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Reportage

A bumpy road to Lisbon

EU Heads of State and Government met in Brussels on 13 and 14 March for their annual Spring Council, where growth and jobs targets are a fixed agenda point. This year, however, discussion of the so-called Lisbon strategy was overshadowed by more pressing issues.

While leaders agreed to launch the second three-year cycle of the renewed strategy, they also made important decisions relating to climate change and energy. The political impetus given by the European Council in relation to the various European Commission proposals on the table (such as on emissions targets) should help to ensure agreement on them by the end of the year. This would then put the EU in a strong position for the international negotiations on a post-2012 climate change agreement taking place in Copenhagen in 2009.

The turbulence in financial markets and related issues did not escape the attention of EU leaders either. Only a matter of days beforehand the British media had been reporting on acrimonious talks between the current owners of Liverpool Football Club and Dubai International Capital, which was attempting to buy out one of the club's two owners. In Brussels the European Council endorsed a communication by the European Commission on the issue of sovereign wealth funds (investment vehicles owned or financed by a state).

Concerns have mounted recently about the increasing number of investments being made in EU companies by such vehicles. It is not clear exactly what some of these non-EU funds are and to what extent they are financed by the, frequently, deep pockets of non-EU states. Of greater concern, it is often hard to discern whether their investment strategies are purely economically driven or whether other strategic or political considerations motivate them.

On the other hand, it is argued that in times of financial problems, they can provide a stabilising force and that in general they contribute to market liquidity. So Member States agreed that the EU should remain open to these investment vehicles. To the relief of the UK and other like-minded Member States, a softly-softly approach was agreed.

Member States agreed to work towards an international code of conduct for sovereign wealth funds. They also agreed that a common EU approach to this issue should be based on principles such as proportionality and transparency, without requiring new legislative initiatives. Member States will, however, work to convince the owners of these funds of the need to adhere to certain standards, concerning transparency in relation to their governance arrangements, investment positions and financing.

On the broader issue of turmoil in the financial markets, there was no agreement on the need for new regulatory measures, but it was noted that EU authorities "stand ready" to take them if needed. In particular, Member States decided that policy action should focus on issues such as: improving transparency in relation to structured products and off-balance-sheet vehicles; valuation standards; strengthening prudential rules; and the role of credit-rating agencies.

It may be that the subsequent turbulence surrounding banks, such as Bear Stearns and HBOS, will provoke the Commission and Member States to act earlier than they had envisaged. In any case, it would appear that the remainder of the EU's journey to meeting the Lisbon targets for growth and jobs in 2010 could be fairly bumpy.



WEBLINKS

- **[Presidency Conclusions of the Brussels European Council \(13/14 March 2008\)](#)**
- **[Communication from the Commission - A common European approach to Sovereign Wealth Funds](#)**
- **[Communication from the Commission - Europe's financial system: adapting to change](#)**
- **[Commission web-site on the Climate Action and Renewable Energy Package](#)**

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MEDIATION

ADR: EU Justice Ministers strike a deal

Progress on the much anticipated proposal on cross-border mediation has finally been made as EU Justice Ministers recently reached agreement on the text. In order to promote mediation around Europe this proposal establishes a number of minimum common rules. These include provisions on suspension of limitation periods, confidentiality, and enforcement of settlement agreements, so as to set in place an effective alternative dispute resolution procedure for cross-border cases. After a sustained period of inter-institutional wrangling, the position of the national governments seems to be in line with that of Members of the European Parliament, who will re-examine the proposal in the coming months. It is expected that final agreement will be reached in June.



WEBLINKS

- [Council Common Position on the Directive on certain aspects of mediation in civil and commercial matters](#)

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JUSTICE AND HOME AFFAIRS

ECJ to fast track preliminary rulings

The European Court of Justice is increasingly faced with references for preliminary rulings from national courts in the field of freedom, security and justice. Such references, particularly those dealing with deprivation of liberty, parental responsibility or custody of children, often call for an urgent response from the Court before the case can be dealt with at national level. The ordinary preliminary ruling procedure has been unable to meet this need for speed and accordingly a new urgent procedure has been introduced. Modifications that have been made include changes to the rules relating to the parties entitled to submit written submissions and shorter periods for making submissions. Moreover improvements regarding internal case management procedures and electronic communications will allow the Court to deal with urgent questions and effectively deal with sensitive issues in a more efficient and accelerated manner.



WEBLINKS

- [Statute of the Court of Justice \(March 2008\)](#)

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CROSS-BORDER SUPPLY OF SERVICES

Services Directive: legal profession comments on UK implementation

The UK Government is currently in the process of implementing the Services Directive. This aims to break down barriers to trade and make it easier for service providers from one Member State to set up business and offer their services elsewhere in the EU. The Department for Business, Enterprise and Regulatory Reform recently consulted key stakeholders on this issue and is currently processing the responses. Both the Law

Society of Scotland and the Solicitors Regulation Authority for England and Wales responded to the consultation, stressing the fact that cross-border supply of legal services are already governed by European legislation and that a light touch regulatory approach is needed to implement the Directive. Whilst implementation is ultimately a task for the Member States, the European Commission had appointed a group of experts from each national administration in order to co-ordinate the implementation efforts. The deadline for the Services Directive to be transposed into national law is the end of this year. For copies of the responses to the consultation please contact: brussels@lawsociety.org.uk



WEBLINKS

- [Directive 2006/123 on services in the internal market](#)
- [Department for Business, Enterprise and Regulatory Reform consultation paper on implementing the EU Services Directive](#)

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Akzo Nobel case: Law Society of England and Wales intervention

The Law Society of England and Wales has now lodged its application for leave to intervene in the Akzo Nobel case with the European Court of Justice. A number of other organisations and at least three Member States are also seeking to intervene in the case, which concerns legal professional privilege for in-house lawyers.



WEBLINKS

- [Text of the Law Society's application and further information](#)

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Accession to the EU: Law Society of England and Wales and Croatian Bar event

On 12 March, as part of Croatian Lawyers' Day, the Law Society of England and Wales (the Society) and the Croatian Bar Association (CBA) co-hosted a joint seminar in Zagreb entitled: "EU accession - what it means for lawyers". The British Ambassador to Croatia, HE Sir John Ramsden Bt, and the Society's Vice President, Paul Marsh, attended the seminar as well as other activities related to Croatian Lawyers' Day. The seminar and overall visit were highly successful and presented an opportunity for the Society and the CBA to explore ways to develop future relations in the lead up to Croatia's accession to the EU.

For further information please contact: julian.broxup@lawsociety.org.uk

Law Society of England and Wales strengthens links with Nigerian market through trade mission

The Law Society of England and Wales (the Society) led a trade mission to Nigeria last month designed to help solicitors enter the market for legal services there. Supported by UK Trade and Investment (UKTI) the visit coincided with the annual conference of the Nigerian Bar Association's Section on Business Law in Abuja. It offered a unique opportunity to meet leading business lawyers in the region as well as an opportunity for English and Welsh solicitors to promote their firms directly to business partners and potential clients. In addition to charring sessions at the conference, the Society's President Andrew Holroyd shared a platform with former UN Secretary General Kofi Annan in giving an opening address to the conference.

For more information please contact international@lawsociety.org.uk



Law Reform

CRIMINAL JUSTICE

UK consults on *in absentia* judgments

On 28 February the UK Government issued a consultation paper seeking the views of UK practitioners and stakeholders on the draft Framework Decision on *in absentia* judgments. This proposal, which seeks to standardise procedural rules in relation to trials *in absentia*, was proposed by the Slovenian Presidency and co-sponsored by the UK, among others. The UK's consultation focuses on a number of issues, including the need to seek a better definition of what *in absentia* actually means and on whether the requirement for specific information to have been given to the defendant before trial is both fair to the individual but also feasible in the context of cross-border law enforcement co-operation. The consultation paper states that the UK's aim is to raise EU standards in line with its own approach to clarity and fair trial. The deadline for responses is 10 April 2008.



WEBLINKS

- [UK Government consultation paper](#)

CIVIL LITIGATION

Commission seeks to improve cross-border debt recovery

On 6 March the European Commission adopted a Green Paper on effective enforcement of judgments in the European Union and the transparency of debtors assets. Following a previous consultation, the conclusion had been drawn that cross-border judgments could be more easily enforced if a common EU approach of acquiring information on a debtor's financial position was employed. The Green Paper proposes solutions which may reduce the problems currently experienced. It calls for greater transparency of debtors' assets and promotes the rights of creditors to acquire details on them, without damaging principles of data protection and the debtors' rights of privacy. Proposals include the drafting of a guide to national enforcement laws, improved access to information registers, better exchange of information between enforcement bodies at EU level and the creation of a 'European Assets Declaration'.



WEBLINKS

- [Green Paper on effective enforcement of judgments in the European Union: the transparency of debtors' assets](#)

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ENVIRONMENTAL LIABILITY

Green crimes: back on the agenda

Last month the European Commission brought forward a new proposal in the field of maritime safety and ship-source pollution. It amends the previous Directive on this matter (2005/36) and replaces the Framework Decision to strengthen the criminal-law framework for the enforcement of the law against ship-source pollution (2005/667/JHA). The latter was annulled by the European Court of Justice (ECJ) in October last year because the legal base used was incorrect in relation to certain of its provisions (Case C 440/05 Commission v Council). The new proposal identifies which infringements of the 2005 Directive would have to be treated by Member States as criminal offences and punished by criminal law sanctions. Rather than specifically itemising these sanctions – a practice the ECJ has disallowed in Directives - the formula used is that sanctions must be effective, proportionate and dissuasive. The new proposal supplements the proposal on criminal law measures for the protection of the environment, which is currently under discussion in the European Parliament and Council of Ministers.



WEBLINKS

- [Proposal for a Directive amending Directive 2005/35 on ship-source pollution and on the introduction of penalties for infringements](#)
- [Proposal for a Directive on the protection of the environment through criminal law](#)

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TAX LAW

Review of Savings Tax Directive

On 4 March the European Commission reported back to the Economic and Financial Affairs Council on its progress in reviewing implementation of the Savings Tax Directive (Directive 2003/48). This Directive puts in place Europe rules on information exchange on savings interest payments, while Austria, Belgium and Luxembourg are authorised to levy a withholding tax during a transitional period. The rules extend to a number of non-EU countries. Both Germany and the UK have pressured the Commission to speed up its work on this issue. A number of loopholes are being identified in the Directive's implementation, such as in relation to some discretionary trusts, meaning that some savings income is falling outside the scope of the Directive. Tax evasion is a matter that many countries are keen to tackle, given the recent Liechtenstein tax scandal. Austria, Belgium and Luxembourg have, however, expressed their unwillingness to re-open discussions over banking secrecy. The Commission also reported to Council on its efforts to hold talks with third countries such as Hong Kong, Macao and Singapore regarding the introduction of taxation of savings legislation equivalent to that already applicable in the EU. The Council asked the Commission to deliver its implementation report on the Directive in May, which is earlier than scheduled.



WEBLINKS

- [Economic and Financial Affairs Council](#)
- [European Commission review of the Savings Tax Directive](#)
- [Directive 2003/48 on taxation of savings income in the form of interest payments](#)

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INTERNAL MARKET

Improving the free movement of goods

Agreement on a proposal to improve the free movement of goods within the internal market looks well within reach, following the conclusion of the European Parliament's debate on the issue. Parliamentarians agreed a number of improvements to the draft Regulation, which lays down procedures relating to the application of certain national technical rules to products lawfully marketed in another Member State. The Council of Ministers is now considering the European Parliament's amendments but it is expected that agreement will be reached at first reading, as the European Parliament position adopted corresponds to the agreement reached between the institutions.



WEBLINKS

- [Proposal for a Regulation laying down procedures relating to the application of certain national technical rules to products lawfully marketed in another Member State](#)
- [Position of the European Parliament adopted at first reading on 21 February 2008 with a view to the adoption of Regulation .../2008 laying down procedures relating to the application of certain national technical rules to products lawfully marketed in another Member](#)

EMPLOYMENT

No action on Acquired Rights Directive

The Acquired Rights Directive (Directive 2001/23) aims to safeguard employees' rights in the event of transfers of undertakings, parts of undertakings or businesses. Over recent years, as practices of outsourcing and offshoring have increased and more countries join the EU, concerns have been expressed about how the Directive protects workers when company ownership and / or jobs are transferred from one Member State to another or even to outside the EU. While recent UK case law has clarified that the rules do apply to transfers to non-EU countries, there appear to be discrepancies between Member States. The European Commission has considered whether the Directive needs to be amended to include a conflict of law rule. A study on this was delivered to it by CMS in May 2007. Following a consultation of the European social partners, however, the Commission has decided against amending the Directive. It would appear that the instances of cross-border transfers are rare in practice – businesses often close down and re-open elsewhere instead. It would also appear that their consequences are adequately dealt with by the provisions of the Directive and of private international law.



WEBLINKS

- [Directive 2001/23 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses](#)
- [Study on the application of Directive 2001/23 to cross-border transfers of undertakings](#)



Viewpoint

Delivering Scottish Legal Services: a consultation on Alternative Business Structures

Next year will mark the 60th anniversary of the Law Society of Scotland. There has of course been considerable change for the profession over those 60 years and I would be surprised if practitioners of 1949 could readily recognise the profession of today. But I would equally be surprised if they could not see a profession which had throughout remained true to its core values and to the fundamental principles to which it has since then sought to give meaning.

The Society recognises that continuing change is a part of the landscape against which the profession operates and will always seek to contribute positively to the processes of change in order to ensure that the profession remains able to meet the challenges which it will face.

While recent developments in England and Wales, as set out in the Legal Services Act, accelerated the need for a debate on alternative business structures, we have always maintained that it is crucial for Scotland to develop its own agenda and formulate solutions in response to the calls for change that will best serve the Scottish legal services market.

With a view to producing an informed policy paper, we issued a consultation on alternative business structures and invited views from across the legal profession, politicians, consumer groups and others who have been involved in the debate on whether the rules governing law firms should be relaxed to allow the legal services market to be opened up to allow different partnership arrangements with other professionals and non-lawyers.

We were pleased to receive a wide spread of responses from different sectors of the legal profession including firms, sole practitioners, law centres and legal faculties, as well as government agencies, such as the Office of Fair Trading, professional bodies such as the Institute of Chartered Accountants in Scotland, voluntary organisations, and consumer groups.

A number of common themes were identified with an overall support for some change from the *status quo*, however, the responses did not represent a consensus view, or point to any one conclusive path forward. Rather, the focus was on ensuring that the quality of legal services provision and the integrity of the solicitor's profession are maintained regardless of the course of action taken.

The Society is now in the advanced stages of developing a policy paper, which will be finalised and published in time for its AGM in May. The final decision on whether to accept the recommendations in the paper must lie with the profession but I am confident that the Society has tackled the main issues head-on and developed proposals for a way forward which represent the way that the Society should develop and continue to contribute to the prosperity of Scotland for the next 60 years and beyond.

Biography



Richard Henderson is President of the Law Society of Scotland. He recently retired as Solicitor to the Scottish Executive and was made a Companion of the Order of the Bath in the New Year's Honours List. On qualifying as a solicitor, Richard joined the then Scottish Office Solicitor's Office in 1972. He was appointed a divisional solicitor in 1987, Deputy Solicitor in 1996 and Solicitor to the Secretary of State for Scotland in 1998 before becoming Solicitor to the Scottish Executive on devolution in 1999. He has also served for the past eight years as a co-opted member of the Council of the Law Society of Scotland.

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- **European Commission proposal on measures to tackle VAT fraud effectively**
- **Communication from the Commission to the Council and the European Parliament on measures to change the VAT system to fight fraud**
- **Proposal for a Decision concerning the conclusion of the Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Lugano Convention)**
- **Amended Proposal for a Directive of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (recast)**

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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