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Donald Eakin
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Reportage

Treaty of Lisbon: dead or just buried?

When EU leaders signed the Treaty of Lisbon last December there was a sense of self-congratulation that after two years of soul-searching the European Union had managed to overcome political divides and competing national interests to produce a blueprint for the future. With a deadline of January 2009 to bring the new regime into effect Member States set about quietly ratifying the Treaty through parliamentary channels. With the French and Dutch still reeling from the 2005 rejection of the Constitution, both governments studiously avoided putting the Treaty to a referendum. Not so in Ireland as the government were constitutionally bound to hold a referendum which duly took place on 12 June. As reports of a no vote came filtering through the day after, the rest of the European Union were left scratching their heads as to why a Member State who had benefited hugely from European funds and whose population is reportedly pro-European (some reports such as the Eurobarometer say to the tune of 82%) said "no". Where was the vote of thanks? As political pundits analysed the result and many seemed to celebrate it, Taoiseach Brian Cowen had to go and face his counterparts at their mid-yearly summit to explain why. Moreover, he had to do this unsheltered by his natural ally the British Prime Minister as just days before the summit the UK Parliament had voted in favour of the Treaty. Since then the High Court has also dismissed an application for judicial review on the failure of the UK Government to hold a referendum.

So what next? Whereas the “no” vote in France and the Netherlands led to the conclusion that the Constitutional Treaty was dead, European leaders seem to think that the people of Ireland can be persuaded to change their minds. Perhaps fair enough as Ireland only voted “yes” to the Treaty of Nice the second time the question was put to them. However no major conclusions were reached last month and Brian Cowen was invited by his colleagues to come back to them in mid-October to consider the way forward. Whilst Ireland was seemingly offered some thinking time the underlying message was that the EU needs to continue to deliver concrete results in policy areas that matters to its citizens.

Indeed, despite the creaking institutional structure and the lengthy decision making procedure the EU can continue to produce policy and legislate under the current provisions. Yes the Treaty of Lisbon would have made improvements to the EU’s institutional make up and offer a better, fairer balance of power in decision making proceedings but the work can and will go on. Indeed to make this point the European Council conclusions issued after the summit meeting referred fleetingly to the Treaty of Lisbon crisis and moved swiftly on to other issues. The Council took stock of developments in, among other things, migration, counter-terrorism and security and the policy implications of high food and oil prices were discussed. With Slovenia now handing over the EU Presidency to the French the message was very much one of business as usual.



WEBLINKS

- [European Council Conclusions](#)
- [Law Society of England and Wales Guide to the Treaty of Lisbon](#)

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Professional Practice

LOBBYING **Commission register opens**

A register for interest representatives (lobbyists) opened on Monday 23 June as part of the European Commission’s European Transparency Initiative. Those who undertake activities falling within the Commission’s definition of interest representation, including lawyers, are expected to register. Lawyers doing so will have to declare the clients for whom they have done such work and the related turnover. Registrants also have to undertake to abide by a code of conduct drafted by the Commission or indicate that they are bound by an equivalent code. Registration is voluntary and need not be done immediately. Concerns remain amongst legal practitioners about the compatibility of the duties under the register with solicitors’ professional obligations. The Law Society of England and Wales is taking steps to clarify this and will be advising its members in due course.



WEBLINKS

- [European Commission register of interest representatives](#)
- [Law Society of England and Wales web-site](#)

ANTI-MONEY LAUNDERING

Governments taken to task over failure to implement anti-money laundering rules

The fight against money laundering is a top priority for the EU but it appears that it is all talk and no action as more than half of Member States have failed to implement the Third EU Money Laundering Directive into national law. This process was due to be completed by mid-December last year but 15 governments have failed to meet this commitment. The European Commission has therefore taken action against these Member States by launching infringement proceedings. This has now reached the second stage with a reasoned opinion having been sent to Belgium, Czech Republic, Germany, Greece, Spain, Finland, France, Ireland, Luxembourg, Malta, Netherlands, Poland, Portugal, Sweden and Slovakia. This entails the Commission setting out reasons why it considers there to have been an infringement of Community law and calls on the Member State in question to comply with Community law within a specified period. If a satisfactory reply is not given the Commission may refer the matter to the European Court of Justice.



WEBLINKS

- [Announcement from the European Commission on infringement action](#)
- [Information on infringement proceedings](#)



Solicitors visit Los Angeles for California trade mission

A group of six solicitors visited Los Angeles for a three-day trade mission organised by the Law Society of England and Wales to learn more about the California legal services market and establish contacts with firms in the state. California is a major economic partner for England and there is already a great deal of legal traffic between London and Los Angeles which can be built on through more connections between the legal professions in each location. Whilst Los Angeles may only bring Hollywood to mind, there are actually a number of diverse sectors in addition to the entertainment and creative industries that also offer opportunities for international business, including financial services, ICT, life sciences and clean technologies.

For more information please see [here](#) or contact [Charlotte Ford](#).

Law Society of England and Wales' International Division goes North

After a successful first six months, the International Division of the Law Society of England and Wales travelled to the north of England to launch its services. Events took place in Manchester on 24 June and Leeds on 25 June with two evenings of international food, entertainment and networking. The events offered firms and solicitors the chance to find out more about the International Division and the activities it has planned and those attending took the opportunity to network with others in the profession who are interested in developing their international business. The business facilities of the Brussels Office were also profiled. The events were sponsored by HSBC and supported by the College of Law and UK Trade and Investment.

For more information on the International Division see [here](#).

For more information on the services of the Brussels Office see [here](#).

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Lawyers to examine how to safeguard the use of expert evidence

A conference to examine the issues surrounding the use of expert evidence both in the United Kingdom and around the European Union will be held by the Law Society of England and Wales on 23 September 2008. Defence practitioners, prosecutors, and judges will discuss questions in relation to gathering, handling, analysing, interpreting and presenting expert evidence. Forensic experts will offer their experience and examine the use of scientific quality standards in the criminal justice system. Cross-border evidence gathering, mutual legal assistance and the future European Evidence Warrant will also be discussed.

For more information see [here](#).

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*Law
Reform*

EMPLOYMENT LAW

Finally an agreement on working time and agency workers

EU employment ministers agreed on longstanding proposals on working time and temporary agency workers on 9 June. The agreed changes to the existing working time rules would continue to allow Member States to permit workers to opt out of the 48-hour weekly work limit but within stricter parameters. A weekly cap of 60 hours would apply and opting out within the first four weeks of employment would be prohibited, unless it relates to a short-term contract. Member States may also disregard "inactive" on-call time (i.e. not carrying out duties) from the calculation of working time – a key issue for many doctors. As for temporary agency workers, according to the deal, they should be afforded treatment equal to other workers in the client company from day one of their posting. The text would, however, allow Member States to derogate from this and apply a qualifying period agreed by social partners. This should accommodate the recent UK-level agreement on such a twelve-week period. Both proposals will now return to the European Parliament for a



WEBLINKS

- **Political agreement on a common position – Amended proposal for a Directive on working conditions for temporary workers**
- **Political agreement on a common position – Amended proposal for a Directive amending Directive 2003/88 concerning certain aspects of the organisation of working time**

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COMPANY LAW

Limiting the liability of auditors

Member States had until 29 June to implement the Directive 2006/43 on statutory audits, which places new duties on auditors and requirements on the audit process. On 21 June a Recommendation on the civil liability of audit firms and auditors was published in the Official Journal. It states that the liability of auditors and audit firms for unintentional breaches of their professional duties should be limited with respect to the audited company and third parties. It goes on to state the ways in which liability could be limited, such as: the introduction of a maximum amount; limiting liability to the auditor's actual contribution to the loss suffered by the claimant, or allowing the auditor to agree in advance with the company to be audited the limitation of liability. The Recommendation notes also that any limitation should not prevent injured parties from being fairly compensated. As a Recommendation is a "soft law" instrument, Member States are not legally required to implement it. The Recommendation invites Member States, however, to inform the Commission by June 2010 what related actions they have taken.



WEBLINKS

- **Commission Recommendation concerning the limitation of the civil liability of statutory auditors and audit firms**
- **Directive 2006/43 on statutory audits of annual accounts and consolidated accounts**
- **Commission Recommendation on external quality assurance for statutory auditors and audit firms auditing public interest entities**

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TAX

Slow progress on VAT for insurance and other financial services

At their meeting of 3 June 2008, EU finance ministers discussed the progress of the proposals to update the VAT rules applying to insurance and financial services. As well as clarifying definitions, the proposal would create an option for taxation by financial operators and allow for cost-sharing schemes amongst operators that did not create additional non-recoverable VAT. Until now the focus in Council working group meetings appears

to have been on discussing the new proposed definitions and non-exhaustive lists of services that fall within certain definitions or exemptions. Some Member States have expressed criticism of the other two elements of the proposal, noted above, and the potential implications for revenue. The Council asked the incoming French EU Presidency to continue discussions and report back to the Council by the end of the year. The European Parliament's Economic and Monetary Affairs Committee discussed the proposal on 2 June with a view to a vote in Parliament in the autumn.



WEBLINKS

- **Proposal for a Directive amending Directive 2006/112 on the common system of VAT as regards the treatment of insurance and financial services – latest available Presidency compromise text**
- **European Parliament draft Report proposing amendments to Directive 2006/112 on the common system of VAT as regards the treatment of insurance and financial services**

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FAMILY LAW

Pan-European divorce rules defeated - for now

Proposals to set down common rules to determine which court will hear a cross-border divorce case and which law will apply have finally hit a brick wall. After years of negotiation, Justice Ministers admitted last month that it was impossible to reach the unanimous agreement needed to adopt the so-called Rome III proposal on jurisdiction and applicable law in matrimonial matters. Since the outset the proposal has been thwarted by political and cultural divisions principally between liberal Scandinavian countries and those with a more traditional outlook. Moreover, one Member State (Malta) doesn't recognise divorce at all. However, all may not be lost as a number of national governments are determined to see rules in this area and may group together to take the proposal forward. Any future agreement would however only affect those countries who have signed up to it. It is expected that this is something the French will take up during their Presidency which began this month.



WEBLINKS

- **Latest public document on the proposal for a Council Regulation amending Regulation (EC) No 2201/2003 as regards jurisdiction and introducing rules concerning applicable law in matrimonial matters**

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CRIMINAL LAW

New European Criminal Records Information System

The exchange of information is key in terms of co-operation between police and judicial authorities and the fight against cross-border crime. Following on from proposals designed to improve the organisation and

content of the exchange of information extracted from criminal records between Member States, the Commission has now brought forward a proposal to link national criminal record databases in order to ensure efficient exchange of information on previous convictions. The European Criminal Records Information System is described as a concrete tool to assist law enforcement and crime prevention. It does not create an overarching "euro-database" but rather sets up a mechanism for direct electronic exchange of information and is the pre-cursor to full interconnection of national criminal record databases.



WEBLINKS

- **Proposal for a Council Decision on the establishment of the European Criminal Records Information System (ECRIS)**
- **Proposal for a Council framework decision on the organisation and content of the exchange of information extracted from criminal records between Member States**

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CIVIL JUSTICE

Ministers adopt applicable-law rules for contracts

The 5 and 6 June meeting of European justice and home affairs ministers adopted the EU Regulation on the law applicable to contractual obligations, otherwise known as the Rome I Regulation. The principle of party autonomy applies as a general rule to contracts, but the Regulation sets specific rules to determine the applicable law when a choice has not been made or is not possible. The Regulation will replace the 1980 Rome Convention and apply throughout the EU with the exception of Denmark. As for the UK, it looks likely that the Government will decide in the coming months to opt in to the Regulation – something it chose not to do when the draft Regulation was initially proposed. A UK consultation on this question closed on Wednesday 25 June. This also asked whether the new rules should also be applied between the different UK jurisdictions, as the Rome Convention does currently. The Regulation will start to apply eighteen months after it has been published in the Official Journal and subsequently entered into force.



WEBLINKS

- **Text of the unpublished Regulation on the law applicable to contractual obligations (Rome I)**
- **Law Society of England and Wales response to the UK Government consultation "Rome I – Should the UK opt in?"**

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Viewpoint

Belfast, Brussels and back

The European Union has hit the headlines recently as the Republic of Ireland took to the polls to vote on the Treaty of Lisbon. As the only Member State to hold a referendum on this new legal and political framework for a Europe of 27 it was firmly in the spotlight. When the reports of a “No” vote came in Europe’s leaders were left scratching their head as to how to move forward.

However, whilst *euro-sceptics*, political commentators and journalists alike ponder the future of Europe it is worth remembering that the EU already has a legal, political and judicial architecture in place. Whilst many agree the framework is in need of review, for the moment this is what we have and we need to work with it. Although the Treaty of Lisbon is dead (or stalled depending on what you read) it could be and should be business as usual in Brussels. And there is a lot of business to be done!

The Law Society of Northern Ireland is part of a joint Brussels Office shared with the Law Society of Scotland and the Law Society of England and Wales. We also share premises with the German Federal Bar, the Austrian Federal Bar, the Bar Council of England and Wales and soon the Czech Bar Association. Not only does this allow us to build links with fellow legal professions around Europe, but it sends a strong message to the policy makers and legislators that the legal profession is engaged and active in Europe.

Our Brussels Office monitors developments in legislation in everything from criminal law to competition, public procurement to private client and is there to assist solicitors in relation to these issues and to lobby on behalf of the legal profession. As the only part of the United Kingdom that has a border with another EU Member State, solicitors in the jurisdiction of Northern Ireland often refer to EU instruments relating to cross-border enforcement, debt recovery, commercial activity and will do so in new areas such as alternative dispute resolution and mediation.

Alan Hunter, Alastair Rankin and I took part in the official launch of the new premises last month. Whilst in Brussels we took the opportunity to meet with the Northern Ireland Executive Office to learn about their work there and discuss how we can build links in Belfast that will assist us with our work in relation to Brussels. We had an interesting lunch with Jim Nicholson the long-standing Member of the European Parliament for Northern Ireland. Jim Allister QC MEP was unable to meet with us in Brussels but met up with us on our return to Belfast where we had a useful discussion about forthcoming issues such as the wills and succession initiative. Baibre de Brun is the third MEP representing Northern Ireland whom we hope to meet at a later date.

As we returned home it became clear that the legal profession and the Law Society of Northern Ireland as both representative body and regulator need to be engaged with the legislative and policy process at the earliest stage of policy making. We need not only to be informed but also to influence. That is now well underway with the new Northern Ireland assembly and our presence now at the heart of Europe also.

Biography



Donald Eakin is President of the Law Society of Northern Ireland. He is a partner in the firm Macaulay & Ritchie Solicitors.



Just published

- **The European Qualifications Framework**
- **Environment Council conclusions of on CO2 emissions**
- **Report on progress made in equal opportunities and non-discrimination in the EU**

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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For those wishing to subscribe for free to the Brussels Agenda electronically and/or obtain documents referred to in the articles, please contact **Antonella Verde**. The Brussels Office also produces regular EU updates covering: Civil Justice; Family Law; Criminal Justice; Employment Law; Environmental Law; Company Law and Financial Services; Tax Law; Intellectual Property; and Consumer Law as well as a monthly update on the case law of the European Court of Justice. To receive any of these, contact **Antonella Verde** stating which update(s) you would like.

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