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Reportage

Events, dear boy, events

Before the summer, it had been thought that after this month's European Council, we might have a clearer idea of the prospect of the Lisbon Treaty being ratified. Following the meeting of EU leaders, however, we are none the wiser as to whether the Treaty will ever enter into force.

What is clear however is that the Treaty will not enter into force as planned on 1 January 2009. It is doubtful that it will enter into force in time for the elections to the European Parliament in June 2009 or indeed the appointment of the new European Commission the following autumn.

When EU leaders meet again in December this year, it is hoped that a political decision will be taken as to the way forward and a timetable. Concerns highlighted by the Irish include the right to nominate a commissioner,

Ireland's neutral status, taxation matters and the impact of the Fundamental Rights Charter on issues such as abortion and same-sex marriage. It remains unclear however whether concessions will be made to Ireland, such as opt outs from controversial sections of the Treaty or additional political declarations, and whether it will be possible to hold a second referendum in time for the institutional turnaround mentioned above.

Ireland's recent reaction to the banking crisis did not help it win sympathy from other EU leaders and with all other Member States expected to ratify the Treaty by the end of the year, it leaves the country in a delicate position.

The continuing financial crisis did, however, help to galvanise EU leaders by the time of the October meeting. A financial rescue package, based on that agreed by the UK and euro-zone countries the previous weekend, was agreed by the 27 Member States.

This action has been coupled with a number of announcements from the Commission: recent proposals to tighten capital requirements for banks and ensure a minimum deposit guarantee of 100,000 euro; proposals due shortly for the registration of credit-rating agencies; and possible proposals by the end of the year on credit derivative products, such as over-the-counter credit default swaps. Tackling the perceived problems surrounding executives' pay is also speeding up the political agenda.

Previous unilateral actions taken by various Member States over recent weeks have come under much criticism. Often support from national governments has failed to recognise the pan-European nature of the banks in question or their dispersed customer base. So the more recent emphasis on coordinated action between governments and central banks has meant that the EU has started to lead the way in managing the crisis.

The package of support to the financial sector, which is worth roughly 2,000 billion euro, might prove to do much to bolster the reputation of the EU and in particular the euro and euro-zone countries. Indeed we might see enthusiasm for euro-zone membership grow once the dust settles.

Unfortunately, EU leaders did not manage to maintain their leadership role in relation to another, arguably pending crisis: that of climate change. Despite having agreed on the thrust of ambitious targets relating to energy and climate change in March 2007 and March 2008, at least for some, the current financial turmoil seemed to provide convenient cover for reopening the debate.

Many of the central and eastern European Member States objected to the targets, claiming that they should have been set against more favourable figures from 1990. Complaints were also directed at the timing of plans to move to carbon-free energy, given the high degree of reliance on coal-generated power in countries such as Poland. An agreement was postponed until the December European Council.

Holder of the EU Presidency, President Sarkozy is set to have his work cut out over the coming weeks. Agreement on climate change will be of key importance to next year's international negotiations and a clearly agreed strategy for the Lisbon Treaty is essential for the functioning of the EU.

One thing EU leaders did manage to agree on was the composition of a so-called "Reflection Group" to muse over a longer-term vision for the EU. Engineering a period of calm would be a useful first priority.



WEBLINKS

- [Proposal for a Directive amending directives as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management](#)
- [European Council Presidency conclusions from October Summit](#)
- [Proposal for a Directive amending Directive 94/19 on Deposit Guarantee Schemes as regards the coverage level and the payout delay](#)

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Professional Practice

PROFESSIONAL QUALIFICATIONS Commission takes action against UK

As reported in previous editions of the Brussels Agenda, the European Commission has launched infringement proceedings against a number of Member States for failing to implement the Directive on the recognition of professional qualifications. This Directive, which should have been implemented into national law by 20 October 2007, consolidates the provisions of fifteen different directives and simplifies the mechanism for the recognition of professional qualifications in the EU. The Commission has recently announced its intention to take the UK and five additional Member States - Germany, Hungary, Luxembourg, Poland, and Sweden - to the European Court of Justice for failure to send the Commission their measures transposing the Directive.



WEBLINKS

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

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ANTI-MONEY LAUNDERING FATF adopts guidelines on risk-based approach for legal profession

The Financial Action Task Force (FATF), the inter-governmental body responsible for developing and promoting policies to combat money laundering and terrorist financing, has adopted guidelines on a risk-based approach to the fight against money laundering. Throughout this process they have consulted with legal professionals and bar associations in order to determine what the legal profession itself should be doing when applying the risk-based approach, in particular, looking at risk indicators and internal controls. A text composed of high-level principles was adopted at the FATF plenary in Rio de Janeiro in October. Meanwhile, the European Commission has announced it is taking action against Belgium, Ireland, Spain and Sweden for failing to implement the third Money Laundering Directive, for which the transposition deadline was 15 December 2007.



WEBLINKS

- [Financial Action Task Force](#)
- [Directive 2005/60 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing \("third Money Laundering Directive"\)](#)

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STANDARDS IN CRIMINAL PROCEEDINGS

Code of Practice for working with interpreters in Scotland

A Code of Practice for working with interpreters in the Scottish criminal justice system has recently been launched. This was developed by the Working Group on Interpreting and Translation (WGIT), which is made up of members from the Scottish Police Service, the Scottish Court Service, the Crown Office and Procurator Fiscal Service (COPFS), the Scottish Legal Aid Board and the Law Society of Scotland. It sets out the various responsibilities and obligations of organisations within the criminal justice system when working with interpreters. It offers an overview of what is expected from each of the WGIT organisations in instructing the services of an interpreter to assist in a summary criminal court case and aims to provide a more effective service to those individuals who require the services of an interpreter.



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Law Society of England and Wales International Day Conference

The Law Society of England and Wales' International Division is marking its one year anniversary on 25 November with a day and evening devoted to the celebration and development of international legal practice and business. The focus of the morning session will be on the prospects of doing legal business internationally. The afternoon session will feature a selection of interactive workshops on how to develop skills and tools for international legal practice. The evening's entertainment will begin with two hours of structured networking to facilitate contact building between guests with interests in particular geographical regions and specific practice areas.

For [more information](#).

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Law Society of Scotland appoints new Chief Executive

The Law Society of Scotland has announced that Lorna Jack will replace Douglas Mill as its Chief Executive in January 2009. Her previous roles have included Head of National Food Industry Team, Scottish Enterprise; Head of Global Companies Research Project, Scottish Enterprise; and chief operating officer for Scottish Enterprise Forth Valley before her current position in Boston, USA, as President of the Americas division of Scottish Development International. Lorna has a considerable track record in promoting the interests of Scotland's business community and it is anticipated that her talents will be of great value to one of Scotland's important and distinctive economic sectors.



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Launch of Scottish Legal Complaints Commission

On 1 October the system for making complaints against Scottish solicitors changed with the opening of the Scottish Legal Complaints Commission. As of this date all complaints must be sent to the Commission in the first instance. The Commission then decides whether a complaint relates to a service provided or to the conduct of a solicitor and whether the Commission or the Law Society of Scotland or both should investigate the matter. The Society and the Commission will be responsible for investigating complaints raised within a year of either the business being completed or the matter being brought to the complainer's attention.



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Law Society of England and Wales sets in place regulatory review

The Law Society of England and Wales commissioned a regulatory review last month. The review is expected to produce a series of recommendations aimed at ensuring that legal services are regulated in ways that are effective for consumers, businesses and the legal sector, taking account of the very different requirements of the different sectors of the legal services market. Lord Hunt of Wirral will lead the review.

For [more information](#).



CONSUMER LAW

Commission proposes new horizontal instrument

On 8 October the European Commission published its proposal for a Directive on consumer rights. This follows on from the Commission's Green Paper on the Review of the Consumer Acquis. The proposed Directive revises and merges four directives on consumer contractual rights, namely, those relating to contracts negotiated away from business premises; unfair terms in consumer contracts; distance contracts and consumer sales and guarantees, into a single horizontal instrument. It applies to both domestic and cross-border contracts. It adopts a full harmonisation approach, according to which Member States cannot maintain or adopt provisions diverging from those laid down in the draft Directive. The proposal will be debated in the European Parliament and in the Council in the coming months.



WEBLINKS

- [Proposal for a framework Directive on consumer rights](#)

RECOGNITION AND ENFORCEMENT

European Parliament proposes a European Authentic Act

The Legal Affairs Committee of the European Parliament has taken the initiative to propose a common system for the mutual recognition and enforcement of authentic acts around the EU. Whilst not a formal legislative proposal, it is presented as a recommendation to the European Commission. The rapporteur, Manuel Medina Ortega MEP, outlines that such a system would make life easier for citizens and businesses, mainly through dispensing with the formalities on legalisation and apostilles and simplifying registration procedures. From the UK perspective however, this initiative throws up a number of problems. Not only does it fail to take into account analogous legal documents, such as deeds, but it is also heavily biased in favour of the civil law notarial system. The Committee is due to vote on the draft report on 4 November.



WEBLINKS

- [Parliament draft Report with recommendations to the Commission on the European Authentic Act](#)

CROSS-BORDER ENFORCEMENT

Road Safety Enforcement Package

In March 2008 the European Commission issued a proposal for a Directive facilitating cross-border enforcement in the field of road safety. The focus of the proposal is on cross-border enforcement in relation to the offences of: drink-driving; speeding; non-use of seat belts; and failing to stop at a red traffic light. It forms part of the EU's broader road safety policy which seeks to halve the number of road fatalities by the year 2010. The proposal is not seeking to harmonise road traffic rules throughout the EU, nor the penalties which are imposed for such offences. Instead it seeks to create an EU electronic data exchange network. On 9 September the European Parliament's Committee on Transport and Tourism adopted a report, which broadly supports the provisions of the Commission's proposal. Parliament is expected to discuss the proposal in plenary on 17 November with political agreement on the final text expected in December.



WEBLINKS

- [Proposal for a Directive facilitating cross-border enforcement in the field of road safety](#)
- [Parliament Report on the proposal for a Directive facilitating cross-border enforcement in the field of road safety](#)

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EMPLOYMENT

Commission improves maternity leave provisions

The European Commission has announced a proposal on maternity leave, designed to improve the current provisions. The proposal seeks to increase the minimum period of maternity leave from 14 to 18 weeks and recommends that women are paid 100% of their salary during this period. Member States would be authorised to set a ceiling on the level of maternity pay, at the same level as that of sick pay. In addition, women would be granted increased flexibility regarding when to take the non-compulsory portion of their maternity leave, as opposed to the present situation where women are obliged to take a specific portion of maternity leave before childbirth. The Commission's proposals also contain stronger protection for women against dismissal and a right to return to the same job or an equivalent one after their maternity leave. New mothers would also have the right to ask their employer for flexible working patterns after the end of their maternity leave, although the employer does have the right to refuse this request.



WEBLINKS

- [Proposal for a revised Directive on maternity leave](#)
- [Proposal for a revised Directive on self-employed women and assisting spouses](#)
- [Commission Communication on work-life balance](#)

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EMPLOYMENT

European Parliament agreement on temporary agency workers

On 22 October the European Parliament adopted the Council Common Position on the proposal for a Directive on temporary agency work, without any amendments. The Directive seeks to harmonise the conditions for engaging agency workers at national level and ensure a minimum EU-wide level of protection. It provides that a temporary agency worker may not be treated any worse, in terms of his basic working conditions including pay, than a comparable permanent worker (who is defined as a worker in the same organisation who is in an identical or similar job). Member States will, however, be able to allow derogation from the equal treatment obligation on the basis of an agreement between social partners. This should accommodate an agreement reached in May between UK employers and unions, providing for the completion of a 12 week qualifying period before equal treatment is afforded. The text will now undergo legal linguist checks and be formally adopted by Parliament and Council before publication in the Official Journal. Member States will have three years to implement the Directive.



WEBLINKS

- [Council Common Position on temporary agency work](#)
- [Recommendation for second reading on Council Common Position for a Directive on temporary agency work](#)

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JUSTICE AND HOME AFFAIRS

Commission urges stakeholders to get involved in future of policy

The Law Society of England and Wales has published a position on the Future EU Justice and Home Affairs Programme beginning in 2010. The Society's position emphasises the need to guarantee procedural safeguards and expresses strong opposition to replacing them with "more flexible" "simplified formalities". Since 1999 EU policy in this area has been developed in the framework of a general programme set by the Council of Ministers every five years. There is an ongoing timetable for action until 2010. Groups of Member States have already published reports setting out their ideas for the future programme. Meanwhile the European Commission has launched its own public consultation on this, requesting contributions by 20 November 2008. It is expected to issue proposals for the programme early in 2009, which will subsequently have to be endorsed by the Council, probably in Autumn 2009 during the Swedish Presidency.



WEBLINKS

- [Commission consultation on EU Justice and Home Affairs Programme](#)
- [Position Paper of the Law Society of England and Wales on the Future of EU Justice and Home Affairs](#)

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HUMAN RIGHTS

Human Rights defenders take the floor

The Law Societies' Joint Brussels Office was represented at a high-level conference "60 years of the Universal Declaration of Human Rights: The Defenders Take the Floor", held at the European Parliament in October. Speakers emphasised the importance of the European Commission engaging human rights defenders systematically in its work and mainstreaming human rights activities consistently throughout all of the EU's work. The UN High Commissioner for Human Rights called for moderation in anti-terror laws. The Council of Europe Parliamentary Assembly expressed serious doubts about the draft counter-terrorism legislation in the UK and reference was made to the report of the Council of Europe Committee Against Torture of 2 October which published a series of recommendations concerning detention of terrorist subjects in the UK. Shortly thereafter, the UK Government dropped its plans to detain terror suspects for 42 days without charge following its overwhelming defeat in the House of Lords on 13 October.



WEBLINKS

- [Defenders Take the Floor](#)
- [Council of Europe Report on the Prevention of Torture](#)
- [Council of Europe Press Release on proposed 42-day pre-charge detention](#)

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Viewpoint

EU Law-making and Policy at a time of Financial Crisis

The past month has seen an extraordinary transformation in the decision-making processes of the EU institutions and Member State governments in response to the global financial crisis. Complex restructurings, consolidations and measures of State support, which would normally occupy months of negotiation and take the European Commission many months more to review have been put together over a weekend and approved by the Commission within 24 hours.

We must welcome the ability of national governments and the Commission to cooperate so as to put in place, with the utmost urgency, those measures needed to restore liquidity and confidence in the banking sector and the financial and equity markets. It cannot be expected, however, that policies formulated and decisions made in such haste will prove to be flawless. For this reason, if no other, it must be right in principle that the Commission has emphasised the temporary nature of many of these measures. The imperative of tackling the financial crisis should not oust the consistent and non-discriminatory application of EU State aid and competition policy, which have made a notable contribution to the success of EU economies. The increased presence of the State in the banking sector, which has resulted from the crisis measures and may not prove to be temporary, poses significant challenges in this regard.

As a result of the crisis, there is understandably a call for more effective regulation of the banking sector.

There are also calls for the postponement of important measures, such as EU greenhouse gas emission targets, which might impose costs on businesses and thereby, it is suggested, impede economic recovery. Vigilance on the part of citizens and businesses will be needed to make sure that longer term issues of fundamental importance are not lost sight of in the battle to restore more benign economic conditions in the EU.

How, it may be asked, may these events and their aftermath be expected to affect the solicitors' profession and, in particular, the work of the Law Society's EU Committee, of which I have recently taken over as Chair? Committee members come from many different professional backgrounds and cover a wide range of expertise in EU law. Some of us work in the UK and some in Brussels. Our minutes and papers are accessible on the Law Society's website.

Having over recent months published a guide to the Lisbon Treaty and commented extensively on proposed measures in the fields of consumer law, State aid, public procurement, private antitrust actions and justice and home affairs, we have an extensive programme of work planned for the coming year. We have, for example, submitted a substantial paper on the future EU Justice and Home Affairs Programme and we are working on the formulation of the Law Society's policy on the complex set of issues surrounding consumer redress, including opt-in and opt-out class actions. We have been working on the European Transparency Initiative, which concerns lobbying the EU institutions, in order to ensure that clients' rights to legal representation and confidentiality are not undermined. We will be looking at EU consultations on State aid and UK implementing measures for the public procurement Remedies Directive.

It is inevitable, however, that the financial crisis and economic downturn will change economic and political priorities and produce measures not anticipated in the Presidency programmes. The EU Committee will need to adapt its programme to address these proposed measures. We will focus on those aspects of EU law and policy which most affect solicitors and their clients, both individual and corporate, frequently working with other Law Society specialist committees. We seek to point the legislator towards measures which are proportionate, effective and non-discriminatory, to ensure that the role of the legal profession is fully respected, that individuals are given the means to gain access to justice and enforce their rights throughout the EU and that EU measures and their UK implementation follow better regulation principles. We welcome suggestions from solicitors as to matters of EU law or its implementation.

Biography



John Wotton is Chair of the Law Society's EU Committee. He is also the member for EU Matters of the Law Society's Council and a member of its Regulatory Affairs Board. He is a consultant with Allen & Overy LLP, having previously been a partner in the practice for 23 years. He practises in the fields of UK, EU and international antitrust law, State aids, public procurement, broadcasting law and sectoral regulation. john.wotton@allenovery.com



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- [Commission Report on the application of Directive 2003/86 on the right to family reunification](#)
- [Proposal for a Directive to simplify EU rules on mergers and divisions](#)
- [Commission Notice on remedies acceptable under the Merger Regulation](#)
- [Commission Regulation amending the Merger Implementing Regulation](#)
- [Opinion of the Committee of the Regions on 'A global approach to migration: Developing a European policy on labour immigration in conjunction with relations with third countries'](#)

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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