



REPORTAGE

Justice Forum: engaging the experts

PROFESSIONAL PRACTICE

COMPETITION AND THE PROFESSIONS

EU study on conveyancing published

MONEY LAUNDERING

Legal profession consulted on risk-based approach

PROFESSIONAL REGULATION

Solicitors Regulatory Authority consults on Legal Services Act

EUROPEAN TRANSPARENCY INITIATIVE

New EU code of conduct for lobbyists

LAW SOCIETIES' NEWS

LAW REFORM

BETTER REGULATION

Commission reports on progress of simplification programme

CONSUMER POLICY

Assessing national collective redress systems

COMPANY LAW

Feedback sought on proposed Small Business Act

ENVIRONMENTAL CRIME

Adoption of directive gathers pace

FINANCIAL MARKETS

Parliament discusses transparency of institutional investors

INTELLECTUAL PROPERTY

Commission plans to revise copyright laws

VIEWPOINT



Andrew Holroyd
Standing up for our in-house colleagues

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Subscriptions/ Documents/ Updates

About us

LINKS

The Law Society of England and Wales

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

Justice Forum: engaging the experts

Last month, Justice Commissioner Franco Frattini launched plans to create a stakeholder forum to engage experts in the development of legislation and policy in the area of freedom, security and justice. This "Justice Forum" will allow key stakeholders such as defence lawyers, prosecutors, members of the judiciary and specialist NGOs from each of the 27 Member States to play a key role in developing, evaluating and monitoring judicial co-operation in civil and criminal matters.

The aim is to allow the Commission to have regular access to a cross-section of views from those working in the field of civil and criminal justice. It is seeking input across the board from practitioners representing the "man on the street" to politicians and the judiciary.

Whilst a new development, the Justice Forum does actually build on work currently underway. The Commission regularly produces reports evaluating the implementation of EU legislation into national systems -

such as the review of the European Arrest Warrant or review of the Regulation on the Service of Documents. The Justice Forum will also be well placed to discuss and evaluate the changes to be brought in under the new Treaty of Lisbon, particularly in the area of criminal justice.

Justice Forum members will be involved from the early legislative stages of proposals, giving their opinion and sharing experience on how best to improve judicial co-operation. They will also be required to give feedback on measures which are proposed and adopted, as well as commenting on the transposition and implementation of legislative acts. The Commission is seeking advice and assistance on ways in which to make the concept of mutual trust, which is supposed to underpin the principle of mutual recognition, a reality.

The Justice Forum will supplement the consultation and impact assessment process used for individual proposals. It should allow for systematic and regular input from experts on overarching themes such as procedural rights and access to justice. In assessing these key themes the Justice Forum will examine the differences between these concepts in the civil and criminal justice field as well as the differences between different legal systems and cultures.

There has been some concern that this forum spells a move towards harmonisation in the field of justice. In answer to this the Commission was loud and clear in underlining that the forum is not an indication of its intention to propose a "European civil code" which would harmonise EU justice policies in the area of civil law.

The first meeting of the Justice Forum should take place around April of this year and a website will be set up for discussion between members and will provide the chance to follow up evaluation processes. The final list of the stakeholder groups is yet to be confirmed, but it is envisaged that the composition of the forum will be around 100 organisations. It will involve delegates from national justice administrations, including the Council of Europe, Eurojust and the European Judicial Networks on both criminal and civil matters. European networks, such as the Council of European Bars and Law Societies and the European Criminal Bar Association will also be represented. National bar associations and law societies are seeking to be included on an *ad hoc* basis.

The Law Societies consider that it is important that the common law approach is understood and respected and the Brussels Office is seeking ways in which to collaborate with the Justice Forum.



WEBLINKS

- **[European Commission Communication on the creation of a Forum for discussing EU justice policies and practice](#)**

[Previous Item](#)

[Back to Contents](#)

[Next Item](#)

[Reportage](#)

[Professional Practice](#)

[Law Societies' News](#)

[Law Reform](#)

[Viewpoint](#)

[Just Published](#)



*Professional
Practice*

COMPETITION AND THE PROFESSIONS
EU study on conveyancing published

Last month, the European Commission published its report into legal services associated with housing and land sales across the EU, giving the UK a relatively clean bill of health. This conveyancing study analyses professional regulation in the systems of 21 Member States and offers a comparative assessment, which contrasts the more restrictive practices of the Latin notarial systems with the more liberal markets such as the UK and Scandinavia. The study finds that consumers have greater choice and are, on average, paying less for conveyancing services under de-regulated systems, with no loss in quality. In what has been perceived as a harsh blow for the notaries of Europe, Competition Commissioner, Neelie Kroes, stated that, "highly regulated systems are not better for consumers in terms of price and choice of legal services." The study concludes that there is little to justify restrictions in this area and the Commission is now asking national governments to take the findings on board and review and update national laws, which limit competition and the free circulation of services.



- [European Commission report on EU conveyancing services market](#)

[Previous Item](#)

[Back to Contents](#)

[Next Item](#)

[Reportage](#)

[Professional Practice](#)

[Law Societies' News](#)

[Law Reform](#)

[Viewpoint](#)

[Just Published](#)

MONEY LAUNDERING

Legal profession consulted on risk-based approach

At the end of 2007, the Financial Action Task Force (FATF) met with a number of representatives in the sectors key to the fight against money laundering, including the legal profession, accountants and real estate agents. FATF is the inter-governmental body responsible for developing and promoting policies to combat money laundering and terrorist financing. The aim of the meeting was to discuss the development of sector-specific guidance on a risk-based approach to the fight against money laundering. From the lawyers' perspective the focus of the guidance will be what the legal profession itself should be doing when applying the risk-based approach looking at risk indicators and internal controls. FATF has extended its consultation to a number of bar associations and legal networks and an initial draft response was submitted to FATF by representatives of the legal profession last month. The aim is to continue discussions until April and the completed guidance will then be submitted to a working group of the Organisation for Economic Co-operation and Development in May with a view to receiving approval by the FATF plenary in June 2008.

[Previous Item](#)

[Back to Contents](#)

[Next Item](#)

[Reportage](#)

[Professional Practice](#)

[Law Societies' News](#)

[Law Reform](#)

[Viewpoint](#)

[Just Published](#)

PROFESSIONAL REGULATION

Solicitors Regulatory Authority consults on Legal Services Act

The Solicitors Regulation Authority has launched three consultations on how it should regulate new forms of legal practice enabled by the Legal Services Act 2007. The three papers focus on some of the rule changes necessary to continue to allow self-regulation and to permit legal disciplinary practices. The first consultation looks at proposed changes to the rules governing solicitors' business structures. The second looks at changes to the accounts rules, while the last covers miscellaneous changes to the code of conduct. The closing date for responses is 21 April.



- [Solicitors Regulatory Authority consultation on the Legal Services Act](#)

[Previous Item](#)

[Back to Contents](#)

[Next Item](#)

[Reportage](#)

[Professional Practice](#)

[Law Societies' News](#)

[Law Reform](#)

[Viewpoint](#)

[Just Published](#)

EUROPEAN TRANSPARENCY INITIATIVE New EU code of conduct for lobbyists

The Law Society of England and Wales has submitted a response to the European Commission's consultation on a future code of conduct for interest representatives (lobbyists). While welcoming moves to improve the transparency of decision-making, the Society has expressed a number of concerns about the type of work that should be considered interest representation and how the code would tie in with solicitors' existing ethical rules and duties towards their clients.



- [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](#)

[Reportage](#)

[Professional Practice](#)

[Law Societies' News](#)

[Law Reform](#)

[Viewpoint](#)

[Just Published](#)



Dubai launch of the International Division of the Law Society of England and Wales

The Law Society of England and Wales is to host a reception in Dubai on 3 March to mark the launch of the International Division and to publicise the new services available to the profession in the United Arab Emirates (UAE). There are currently over 450 solicitors practising in the UAE and, with new ones joining all the time, it is an ever-expanding market for the International Division's services.



- [Law Society of England and Wales International Division website](#)

[Previous Item](#)

[Back to Contents](#)

[Next Item](#)

[Reportage](#)

[Professional Practice](#)

[Law Societies' News](#)

[Law Reform](#)

[Viewpoint](#)

[Just Published](#)

Law Society of England and Wales trade mission to Los Angeles

The Law Society of England and Wales is planning a West Coast trade mission to Los Angeles in June 2008, which will offer participating firms key networking and business development opportunities. The Mission will be organised in co-ordination with the State Bar of California and the Los Angeles County Bar Association. For anyone who is interested in participating more information is available on the International Division website.



WEBLINKS

- [Law Society of England and Wales International Division website – West Coast trade mission](#)

[Previous Item](#)

[Back to Contents](#)

[Next Item](#)

[Reportage](#)

[Professional Practice](#)

[Law Societies' News](#)

[Law Reform](#)

[Viewpoint](#)

[Just Published](#)

Brussels trainees visit European Institutions

The Brussels Office trainees organised visits at the beginning of the year to the European Parliament and the European Court of Justice, providing an opportunity for trainees working in Brussels to experience the activities of the institutions at first hand. A group of trainees was hosted by Diana Wallis MEP at the European Parliament in January and attended a meeting of the Legal Affairs Committee. In February, trainees visited Luxembourg, where they attended a hearing at the European Court of Justice and had the opportunity to meet with representatives of the Court.

[Previous Item](#)

[Back to Contents](#)

[Next Item](#)

[Reportage](#)

[Professional Practice](#)

[Law Societies' News](#)

[Law Reform](#)

[Viewpoint](#)

[Just Published](#)

Brussels Office News

This month, the Brussels Office said farewell to David Cardwell and Joanna Shaw, who recently completed their secondments, and welcomed Aruna Limoli and Elora Mukherjee for their six-month seats. Aruna is currently undertaking her training with the Birmingham Office of Halliwells LLP, while Elora joins the Brussels Office on secondment from MacRoberts in Glasgow.

[Previous Item](#)

[Back to Contents](#)

[Next Item](#)

[Reportage](#)

[Professional Practice](#)

[Law Societies' News](#)

[Law Reform](#)

[Viewpoint](#)

[Just Published](#)



Law
Reform

BETTER REGULATION

Commission reports on progress of simplification programme

At the end of January, the European Commission published its second progress report on its legislative simplification programme, noting that its proposals are more or less on course. The Commission has adopted

over 80 per cent of the initiatives that were scheduled for 2007. In order to achieve simplification, the Commission is taking an approach of introducing targeted measures, identifying potential areas of law for simplification and assessing the impact of reform, before proposing new directives to simplify and consolidate existing legislation. The Commission's proposals cover a range of areas, including tax law where, for example, an initiative on tax payable on interest and royalty payments is expected later in 2008. Further proposals to simplify the EU's body of rules on company law, accounting and auditing are expected before the summer.



WEBLINKS

- [European Commission second progress report on the strategy for simplifying the regulatory environment](#)

[Previous Item](#)

[Back to Contents](#)

[Next Item](#)

[Reportage](#)

[Professional Practice](#)

[Law Societies' News](#)

[Law Reform](#)

[Viewpoint](#)

[Just Published](#)

CONSUMER POLICY

Assessing national collective redress systems

During February, the European Commission held a short consultation on the issue of collective redress. In particular, it sought comments on a series of benchmarks proposed by the Commission. Once finalised, the effectiveness of national collective redress systems is to be assessed against these various criteria. They include aspects such as: the ease with which consumers can obtain redress; the proportionality of costs involved; and the adequacy of compensation. Commissioner Kuneva also launched MarketWatch last month – an attempt by the Commission to screen various retail markets to ensure they are working effectively and ultimately, if they are not, to take corrective actions. The Commissioner has made retail financial services and the cross-border sale of certain consumer goods, such as books and CDs, her priority for 2008. How this will tie in with the on-going work of the Commission's Competition and Internal Market Directorates General has yet to be seen.



WEBLINKS

- [European Commission website on consumer collective redress](#)
- [Law Society of England and Wales International Division website - discussion forum on the European Commission's benchmarks](#)

[Previous Item](#)

[Back to Contents](#)

[Next Item](#)

[Reportage](#)

[Professional Practice](#)

[Law Societies' News](#)

[Law Reform](#)

[Viewpoint](#)

[Just Published](#)

COMPANY LAW

Feedback sought on proposed Small Business Act

A public consultation on the content of a proposed European Small Business Act has been launched by the European Commission. Following on from the general strategic plans for small and medium-sized enterprises (SMEs) set out in the Commission's Lisbon Partnership for Growth and Jobs, the Act is intended to offer SMEs measures to help them gain better access to the single market. One of the key aims behind the initiative is to reduce the regulatory burden on SMEs. Other substantive aims include facilitating SMEs access to public procurement opportunities, improving State aid rules to give SMEs greater support and even looking at possible measures to deal with the adverse effects of direct and indirect taxation. The Commission is seeking

the views of stakeholders until the end of March, with the aim of producing proposals by June.



- [European Commission consultation on the Small Business Act](#)

[Previous Item](#)

[Back to Contents](#)

[Next Item](#)

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

ENVIRONMENTAL CRIME

Adoption of directive gathers pace

The European Commission's proposed Directive to harmonise serious environmental crimes continues to be the subject of debate in the European Parliament. Parliament's Legal Affairs Committee considered a draft report on the matter on 26 February and discussed, in particular, some of the main outstanding issues. The timing of adoption proved to be a key concern for the Committee. While a few members argued for a slower approach that would allow the Parliament to come up with a more forceful piece of legislation, most members expressed concerns that agreement should be reached on the legislation by the middle of 2008. This would allow final adoption by the end of the year – before parliamentary elections, changes to the Commission and, indeed, the entry into force of the Treaty of Lisbon in 2009. The Committee proposed to hold discussions with the Council of Ministers early in March in order to speed up agreement.



- [Draft report on the proposal for a directive on the protection of the environment through criminal law](#)

[Previous Item](#)

[Back to Contents](#)

[Next Item](#)

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

FINANCIAL MARKETS

Parliament discusses transparency of institutional investors

Following the European Parliament's Legal Affairs Committee discussion of a working document on institutional investors in January, the Committee held a hearing on the topic in February. The hearing was attended by key stakeholders from the banking and financial industries. The speakers from these industries were almost unanimous in their assertions that there is no need for the introduction of further regulation in the private equity and hedge fund sectors. Several contributors suggested that the best way forward for the EU would be to concentrate on the effective implementation of existing regulations, rather than introducing new ones. The Committee is to take on board the submissions from the hearing before publishing a draft report in March. A final resolution of the Parliament should be adopted by September at the latest.

A copy of the Committee's working document is available from the Brussels Office.

[Previous Item](#)

[Back to Contents](#)

[Next Item](#)

INTELLECTUAL PROPERTY

Commission plans to revise copyright laws

The European Commission announced two initiatives in the field of intellectual property in February. First it announced the re-launch of a consultation on private copyright levies, which are the fees applied to technical equipment used to copy artists' work such as compact discs and cassettes. This follows a previous consultation in 2006, after which proposals were shelved due to opposition from the music industry. It invites stakeholders to comment on the practical application of copyright levies and runs until 18 April with a hearing scheduled to take place in June. The Commission also outlined its intention to introduce a new proposal to extend copyright protection for performing artists from 50 to 95 years. This is intended to allow performers to benefit from copyright protection for an extended period, on a par with that of a composer, and is expected to increase their income from sound recordings considerably.



WEBLINKS

- [European Commission consultation on copyright levies](#)

[Previous Item](#)

[Back to Contents](#)



Viewpoint

Standing up for our in-house colleagues

Over recent weeks, I have expressed my deep concerns about the routine bugging of telephone conversations between lawyers and their clients.

It is completely unacceptable that criminal defence solicitors should fear that their conversations with clients are being monitored. It is a long-established principle of English law that every client of a solicitor should be able to confer with them and obtain legal advice in confidence.

In the business world, the ability to obtain legal advice in confidence is also essential. In our jurisdiction, as in many other European jurisdictions, obligations of legal professional privilege extend to all members of the profession, whether they work in private practice or in house. There are few exceptions to this rule, such as in relation to anti-money laundering legislation, to which the profession has had to adapt.

In relation to EU competition law, however, we have lived with an exception to the rule that has split our profession. Advice given by in-house counsel is not privileged for the purposes of EU competition law investigations, whereas that of outside counsel is.

We at the Law Society of England and Wales believe that it is time for this anomaly to be corrected. The advice of in-house lawyers in the EU, who are regulated and subject to the disciplinary rules of their professional body, should be afforded the same protection as their colleagues in private practice. For that reason we are seeking leave to intervene before the European Court of Justice in the *Akzo Nobel* case - an

appeal from the Court of First Instance's September 2007 judgment on this very issue.

The European Court of Justice has been presented with a prime opportunity to update its case law, so that it reflects modern business reality. There are countless reasons why it is in the EU's interest to support this. In-house lawyers know their company and its business. They are able to give quick advice on competition law issues, tailored to the company. As lawyers, they should not be seen as the facilitators of anti-competitive behaviour, but as the front-line in ensuring compliance. To suggest otherwise is frankly insulting.

In this world of decentralised competition enforcement and self-assessment, the potential of criminal prosecution for cartelists, broader concerns of civil damages and regulatory headaches such as securities rules and Sarbanes Oxley, ensuring compliance is essential. As some would say, it is a "no-brainer". And, if some lawyers are indeed found to be facilitating illegal behaviour, they should be disciplined, as they would be for other unethical or illegal behaviour.

Besides the practical benefits, we should not forget the more fundamental point I mentioned at the start. The right of a client to consult a lawyer and to receive legal advice in complete confidence is a fundamental right, and exceptions to this should be drawn narrowly. We balk at the idea of the State eavesdropping on confidential telephone conversations. We should be equally concerned by its ability to seize documents containing similar communications during a dawn raid.



WEBLINKS

- [*Case T-125/03, Akzo Nobel Chemicals and Akcros Chemicals v Commission*](#)
- [**Law Society of England and Wales press release on application to seek leave to intervene before the ECJ in the Akzo Nobel case**](#)

Biography



Andrew Holroyd is the President of the Law Society of England and Wales. In his practice, he specialises in immigration law and is a partner at Jackson & Canter in Liverpool. He was elected to the Law Society Council in 1999, and was Chair of the Training Committee and the Standards Board before he was elected to be Deputy Vice President in July 2005.



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- **Commission proposal for a Directive concerning mergers of public limited liability companies**
- **Commission guidelines on state aid for environmental protection**
- **Commission external feasibility study on an alternative to the capital maintenance regime established by the second Company Law Directive**
- **Council Directive 2008/8 as regards the place of supply of services**
- **Council Directive 2008/9 laying down detailed rules for the refund of value added tax to taxable persons not established in the Member State of refund but established in another Member State**
- **Council Regulation 143/2008 as regards the introduction of administrative co-operation and the exchange of information concerning the rules relating to the place of supply of services, the special schemes and the refund procedure for value added tax**

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:

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