, fully functioning institutions, operating within a clear set of rules to allow it to enforce decisions effectively. The Reform Treaty provides for this.

The UK approach to the Treaty negotiations was always to look at what was in the best interests of the United Kingdom. In the wider context, membership of a strong EU brings with it strategic benefits as we push forward global initiatives to tackle climate change and poverty and to promote equitable trade and international peace and security. We have, however, maintained a clear division of EU powers and those of national governments, as well as keeping the EU's foreign and defence policies strictly intergovernmental.

We have also been looking at what is best for UK nationals and have negotiated effectively to secure agreements that protect our interests. We have secured the right to choose whether or not to opt in to Justice and Home Affairs measures across the board, recognising that, while co-operation in Justice and Home affairs has immense potential both to promote cross-border business and to tackle issues such as international organised crime and terrorism, we must also protect the particular features of UK common law system, police and judicial processes, the strengths of which are valued around the world. The water-tight opt-outs that we have secured will enable us to work with our European partners where it serves our interests to do so, while retaining control over our own legal system.

The status of the Charter of Fundamental Rights has proved to be a contentious and often misunderstood part of the treaty negotiations. However, it is important to note that, not only has the principle of fundamental rights long been part of the European legal order, but also that the Charter imposes no new obligations on Member States. The Charter does not create new rights, but merely sets out a clear statement of existing rights and the limits on the EU's powers to legislate. We have ensured the legal precision of these rights by insisting upon "horizontal" articles in the Charter text and a clear status for the Charter Explanations.

The legal structure of the EU touches on all areas of law and, as such, it is of huge importance to the UK legal profession who will also be well aware of the opportunities presented by the Union. British practitioners have made enormous contributions to the development of EU law and have generated a huge amount of business for the UK. I hope that the legal profession will be reassured that the Reform Treaty will make the EU better regulated, as opposed to more regulated, institutionally stronger and more coherent.

Biography



Jim Murphy, Member of Parliament for East Renfrewshire, was appointed Minister for Europe in June 2007.

[Previous Item](#)

[Back to Contents](#)

[Reportage](#)

[Professional Practice](#)

[Law Societies' News](#)

[Law Reform](#)

[Viewpoint](#)

[Just published](#)



Just published

- **European Parliament and Council's Directive on payment services in the internal market (amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC)**
- **Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings**

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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