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The Law Societies
JOINT BRUSSELS OFFICE

The Brussels Office Update Series:

Developments from the European Court of Justice

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INTRODUCTION

April – News from the EU Courts

The Court was closed for Easter from 1 to 16 April.

The Judgment in the competition case *Holcim (Deutschland) AG v Commission* (C-282/05) was released in April. The company was seeking to recoup bank charges it had paid when appealing cartel fines but the Court has rejected its case. Opinion in *Willy Kempter KG v Hauptzollamt Hamburg-Jonas* (C-2/06) was also given this month. The Advocate General has sought to clarify when a national court has to re-examine an administrative decision once it has become definitive, in order that it conforms to Community law, noting that the defendant need not have relied on Community law when originally contesting the decision.

On 26 April, Member States decided to renew the mandates of the judges at the CFI. With the exceptions of those announced in last month's ECJ Update, all other mandates have been renewed. Terms run from 1 September 2007 to 31 August 2013. Judge Forwood has been re-appointed.

Coming up

The Judgment in *Advocaten voor de Wereld* (C-303/05) will be released in early May. This case concerns the Belgian implementation of the European Arrest Warrant and its compatibility with the Treaty of European Union (TEU). The Belgian court has asked whether the legal base for the Framework Decision relied on by the Council was correct. This decision could have consequences for law-making under the third pillar of the Union.

The Judgment in *Color Drack* (C-386/05) is due to be released. This case concerns an international contract for the sale of goods, where the correct jurisdiction is in question. The Court is asked if the plaintiff may sue the defendant in the jurisdiction of the place of delivery of the goods. The Judgment in *Thames Water Utilities* (C-252/05) is also due to be released. This case concerns the legality of the escape of a large amount of slurry that was allowed to escape from sewage pipes for an extended period in the UK.

The Judgment in *SGL Carbon* (C-328/05) will come out. This is a competition case argued on the principle of *ne bis in idem* or double jeopardy, where a second fine failed to take account of an earlier fine imposed on the same organisation for the same events in the USA. The Opinion will be released in *Laval un Partneri* (C-341/05) in May. This case considers whether a foreign temporary provider of services needs to meet European standards of conditions of employment in the construction industry.

Case tracker

The case tracker in Annex I sets out timetables for the progress of individual cases of interest and provides links to relevant documents/further sources of information for some of the most interesting and important cases going through the Courts.

1 CIVIL LITIGATION

1.1 Judgment in Elaine Farrell v Alan Whitty, Minister for the Environment and Others, Motor Insurers Bureau of Ireland (MIBI) (C-356/05)

19 April 2007, First Chamber

Civil liability – Direct effect of directives – Insurance of motor vehicles – Emanation of the state

Background
Ms Farrell sustained injuries in a car crash, when she was sitting on the floor at the back of a vehicle. The vehicle was neither designed for the carriage of passengers nor fitted with seats for that purpose. As the driver, Mr Whitty, had no insurance, Ms Farrell applied for compensation from the Motor Insurers Bureau of Ireland (MIBI). The MIBI declined her application for compensation, alleging that Ms Farrell was not a passenger as she had not been travelling in a part of a vehicle designed or constructed for human transport.

Ms Farrell sought a declaration that the national legislation had not correctly transposed all the relevant provisions of Directive 90/232, regarding insurance against civil liability of road vehicles. The High Court of Ireland asked the ECJ to declare whether it was intended that the Directive cover vehicles not designed, nor built, for human road transport.

Judgment
According to the Court the maintenance of domestic legislation which provided an exclusion from obligations in civil liability insurance for personal injury was contrary to the aims of Article 1 of this Directive. In *Withers* (C-158/01), the Court had extended the meaning of 'passengers' to people carried in a part of a vehicle not adapted for seated transport. The right of Member States to derogate from the obligation to protect accident victims is clearly defined by Community legislation. Therefore, Member States are not entitled to introduce additional restrictions to the level of compulsory insurance cover for passengers.

Link
Judgment

1.2 Judgment in Aikaterini Stamatelaki v NPDD Organismos Asfliseos Eleftheron Epangelmation (OAEE) (C-444/05)

19 April 2007, Second Chamber

Reimbursement of private medical treatment – Justification for exclusion – Article 49 TEC

Background
Mr Stamatelaki was a Greek national who held health insurance with OAEE. He was admitted for private medical treatment at the London Bridge Hospital twice in 1998 and sought to claim the full costs for this treatment from his health insurance provider. Greek legislation in force at the time prohibited claims for reimbursement from anyone treated in a private hospital over the age of 14 whilst allowing reimbursement for those treated publicly. Due to this, a claim lodged before the national court was dismissed. Mr Stamatelaki died on 29 August 2000 and his wife, as sole heir, lodged a complaint challenging the refusal which was dismissed on the

same grounds. A third action challenging that decision was brought before the national administrative court which referred to the ECJ. The court wondered whether this national law restricts the freedom to provide services set down in Article 49 TEC and if so, whether it can be justified by the need to avoid abuse of the social security system.

Judgment
It has been held in previous cases that freedom to provide services encompasses the freedom of recipients to travel to receive services. This includes persons who have to go to another Member State to receive medical treatment as demonstrated in *Watts* (C-372/04). In the absence of harmonisation at Community level, it is up to Member States to determine social security benefit schemes in line with Community law. The Court deemed it clear from these proceedings that a patient insured in Greece who receives treatment in a public or private hospital there would be compensated. Therefore, the refusal to grant Mr Stamatelaki his compensation purely because he was treated in a different Member State is a restriction on the freedom to provide services for both him and the service providers. This legislation clearly deters or even prevents patients from seeking treatment from establishments in other Member States. The absolute nature of the prohibition is not appropriate to the objective and cannot, therefore, be justified.

Link
Judgment

2 COMPETITION

2.1 Judgment in Bolloré and others v Commission (Cases T-109/02, T-118/02, T-122/02, T-125/02, T-126/02, T-128/02, T-129/02, T-132/02 and T-136/02)

26 April 2007, Court of First Instance

Appeal - Cartel decision – Carbonless paper

Background
In 2001 the Commission fined a number of producers of carbonless paper for operating a cartel. Fines totalling 313 million euro were imposed on ten companies. A number of the companies in question lodged appeals with the CFI in 2002, claiming that the effects of the cartel and its duration were less than what was concluded by the Commission, that some companies had not known they were participating in such a Europe-wide cartel and that the Commission had erred in calculating the fines.

Judgment
The CFI upheld the decision of the Commission and rejected the appeals. It did however decide to reduce the fines imposed in relation to two of the companies. Fines were reduced in relation to Arjo Wiggins Appleton and Papelera Guipuzcoana de Zicuñaga SA. The first had already had its fines reduced by the Commission by 35% because of its cooperation. As it managed to demonstrate, however, that the evidence it had supplied to the Commission was of a quality similar to that of another company (Mougeot), its fines were reduced by the same amount as Mougeot i.e. 50%. The Court held that in relation to the second company the Commission had failed to prove its participation in market sharing. This had an impact on the gravity of the infringement and thus the level of fines, which the Court reduced by 15%.

Link
Judgment

2.2 Judgment in Holcim (Deutschland) AG v The Commission (C-282/05)

19 April 2007, Second Chamber

Unlawful anti-trust fines – Article 81 TEC – Community liability for bank guarantee

Background
This appeal from the CFI stems from fines imposed by the Commission back in 1994 in relation to a cartel in the cement industry. The Commission's decision to impose fines was challenged by the applicants and annulled by the CFI in relation to Holcim (in fact its predecessor companies). When such an appeal is lodged against a Commission decision, however, this does not suspend its effect and the fine remains due. The Commission will however accept a bank guarantee in lieu of payment pending the appeal. Having succeeded in its appeal the company asked the Commission for reimbursement of the costs involved in establishing the bank guarantee. The Commission refused and the CFI upheld this.

Judgment
The ECJ agreed with Opinion of the Advocate General and rejected the appeal. The appeal was put forward in three parts: firstly, that the CFI erred in law in considering the damages action partly time-barred; secondly, that the CFI erred by seeking to determine whether there was a sufficiently serious breach of Community law for the purpose of establishing liability; and thirdly, that the CFI erred by not finding a causal link between the illegality of its decision and the costs of the bank guarantee. The Court rejected the first two pleas in law and subsequently the third had to be rejected as no basic breach could be established.

Link
Judgment

2.3 Opinion in Cementbouw Handel & Industrie BV v Commission (C-202/06)

26 April 2007, Advocate General Kokott

Appeal – Merger control – Principle of proportionality

Background
The Court is asked to clarify the division of jurisdiction between the Community and the Member States in merger control and in particular the point in a merger when the competent competition authority should be determined. In 1999 Cementbouw and Haniel acquired joint control of CVK and its undertakings, renaming the grouping CK. Two groups of transactions were concluded (a pooling arrangement and then a transfer of shareholdings), which the Commission regarded as a single concentration between undertakings. The Commission's jurisdiction to examine the case rested on this assumption. The Commission said this transaction exceeded the relevant turnover thresholds and following a number of exchanges ordered the dissolution of CK. The appellants challenged this but the CFI dismissed the claim in February 2006 and an appeal was brought before the ECJ. Cementbouw claims that the CFI was wrong to allow the Commission, without sufficient justification, to disregard an

in-depth examination of the competitive situation which had been carried out by the national competition authority (NMa).

Opinion
The Advocate General agreed with the CFI that the case should be dismissed. He commented that Regulation 4064/89 (the Merger Regulation) gives a clear definition of jurisdiction according to the principle of double exclusivity - concentrations with a Community dimension are examined solely by the Commission. The Merger Regulation does not expressly define the timeframe for determining jurisdiction. Jurisdiction is to be determined instead by reference to the date from which a concentration is to be notified to the Commission i.e. when the undertakings concerned enter into a binding contractual arrangement.

The Advocate General noted that decisions of national competition authorities are not binding on the Commission. Emphasising the clear division of jurisdiction provided in the Merger Regulation the relevant factor in examining the proportionality of conditions or obligations is not whether the merged enterprises still have a Community dimension after these conditions have been complied with. Rather, it is whether the commitments entered into by the undertakings concerned 'are proportional to and would entirely eliminate the competition problem'.

Link
Opinion

2.4 Reference in Comisión del Mercado de las Telecomunicaciónes v Administración del Estado (C-82/07)

Lodged on 15 February 2007

Electronic communications – Division of functions between authorities

Background
The case concerns Directive 2002/21 which provides a common regulatory framework for electronic communications networks and services. The national court asks if Member States are required to allocate separate authorities 'regulatory functions' and 'operational functions' when assigning national numbering resources and managing national numbering plans. When a specific authority presently exercises both these roles under implementing legislation, the court asks whether a Member State can reduce its authority by splitting up functions between the original body and another, or the state itself.

Link
Reference

2.5 Reference in Autostrada dei Fiori SpA, AISCAT, Associazione Nazionale dei Gesttori delle Autostrade v Government of the Italian Republic, Ministry of Infrastructure and Transport, Ministry of the Economy and Finance and Azienda Nazionale Autonoma delle Strade (ANAS) (C-12/07)

Lodged 19 January 2007

State owned company - Procurement – Competitive tendering

Background
In this reference the Court is asked five separate questions about the application of various Community law rules to a joint-stock company, such as ANAS, which has powers given to it by the Italian legislature, including powers of intervention in the market. It asks whether ANAS could be regarded as an "undertaking" (albeit a public undertaking) for the purposes of Community law and as such be subject to the competition rules. It asks about the compatibility of the Italian legislation providing for a "possible right of compensation" where a public undertaking has a substantial right of expropriation with the right to property under Community law. Also, it asks whether the assignation of public services to such an undertaking without holding a competitive tendering procedure is compatible with Community rules. It goes on to ask whether a Member State may extend the public procurement regime to cover "vertical" transactions put in place by private undertakings, which have been awarded concessions, while at the same time reserving to itself the right to appoint members of a committee to evaluate the tenders submitted by concessions. Lastly the court seeks to ascertain whether the advantageous financial regime in which ANAS operates, including preferential loan rates and public contributions (intended for infrastructure projects but without separate accounting requirements) constitutes State aid.

Link
Opinion

3 COMMUNITY LAW

3.1 Opinion in Willy Kempter KG v Hauptzollamt Hamburg-Jonas Ausfuhrerstattung (C-2/06)

24 April 2007, Advocate General Bot

Review of final administrative decision - Misinterpretation of Community law

Background
This case sought to clarify the judgment of Kühne & Heitz (C-453/00), issued in January 2004. The referring court questioned the jurisprudence on the extent to which an administrative decision, which has become definitive, can later be reviewed to take account of a subsequent interpretation of Community law. Willy Kempter was an exporter of bovine products to various Arab and former Yugoslav countries and received export subsidies (under Regulation 3665/87). The German authorities found that some animals died in transportation and in line with national legislation asked for a refund. On appeal the national court confirmed the demand for reimbursement. A subsequent ruling by the German courts in another case appeared to contradict this ruling and Kempter launched a second case, alleging that the law had changed and demanding a review of the proceedings. Kempter lodged its application for review only 19 months after that judgment was delivered. The question to the Court sought to clarify the extent to which Community law provides for cases to be re-opened when they contradict a subsequent interpretation of Community law, even though the claimant had not relied on Community law in the original case.

Opinion
The Kühne & Heitz ruling states that there is an obligation to reopen such a decision in order to take account of an ECJ ruling if: the power to do so exists under national law; the decision has been the subject of a ruling by a national court of final instance;

that ruling is based on a misinterpretation of Community law arrived at without use of a preliminary reference to the ECJ; and the person in question complained to the public body concerned immediately after becoming aware of the ECJ's ruling. In this Opinion the Advocate General clarified this, stating that the claimant need not have relied on Community-law arguments in his original appeal against the administrative decision in order subsequently to rely on the Kühne ruling. He also considered that it was not contrary to Community law for the Member State to impose a time limit on the exercise of this right, provided this meets the Court's long-standing conditions as to the equivalence and effectiveness of remedies for the enforcement of Community-law rights.

Links
Opinion
Ruling in Kühne & Heitz (C-453/00)

4. EMPLOYMENT

4.1 Action in Commission v Italian Republic (C-46/07)

Lodged on 1 February 2007

Old-age pensions – Discrimination on grounds of gender

Background
The Court is asked whether, by maintaining in force a provision by which public employees are entitled to receive the old-age pension at different ages depending on whether they are male or female, Italy has failed to fulfil its obligations under Article 141 TEC which provides for equal pay for equal work between men and women.

Link
Action

4.2 Reference in Centrum voor gelijkeid van kansen en voor racismebestrijdin v NV Firma Feryn (C-54/07)

Lodged 6 February 2007

Advertising positions – Discriminatory comments – Responding to market demand

Background
The Labour Court in Brussels referred several questions to the ECJ concerning Directive 2000/43 which implements the principle of equal treatment irrespective of racial or ethnic origin. An investigation carried out by a journalist revealed that the head of a company called Firma Feryn did not want to employ Moroccans because he felt that his company's 'clientele would not want foreign fitters or fitters with foreign origins'. The Equal Opportunities Centre (EOC) initiated a case resulting in an out-of-court settlement and a commitment to diversify his recruitment policy. When the firm failed to execute the diversification, a second case was brought in June 2006. The Labour Court acknowledged discrimination but imposed no fines. The EOC appealed on the grounds that Belgian and EU legislation provide for fines in cases of discrimination.

The ECJ is asked to clarify a number of points: whether the exclusive recruitment of native fitters by the employer's company is relevant in assessing whether the employer's recruitment policy is discriminatory; what is meant by 'facts from which it may be presumed that there has been discrimination'; whether a simple, unilateral statement by the employer that he does not, or no longer discriminates, is sufficient in establishing no discrimination; and what constitutes an 'effective, proportionate and dissuasive sanction' in a case such as this.

Link
Reference

5 FAMILY LAW

5.1 Reference in Kerstin Sundelind Lopez v Miquel Enrique Lopez Lizazo (C-68/07)

Lodged 12 February 2007

Divorce – Non-EU residents – Brussels II Regulation - Jurisdiction

The respondent in a divorce hearing is a foreign national who is not resident in, nor a citizen of, any Member State. The Brussels II Regulation (2201/2003) sets down the jurisdiction rules in such cases. It sets down that the court of the state in which the spouses are habitually resident or one or the other has been resident for some time has jurisdiction. The Court is asked whether the case can be heard in a court in a Member State which does not have jurisdiction under Article 3(1) of Brussels II Regulation or if it should be heard in a court in a Member State that may have jurisdiction by application of one of the rules set out in Article 3(1).

Link
Reference

6 TAX

6.1 Judgment in Velvet & Steel Immobilien und Handels GmbH v Finanzamt Hamburg-Eimsbuttel (C-455/05)

19 April 2007, Third Chamber

VAT – Credit guarantees

Background
On 25 September 1998 and 12 July 1999 Velvet & Steel (V&S) concluded contracts entitling it to part of the purchase price of an apartment building in return for assuming various obligations (including an obligation to renovate) relating to the building. Subsequently V&S was released from its obligations in return for payment of lump sums to the proprietors. The profit V&S made from this transaction remained with it as "payment for compensation/indemnity in respect of any loss of profit".

The German tax authorities deemed that taking on the obligation to renovate was a provision of services and therefore subject to VAT. V&S challenged this decision on the basis that neither of the obligations it had assumed had actually been carried out, and they should be classed as "assumptions of obligations" under the provision of

German tax law which transposes Article 13B(d)(2) of the Sixth VAT Directive. The authorities argued that the Directive referred only to pecuniary obligations. The ECJ was asked whether Article 13B(d)(2) was to be interpreted as also including non-pecuniary obligations.

Judgment
The Court accepted that some of the language versions of the Directive referred clearly to pecuniary obligations, while others were more general. It is settled case law however that one language version cannot serve as the sole basis for interpretation nor override other language versions. Given the language difficulties, the text has to be read in context rather than literally and it was clear from Article 13B(d) that it concerned transactions which were financial in nature. The renovation of a building is not financial in the same way as a credit guarantee or the management of investment funds, thus the Court ruled that Article 13B(d)(2) does not include non-pecuniary obligations.

Link
Judgment

6.2 Opinion in Européenne et Luxembourgeoise d'investissements SA (Elisa) v Directeur générale des impôts (C-451/05)

26 April 2007, Advocate General Mazák

Wealth tax – Foreign centre of management - Discrimination

Background
This case concerns a preliminary ruling from the French courts seeking to ascertain the compatibility of French legislation with Treaty provisions on free movement - Articles 43 (prohibiting restrictions on freedom of establishment) and 56 (prohibiting restrictions on the free movement of capital) TEC. The legislation provides for a tax of 3% of the commercial value of immovable property held by legal persons. Exemptions are provided however for companies whose centre of management is in France. In relation to foreign companies, exemptions are provided if there is a double tax convention with the country in which the company is based, such as there is with Luxembourg in this case, which also contains provisions on information exchange. This agreement excludes, however, Luxembourg holding companies, such as Elisa, from the scope of the convention. As such the authorities deemed Elisa not to benefit from the exemptions in the legislation. The French court asked the ECJ to what extent this different treatment of foreign companies conflicted with Treaty rules, and to what extent Directive 77/799 on mutual assistance by Member States' competent authorities precluded them from applying contradictory provisions of bilateral conventions (such as excluding Luxembourg holding companies).

Opinion
The Advocate General noted the claim that the main aim of this legislation was to prevent avoidance of wealth tax. However, the provisions in the TEC regarding free movement of capital (Article 56 et seq. TEC) preclude a Member State from maintaining a tax on the commercial value of immovable property from which companies holding their centre of management in France are exempted, whereas exemption of those having their tax residence in another Member State depends on that country having drawn up a cooperation agreement for exchange of information with France. The Advocate General goes on to state that Directive 77/799 does apply in such a situation, and as such, prevents the application of any bilateral

agreement by Member States to the extent that this would frustrate the proper application of the Directive.

Link
Opinion

6.3 Opinion in Planzer Luxembourg Sarl v Bundeszentralamt fur Steuern (C-73/06)

19 April 2007, Advocate-General Trstenjak

VAT reimbursement – Certificates issued by Member State – Place of business

Background
Planzer is a transport company registered in Luxembourg, which carried out business in Germany and presented the German tax authorities with a request for reimbursements of VAT paid on fuel. Each of these requests was accompanied by a certificate from the Luxembourg tax administration confirming, in terms of Annex B to the Eighth VAT Directive (79/1072), that Planzer was a Luxembourg registered company. On each occasion the German authorities rejected the requests, claiming that Planzer was a Swiss controlled company. The question referred to the ECJ was whether a certificate issued under Annex B as described above has binding effect or creates an irrefutable presumption that the company is established in the Member State issuing the certificate. If not, the Court is asked whether the term "place of business" in Article 1 of the Thirteenth VAT Directive means the location of the registered office, the place where the management decisions are taken or the place from where decisions vital to normal, everyday operation are taken.

Opinion
The Advocate General answered the first question in the negative. Although a certificate is necessary to obtain reimbursement of VAT, it does not in itself create an irrefutable presumption as to the company's country of establishment. While the Advocate General did not wish to doubt the good faith of national authorities issuing such certificates, she noted that for the purposes of fighting VAT fraud, it might sometimes be necessary to carry out further checks on the company in question at the stage of VAT reimbursement. As regards the second question, the Advocate General considered that the true way of determining a place of business was to look at where the actual economic activity takes place and this is identified by having regard to where the manpower and equipment are situated.

Link
Opinion

6.4 Reference in L'Etat Belge v Les Vergers du Vieux Tauves San (C-48/07)

Lodged 5 February 2007

Tax on dividends - Usufruct shareholders

Background
In this reference the Court is asked to determine the compatibility of Belgian tax law with Directive 90/435 (on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States). The specific question is whether a beneficiary of dividends who is not the owner of the

shareholding can be permitted the same tax exemption on those dividends as the actual shareholder would be.

Link
Reference

6.5 Reference in Banque Federative du Credit Mutuel v Ministrie de l'Economie, des Finances et de l'Industrie (C-27/07)

Lodged 26 January 2007

Distribution of profits from subsidiary to parent – Tax credits

Background
The question referred to the Court concerns the situation where profits are distributed from a foreign subsidiary to a French parent company and the French parent company does not distribute those profits on to its shareholders within five years. The legislation provides for an add-back to the taxable income of the French a parent company of 5 % of the tax credits attributed upon the distribution of profits by a subsidiary established in another Member State where those distributed profits have been subject to a withholding tax. After five years the parent is no longer eligible for the tax credit and the national court asks whether the additional 5% taxation is permitted under Article 7(2) of Directive 90/435 (on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States). In particular the court notes the small amount involved and the fact that the credits were given in order to mitigate the double taxation of dividends. Alternatively it asks whether this should be regarded as contrary to Article 4 of the Directive. Article 7(2) provides that the Directive does not affect domestic provisions designed to reduce the economic impact of the double taxation of dividends. Article 4 contains the general provision that Member States should not tax distributed profits received by a parent from a subsidiary or else should allow the tax already paid by the subsidiary to be deducted.

Link
Reference

ANNEX I: CASE TRACKER

"C" indicates a case before the ECJ, whereas "T" indicates the CFI.

Topic	Case	Hearing	Opinion	Judgment
Company				
Inaccurate listings particular	Ntionik and Pikoulas C-430/05		8 March 2007	
Competition				
Privilege of in-house lawyers under EC competition	Akzo Nobel T-253/03 R T-125/03 R			
Unlawful antitrust fines	Holcim C-282/05		11 January 2007	19 April 2007
Constitutional				
Review of final administrative decision, interpretation of EU law, conditions	Willy Kempter KG v Hauptzollamt Hamburg-Jonas Ausfuhrerstattung C-2/06		24 April 2007	
Employment				
Equal pay and working time for men and women	Ursula Voβ v Land Berlin C-300/06			
Discrimination on grounds of disability	S. Coleman v Attridge Law, Steve Law C-303/06			
Minimum daily and weekly rest periods	R v Secretary of State for the Home Department C-294/06			
Employee rights in transfer of undertaking	Jouini and Others C-458/05		22 March 2007	
Retirement rights of employees	Félix Palacios de la Villa v Cortefiel Servicios SA, José María Sanz Corral and Martin Tebar Less C-411/05		15 February 2007	
Social security for migrant workers	Derouin C-103/06	7 March 2007		
UK's Health and Safety at work legislation	Commission v UK C-127/05		18 January 2007	
Family				
Jurisdiction in child welfare cases	Applicant C C-435/06			

Professional Practice				
Second Money Laundering Directive, compatibility with right to a fair trial	Ordre des barreaux francophones et germanophones e.a. C-305/05	12 September 2006	14 December 2006	
Taxation				
Taxation of loans between companies in a group	Thin Cap Group Litigation v Commissioner of Inland Revenue C-524/04		29 June 2006	13 March 2007
Special investment funds and closed ended investment funds	J.P. Morgan Fleming Claverhouse Investment Trust plc C-363/05	13 December 2006	1 March 2007	
Contributions to occupation pension scheme	Commission v Belgium C-522/04		3 October 2006	
UK Corporate tax regime – UK parent and foreign subsidiary	Finanzamt Hamburg-Am Tierpark v Burda Verlagsbeteiligungen GmbH C-284/06			
Autonomous regional tax policies conflicting with national tax law	Unión General de Trabajadores de la Rioja C-428/06			

ANNEX II: OVERVIEW OF THE EUROPEAN COURT OF JUSTICE

This update is a monthly publication summarising the main cases that are being heard by the EU Courts and which are of importance and interest to practising solicitors in the UK and other legal practitioners.

The European Court institution comprises the European Court of Justice (ECJ), the Court of First Instance (CFI) and the Civil Service Tribunal, recently established to deal with staff cases. This update shall only cover the case law of the ECJ and CFI.

The ECJ was established in 1952 under the ECSC Treaty and its competence was later expanded to ensure that the then EEC legislation was interpreted and applied consistently throughout the Member States. While subsequent treaty amendments have further extended the Court's jurisdiction to new areas of EU competence, the Court has also been instrumental, through its judgments and rulings, in furthering the process of European integration. Articles 7, 68, 88, 95, 220-245, 256, 288, 290, 298, and 300 of the Treaty of the EC set down the composition, role and jurisdiction of the Court.

Currently there are 27 Judges (one from each Member State) and 8 Advocates General who are appointed by Member States for a renewable term of six years. The Advocates General assist the Court by delivering, in open court and with complete impartiality and independence, Opinions in all cases, save as otherwise decided by the Court where a case does not raise any new points of law.

The ECJ has competence to hear actions by Member States or the EU institutions against other Member States or institutions – either enforcement actions against Member States for failing to meet obligations (such as implementing EU legislation) or challenges by Member States and institutions to EU legal acts (such as challenging the validity of legislation) – although some jurisdiction for the latter has now passed to the CFI. The ECJ also hears preliminary references from the courts in the Member States, in which national courts refer questions on the interpretation of EU law to the ECJ. The ECJ normally gives an interpretative ruling, which is then sent back to the national court for it to reach a judgment.

The CFI was set up in 1989, creating a second tier of the ECJ. All cases heard by the CFI may be subject to appeal to the ECJ on questions of law. The CFI deals primarily with actions brought by individuals and undertakings against decisions of the Community institutions (such as appeals against European Commission decisions in competition cases or regulatory decisions, such as in the field of intellectual property).

For more detail please refer to the Glossary of Terms at Annex III of this update and the Court's website: http://curia.europa.eu/en/index.htm

ANNEX III: GLOSSARY OF TERMS AND ACRONYMS

THE INSTITUTIONS	
ECJ	European Court of Justice The Court of Justice may sit as a full Court, in a Grand Chamber (13 Judges) or in chambers of three or five Judges. It sits in a Grand Chamber when a Member State or a Community institution that is a party to the proceedings so requests, or in particularly complex or important cases. Other cases are heard by a chamber of three or five Judges. The Presidents of the chambers of five Judges are elected for three years, the Presidents of the chambers of three Judges for one year. The Court sits as a full Court in the very exceptional cases exhaustively provided for by the Treaty (for instance, where it must compulsorily retire the European Ombudsman or a Member of the European Commission who has failed to fulfil his obligations) and where the Court considers that a case is of exceptional importance. The quorum for the full Court is 15.
CFI	Court of First Instance The Court of First Instance sits in chambers composed of three or five Judges or, in certain cases, may be constituted by a single Judge. It may also sit in a Grand Chamber or as a full court in particularly important cases.
Community institutions	The three main political institutions are the European Parliament, the Council of Ministers (comprising Member States) and the European Commission. The ECJ and the Court of Auditors are also Community institutions.
JURISDICTION OF COURTS	
Reference for a preliminary ruling **Article 234 TEC**	As certain provisions of the Treaties and indeed much secondary legislation confers individual rights on nationals of Member States which must be upheld by national courts, national courts may and sometimes must ask the ECJ to clarify a point of interpretation of Community law (for example whether national legislation complies with Community law). The ECJ's response takes the form of a ruling which binds the national court that referred the question and other courts in the EU faced with the same problem. The national court then proceeds to give its judgment in the case, based on the ECJ's interpretation. Only national courts may make a preliminary reference, but all parties involved in the proceedings before the national court, the Commission and the Member States may take part in the proceedings before the ECJ.
Action for failure to fulfil an obligation **Articles 226 & 227 TEC**	Usually the Commission, although also another Member State (very rare in practice) can bring an action at the ECJ for another Member States' breach of Community law. The ECJ can order the Member State to remedy the breach and failing that can impose a financial penalty. Most commonly this concerns a Member State's failure to properly implement a directive.

Action for annulment **Article 230 TEC**	The applicant (Member State, Community institution, an individual who can demonstrate direct and individual concern) may seek the annulment of a measure adopted by an institution. Grounds for annulment are limited to: lack of competence; infringement of an essential procedural requirement; infringement of the Treaty or of any rule of law relating to its application; and misuse of powers.
Action for failure to act **Article 232 TEC**	Either the ECJ or CFI can review the legality of a Community institution's failure to act after the institution has been called to act and not done so. These actions are rarely successful.
Appeals	Appeal on points of law only against judgments of the CFI may be brought before the ECJ.
PROCEDURE	
Written Procedure	Any direct action or reference for a preliminary ruling before the ECJ must follow a specific written procedure. Actions brought before the CFI follow a "written phase".
Hearing	Where a case is argued orally in open court before the ECJ. In the CFI there is an "oral phase" (which can follow on from an initial "written phase") where a case may be argued openly in court.
Opinion of the Advocate General	In open court an Advocate General will deliver his Opinion which will analyse the legal aspects of the case and propose a solution. This often indicates the outcome of a case but the judges are not bound to follow the Opinion.
Judgment/Rulings	Judgments and rulings in both the CFI and ECJ are delivered in open court. No dissenting opinions are ever delivered.
Reasoned order	Where a question referred to the ECJ for a Preliminary Ruling is either identical to a question on which the ECJ has already ruled or where the answer to the question admits no reasonable doubt or may be deduced from existing case law the ECJ may give its ruling in the form of an Order citing previous judgments
TREATIES	
TEC	The Treaty establishing the European Community
TEU	The Treaty on the European Union
ECHR	European Convention on Human Rights

Further information can be found in the "texts governing procedure" section of the ECJ website: http://curia.europa.eu/en/index.htm

EU legislation can be found on the Eur-lex web-site: http://eur-lex.europa.eu/en/index.htm