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The Brussels Office Update Series:

Developments from the European Court of Justice

May 2008

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INTRODUCTION

May – News from the EU Courts

In *Parliament v Council* (C-133/06), the Court annulled provisions of a Directive on the granting and withdrawal of asylum status, stating that Council had exceeded its Treaty powers by inserting in the Directive rules on the adoption of secondary legislation that did not conform to the Treaty. In *Cartesio Oktato es Szolgaltato bt* (C-210/06) Advocate General Maduro clarifies that appellate courts cannot interfere with the discretion of lower courts to make preliminary references to the ECJ.

In *Barrtsch* (C-427/06) Advocate General Sharpston wrestles with the Court's judgment in *Mangold* and clarifies the extent to which general principles of equal treatment and age discrimination rules should apply to pension cases relating to the period before the deadline for the implementation of the Directive on equal treatment (2000/78).

On-line traders will also be interested to read the opinion in *deutsche internet versicherung* (C-298/07) which states that they need not necessarily provide contact information other than an email address. A series of tax cases in section 15 continues the examination of the way profits and losses are to be treated by transnational companies or investment arrangements for tax purposes, and the extent to which Member States can impose restrictions. A challenge to the Emissions Trading Scheme brought by French company Arcelor was also rejected by Advocate General Colomer (C-127/07).

In the case of *Weiss und Partner* (C-14/07), the Court stated that the service of documents from another Member State may not necessarily be refused because an annex to a document, instituting civil proceedings, has not been translated, if it bears a mere evidential purpose and does not prevent a defendant from understanding the claim and asserting his rights.

Coming up in June

The Court will give a ruling in *Commune de Mesquer* (C-188/07), concerning the Erika shipping disaster, in which it was asked to interpret the provisions of Directive 75/442 on waste, in relation to whether heavy fuel oil can be considered waste or whether it becomes waste as a result of a spillage accident. The Court will rule in *International Association of Independent Tanker Owners* (C-308/06) in which the Court is asked to assess the conflict between differing levels of liability specified by Directive 2005/35 (introducing *inter alia* criminal penalties for infringement by companies that discharge pollution into the seas) and the Montego Bay Convention.

A ruling will be issued in *Wood* (C-164/07) on whether or not Community precludes, having regard to the general principle of non-discrimination enounced in Art 7 TEC, a French rule of a compensation fund, which prohibits the payment of compensation to a French national on the death of his father, simply on the grounds of the father's nationality.

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. ASYLUM

1.1 Judgment in Parliament v Council (C-133/06)

6 May 2008, Grand Chamber

Common policy on asylum – Refugee status - Procedure for amending minimum common list

Background
Directive 2005/85 on minimum standards for granting and withdrawing refugee status was adopted on the basis of Article 63 TEC, which is designed to create minimum standards on procedures in Member States for granting and withdrawing refugee status. The Directive dictates that the adoption and subsequent amendment of a common list of safe countries of origin should be by qualified majority vote after consultation of Parliament. The Parliament contests the provisions of the Directive which stipulate its mere consultation and contends that the lists in question should be adopted and amended by the process of co-decision. The Parliament avers that by making use of legal bases contained in this act of secondary legislation, the Council has essentially 'reserved to itself a right to legislate'. Accordingly, the ECJ is asked to determine whether the Council has the lawful right to assign in this way the use of the consultation procedure to the process of adopting and amending the list of safe countries.

Judgment
The Court made reference to the institutional separation of powers and held that according to Community law, each institution is expected to act within the remit of the powers conferred upon it by the Treaty. By introducing within the Directive a process of adopting and amending the list of safe countries which differs to that specified in the Treaty, the Council has gone beyond the powers afforded to it. Were it to be accepted practice to allow the institutions to introduce secondary legal bases, this would amount to affording them a legislative power which is not provided for by the Treaty. Additionally, the principle of institutional balance which calls for each institution to exercise its powers with respect to those of the other institutions would be greatly disturbed. The Court annulled the provisions of the Directive at issue. It stated that in future, the Council must comply with the Treaty when adopting or amending the list of safe countries.

Link
Judgment

2. CITIZENSHIP

2.1 Reference in Blaise Baheten Metock and others v Minister for Justice, Equality and Law Reform (C-127/08)

Lodged 25 March 2008

EU citizen – Spouse of EU national – Rights of residence

This reference from the Irish High Court seeks to clarify the extent to which Member States can impose conditions on the non-EU national spouse of an EU national before granting residence in that country. In particular the court asks about provisions of Directive 2004/38 and whether its provisions should be applied regardless of the means in which the non-EU national entered the Member State and of the fact that marriage to the EU citizen took place after entry into that Member State.

Link
Reference

3. CIVIL JUSTICE

3.1 Judgment in Glaxosmithkline, Laboratoires Glaxosmithkline v Jean Pierre Rouard (C-462/06)

22 May 2008, First Chamber

Enforcement of judgments – Employment contracts – Multiple defendants

Background
The reference stems from a redundancy claim brought by Mr Rouard before a French labour court. The question referred was whether the French or British courts had jurisdiction to deal with a claim by a French employee, who was sent to work for a French company in Morocco. The French company had subsequently transferred the employee to a British subsidiary company in the same group, which agreed to maintain certain aspects of the original contract. Regulation 44/2001 refers to jurisdiction and provides a general rule under Article 6 that, in a claim against multiple defendants, the competent court can be the court of the country where any one of the defendants is domiciled provided that the claims are so closely connected it would be expedient to hear and determine them together. The Regulation contains, however, specific and exhaustive provisions regarding jurisdiction in relation to employment contracts in section 5 (Articles 18 – 21). The companies challenged the jurisdiction of the court. In this context, the ECJ is asked to determine whether the rule of special jurisdiction outlined in Article 6 can apply to employment contracts where two companies established in two different Member States are considered to be the joint employers of the employee in question.

Judgment
Jurisdiction over individual contracts of employment is governed by the exhaustive provisions outlined in section 5 of the Regulation. Unless specifically provided for within this section, derogation from these rules is not possible. The specific jurisdiction rule of Article 6 does not fall within section 5, nor is any reference made to it therein. The rule of special jurisdiction is to be strictly interpreted. Were it to be applied to employment contracts, it would be open for use by both employees and employers. This could potentially conflict with the Regulation's objective of protecting the weaker party, i.e. the employee. For example, an employer could potentially rely on Article 6 to circumvent the provisions outlined in Article 20 of the Regulation which dictate that an employee can only be sued in the Member State in which he is domiciled. Accordingly, the Court came to the conclusion that the rule of special jurisdiction is not applicable to cases concerning individual contracts of employment.

Link
Judgment

3.2 Judgment in Weiss und Partner v Industrie und Handelskammer Berlin (Case C-14/07)

8 May 2008, Third Chamber

Service of documents – Judicial co-operation – Language of documents

Background
A German company, l'Industrie und Handelskammer Berlin, sought damages from an English architect firm for defective building plans. Relying on Regulation 1348/2000 on the service in Member States of judicial and extra judicial documents, the architect firm claimed that it had not been notified effectively of the proceedings against them. Although the main document itself had been translated into English, the annex was in German which it did not understand. It refused service of the document on these grounds. The original building contract had stated that correspondence between the parties and public authorities would be carried out in German and evidence of such correspondence had been adduced in the main proceedings. The ECJ was asked to consider whether a defendant may refuse service of a document instituting civil proceedings from another Member State in circumstances where the receiving party claims not to understand the language of the Member State of origin, even though the receiving party had concluded a contract in which he was required to correspond with other parties in the same language. Even if this is not the case, it was asked whether a contractual agreement to use a particular language would itself prevent the addressee from refusing service of a document.

Judgment
The Regulation refers to the 'document instituting proceedings' but does not refer to its annexes. In the absence of such reference, the Regulation must be interpreted in light of its objectives and context, that being to accelerate transmission of documents. These objectives should not however be reached by undercutting the rights of the defence. As such, where the annex is simply of an evidentiary nature and it does not prevent the recipient from understanding the nature of the claim and still allows for the recipient to assert his rights in the proceedings, refusal of service should not be allowed. It is for the national court whether the content of the translated document is sufficient to allow the recipient to assert his rights. The Court concluded that where the addressee of the document has contractually undertaken to correspond in the language of another Member State, he may not rely on the Regulation in order to refuse acceptance of service of annexes which are written in that same language. Equally such a contractual provision does not give rise to a presumption of knowledge of the language but it is an evidential factor.

Link
Judgment

4 COMPANY LAW

4.1 Opinion in Cartesio Oktato es Szolgaltato bt (C-210/06)

22 May 2008, Advocate General Poiares Maduro

Company law – Rules of incorporation – Freedom of establishment

Background
Hungarian law provides that in order for a company to be incorporated in Hungary, its headquarters must be based there. Cartesio is a Hungarian registered limited partnership with its operational headquarters in Hungary. It wishes to move its headquarters from Hungary to Italy whilst remaining incorporated in Hungary and subject to Hungarian laws. An attempt to have an Italian address entered in the register was refused. Cartesio was informed by the Hungarian commercial court that it could not be registered abroad and remain a Hungarian company. In order for it to transfer its headquarters to Italy, it had first to be dissolved in Hungary and re-established under Italian law in Italy. The ECJ is asked whether such national legislation is compatible with Community law. The Hungarian legal system

allows for orders to make a preliminary reference to be the subject of an appeal. It is asked what extent appellate courts may oblige lower courts to revoke a request for preliminary ruling.

Opinion
Advocate General Poiares Maduro considered that the Community provisions concerning freedom of establishment apply, given that the company wishes to pursue an economic activity in another Member State. He contended that the national rules allow headquarters to be moved only within the Member State and have the effect of treating cross-border situations differently. He condemned the administrative burdens associated with the transfer of operational headquarters from one Member State to another. He criticised the cost and time involved in the dissolution of a company in one Member State prior to it having to reconstitute itself in another. Such national rules, without offering any form of justification, serve to restrict the right to establishment, contrary to Community law. In relation to the preliminary ruling procedure, the Advocate General concluded that as Community law gives any court the right to pose questions for reference to the ECJ, national rules and appellate courts may not compel lower courts to suspend or revoke requests for preliminary ruling.

Link
Opinion

4.2 Reference in SCT Industri Aktiebolag i likvidation v Alpenblume Aktiebolag (C-111/08)

Lodged 9 May 2008

Brussels I Regulation – Insolvency proceedings

The referring court asks whether the exception in the Brussels I Regulation in relation to insolvency applies to cases where a Member State does not recognise the powers of disposal of a liquidator who has transferred ownership of the shares in one company to a company based in another Member State.

Link
Reference

5 COMPETITION LAW

5.1 Judgment in Evonik Degussa v Commission and Council (C-266/06 P)

22 May 2008, Fourth Chamber

Competition - Cartels - Principle of certainty (nulla poena sine lege certa) in relation to fines

Background
This case concerns a price-fixing arrangement between Degussa AG Gmbh (now Evonik Degussa), Nippon Soda Company Ltd and Aventis SA (formerly Rhône-Poulenc) in relation to the market for methionine, an amino acid used in animal feed, from 1986 - 1999. In 2002 the European Commission fined Degussa and Nippon €118,125,000 and € 9,000,000 respectively for their part in the cartel. Aventis SA had participated in the leniency process and been granted full immunity. In the same year Degussa filed an appeal with the CFI seeking to annul the Commission's decision. The CFI rejected Degussa's arguments but did reduce the fine to €91,125,000. In 2006, Degussa filed an appeal against the judgment of the CFI. Degussa called into question the legal basis for the Commission's actions in levying the fine, due to the

fact that the Commission had disregarded the principle of legal certainty, and demanded that the decision be annulled and the fine against them dropped.

Judgment
The Court of Justice dismissed Degussa's appeal in its entirety. In doing so it confirmed the validity of the legal basis on which the Commission issues fines, stating that this does conform to the principle of legal certainty.

Link
Judgment

5.2 Unión General de Trabajadores de la Rioja UGT-RIOJA v Juntas Generales del Territorio Histórico de Vizcaya (C-428/06)

8 May 2008, Advocate General Kokott

State aid - Autonomous regional taxation – Harmonisation of national and regional tax policies

Background
Spanish authorities in the autonomous Basque region possess competence over fiscal matters. They implemented a system of taxation which provides for a lower rate of corporation tax to that within the rest of Spain (32.5% compared to 35%). They also introduced a system of tax deductions to apply within the Basque region which does not exist in Spanish tax legislation. Neighbouring regions and trades unions challenged the differences in taxation. The measures are challenged purely on the basis of the regional selectivity created and not other factors. The national court asks if these provisions are selective tax breaks and therefore a type of State aid as described in Article 87(1) TEC. The court goes on to ask if such measures should, as such, be notified to the Commission.

Opinion
Following on from previous case law of the Court, such as that examining the legitimacy of tax provisions in the Azores, the Advocate General did not condemn the measures in question. She noted that the authorities possessed the necessary powers to adopt such measures and that they were applied in the same way to all companies in the region. While it advantaged local companies, the measures did not favour certain companies in the sense of the State aid rules. The Advocate General noted that for this opinion to hold, the authorities in question had to possess a certain degree of autonomy to legislate on tax matters. Such authorities had to have an independent institutional structure, be free from any decisive influence from central government, have a sufficient degree of discretion to pursue their own fiscal policy objectives and support the cost of such lower taxes from its own resources.

Link
Opinion

5.3 Appeal in Ireland and others v Commission (C-89/08)

Appeal brought 27 February 2008

State aid – Procedural irregularities – New aid – Duty to give reasons

The Commission has lodged an appeal to the CFI's judgment of 12 December 2007 in joined cases T-50/06, T-56/06. T-60/06, T-62/06 and T-69/06, which annulled State aid decisions of the Commission. The Commission alleges that the CFI has committed procedural irregularities by raising points of substance of its own volition, not based on the factual

material in the case file, and has breached the Community State aid rules. In particular the Commission challenges the Court's assertion that it should have given reasons in its decision, claiming that this is not so according to Regulation 659/1999.

Link
Appeal lodged

6 CRIMINAL JUSTICE

6.1 Reference in Dominic Wolzenburg (C-123/08)

Lodged 21 March 2008

Nationality – European arrest warrants

The Rechtbank of Amsterdam refers certain questions to the ECJ in relation to Articles 4(6) and 18 of the Framework Decision on the European Arrest Warrant and the surrender procedures between Member States (2002/584). The ECJ is asked *inter alia* whether a non-national who stays or resides in the executing Member State is to be considered to fall within the scope of Article 18(1) regardless of the duration of the lawful residence in the executing Member State. Among other questions in relation to the arrest of a national of another Member State, the Rechtbank also asks whether national measures specifying the conditions under which a European arrest warrant can be rejected by the judicial authority of the executing Member State come within the scope of the EC Treaty.

Link
Reference

7 DATA PROTECTION

7.1 Opinion in Tietosuojavaltuutettu v Satakunnan Markkinapörssi Oy et Satamedia Oy (C-73/07)

8 May 2008, Advocate General Kokott

Directive 95/46 processing of personal data - Protection of privacy - Freedom of expression

Background
In this case the Advocate General examined the relationship between the protection of personal data and the freedom of expression in relation to the press. The defendant company gathered financial information that was in the public domain from the tax authorities and used this to compile a list containing detailed financial information on the tax returns of over 1.2 million individuals. This list was then published in a newspaper and included the individual's name, address, amount of capital income and salary, as well as details relating to inheritance. This data was then transferred to a sister company who in turn passed this on to a third company who set up a short message service (SMS) system via which the relevant information above could be sent. After an investigation, the Finnish mediator in charge of data protection asked the Finnish Data Protection Commission to prohibit the companies from partaking in a number of activities; including the transfer of the personal data collected for editorial purposes to a third party for commercial uses. This request was rejected. The mediator then took the case to the Highest Administrative Court in Finland. This court made a preliminary reference to the ECJ on the question of whether these activities could be deemed

to be processing of personal data as understood by Directive 95/46. The European Data Protection Supervisor was refused leave to intervene in the case.

Opinion
The Advocate General stated that an activity must be regarded as data processing in a personal matter within the meaning of Article 3(1) of Directive 95/46 when it consists of: a) collecting administrative documents data relating to capital income and salary and using them for publication; b) publishing such data in detailed lists; c) compiling such data on CD:ROMs so that they can be used for business purposes; and d) transferring such information as a follow up to a request received by SMS. Moreover, files which include data not already published and subsequently transferred do fall within the scope of the Directive. The Advocate General argued that the derogation afforded in Article 9 of the Directive in relation to processing of personal information for journalistic purposes, which seeks to reconcile freedom of expression and personal data, applies when the aim of the publication of personal data is to communicate information and ideas on questions of public interest. The Advocate General stated that the Directive is silent as to whether Article 17, on security of processing, as interpreted in conjunction with the principles and purpose of the Directive, precludes the publication of data collected for journalistic purposes and its onward disclosure for commercial purposes. This point must be examined by the Finnish Court taking into account all objective considerations.

Link
Opinion

8 E-COMMERCE

8.1 Opinion in Bundesverband der Verbraucherzentralen und Verbraucherverbände v deutsche internet versicherung (C-298/07)

15 May 2008, Advocate General Colomer

Directive 2000/31 - Electronic commerce - Provision of services via internet

Background
This case concerns the interpretation of the e-commerce Directive on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (2000/31). The defendant company “deutsche internet versicherung” is an insurance company dealing with motor insurance that offers its services solely via the internet. The relevant internet site includes the company’s postal address and e-mail address but no telephone number. The Association of German Consumers brought a case before the regional court in Dortmund asking the court to compel deutsche internet versicherung to publish a telephone number so that potential customers could make direct contact with the company. Moreover the German Consumers Association argued that deutsche internet versicherung should cease trading. The regional court found for the claimants. The Regional High Court annulled the judgment, stating that it was possible to establish direct communication with the service provider via email and that a telephone contact was not required. Moreover an expert witness argued that the company had answered email correspondence directly and swiftly without the involvement of third parties - therefore it could be deemed “direct communication”. The Appeal Court then referred a question to the ECJ asking whether under the Directive a service provider is obliged to provide a telephone number in order to allow for direct and efficient contact; and if not whether a second means of communication needs to be provided.

Opinion
The Advocate General advised the Court that it should state that a service provider is not obliged to provide a telephone number nor a second means of communication, providing that the first means of communication (in this case e-mail) is appropriate and sufficient for the company to respond quickly, directly and efficiently to consumer enquiries.

Link
Opinion

9 EMPLOYMENT LAW

9.1 Judgment in Nancy Delay v Universita degli studi di Firenze (C-276/07)

15 May 2008, Seventh Chamber

Freedom of movement – Employment contracts for language assistants – Acquired rights – Discrimination based on nationality

Background
Ms Delay is a Belgian citizen who was employed as 'foreign language assistant' in Italy under successive fixed-term contracts during 1986 to 1994. In October 1994, her contract was not renewed. Two months later she concluded a contract for an indefinite period with the same teaching institution. Based on certain amendments made to Italian law, her post changed from 'foreign language assistant' to that of 'linguistic associate'. According to the national rules, those who were previously employed as language assistants are entitled to retain the rights they acquired during such employment. Despite performing similar duties to her previous employment, Ms Delay received less in terms of remuneration. She therefore brought an action before the national courts by virtue of which she claimed that her contract should be recognised as having been for an indefinite period from its commencement in 1986 and sought recognition of the rights she had acquired thereafter. In the context of these proceedings, the ECJ is asked whether it is contrary to Article 39 TEC to deny an employee the recognition of their previously acquired rights when their fixed-term employment contract is replaced by one of indefinite duration.

Judgment
Article 39 TEC calls for the abolition of discrimination on grounds of nationality in relation to workers. In order to find that Ms Delay had been subject to such discrimination, it is necessary to assess whether an Italian worker in a similar situation would have been treated differently and whether non-nationals are thereby afforded a lower level of protection. By virtue of national law, a national worker is permitted to have his fixed-term contract adapted into a contract for an indefinite duration and similarly to see his acquired rights guaranteed from the date of his initial employment. The application of this law is however dependent upon there being a continued employment relationship between the employer and employee. Given that there was a two-month gap between the end of Ms Delay's employment as 'language assistant' and the commencement of her employment as a 'linguistic associate', it is for the national court to establish whether a continuity of the employment relationship exists. If a national worker in a comparable situation is entitled to have his acquired rights recognised, it follows that denying the same treatment to a non-national is contrary to Community law.

Link
Judgment

9.2 Opinion in Jörn Petersen v Arbeitsmarktservice Niederösterreich (C-228/07)

15 May 2008, Advocate General Colomer

Unemployment and invalidity benefit – Residence in another Member State

Background
The Austrian court asks the ECJ a question regarding intermediate unemployment benefit paid to persons claiming incapacity while a full analysis of their circumstances is made. Mr Petersen is a German citizen who had been working in Austria. In 2000 he made a claim for incapacity benefit, which was rejected. Pending his appeal, the Austrian authorities authorised unemployment benefits to be paid to him. The benefit is paid without assessment of capacity or willingness to work and is to be set off against any permanent benefit later decided upon. Mr Petersen later informed the authorities of his intention to move to Germany, in the hope that they would continue paying the benefit, but the authorities stopped payments on the grounds of his change of domicile. The question asked is whether such a benefit falls within the meaning of an unemployment benefit in terms of Regulation 1408/71. If so, the ECJ is asked whether Article 39 TEC precludes a national provision which suspends the benefit if the person lives abroad.

Opinion
The Advocate General starts his opinion with a reference to Hamlet, before reaching a finding that Community law should preclude Member States from stopping the grant of such benefits while the recipient is present in another Member State. The Advocate General concludes that the benefit in question does fall within the scope of Article 4 of Regulation 1408/71 and as such should be considered an unemployment benefit. Given Mr Petersen's link to the Austrian social security system and the pending nature of his claim for incapacity benefit, the Advocate General concluded that it should be considered contrary to Community law to suspend such benefits simply because the claimant is staying in another Member State.

Link
Opinion

10 ENVIRONMENT

10.1 Opinion in Société Arcelor Atlantique et Lorraine, et al v Premier Ministre, Ministre de l'Economie, des Finances et de l'Industrie, Ministre de l'Ecologie et du Développement durable (C-127/07)

21 May 2008, Advocate General Maduro

Emissions trading – Equal treatment of sectors

Background
Directive 2003/87, which creates the EU's greenhouse gas emission trading system, was implemented in France by a decree in 2004. A number of companies involved in the steel sector brought an action to have the first article of this measure annulled. According to them, this law violates the principle of equal treatment, given that it applies the scheme to installations in the steel sector but not to those in the aluminium and plastic industries. The applicants relied on a number of fundamental rights contained in the French constitution, such as the right to property, and in particular the right to equality. It is noted that in relation to certain products the different industries in question can be in direct competition. The Court is asked to consider the validity of the Directive in light of this principle and to clarify the sensitive

relationship between Community law and constitutional aspects of Member States' legal systems.

Opinion
The Advocate General concluded that none of the arguments put forward in the case were such as to put into doubt the validity of the Directive.

Link
Opinion

11 EQUAL TREATMENT

11.1 Opinion in Birgit Bartsch v Bosch und Siemens Hausgerate (BSH) Altersfursorge GmbH (C-427/06)

22 May 2008, Advocate General Sharpston

Directives before transposition – Survivors' pensions – Age discrimination

Background
Mrs Bartsch is the widow of Mr Bartsch who was twenty one years senior to her. Mr Bartsch had been employed with BSH at the time of his death in 2004. On his death, Mrs Bartsch applied for a widow's pension. Her application was unsuccessful on the basis of an 'age-gap clause' which stipulated that payments would not be made if the widow was more than fifteen years younger than the former employee. Mrs Bartsch subsequently claimed a breach of the principles of equal treatment, contrary to Article 13 TEC and Directive 2000/78 establishing a general framework for equal treatment in employment and occupation. BSH argue that the provision in question is justified by the need to limit and quantify risks assumed by voluntary pension schemes. It argued Article 13 TEC is an empowering measure and is not directly effective. At the time of the proceedings, the deadline for implementation of the Directive had not yet passed and it had not yet been implemented in Germany. In this context, the German Federal Labour Court asks the ECJ about the extent to which the *Mangold* judgment can be applied to this case and whether Community law contains a general principle prohibiting age discrimination which applies even in cases where the alleged discriminatory treatment is unrelated to Community law. The Court is asked whether these principles have horizontal application between private parties and whether the present situation falls within the scope of Community law.

Opinion
The Advocate General compared the present case to that of *Mangold* which had regarded the principle of non-discrimination on grounds of age as a general principle of Community law. The Advocate General states that the general principles of equality do operate in certain circumstances to prohibit age discrimination but that there has not been a Community rule that always prohibits it. Such general principles, however, operate through the application of Community law. Given that Article 13 TEC is not directly effective and Directive 2000/78 had not reached the end of its transposition period in the present case, the Advocate General did not consider there to be a specific substantive rule of Community law that provided for the application of the equality principle to this case. A Directive cannot provide a direct link to Community law prior to the end of its transposition period. During its transposition period, however, Member States are prevented from adopting measures that are incompatible with the Directive. However, the age-gap clause did not relate to the transposition of a Community law provision, nor was it adopted during the Directive's transposition period. Since the situation at hand does not fall within the scope of Community law, the general principle of equality cannot be applied between private parties. Had the Directive been in force, the

scheme operated by BSH would fall foul of its measures in that by excluding a widow such as Mrs Bartsch from any payment whatsoever it fails the proportionality test, notwithstanding the justification proffered.

Link
Opinion

12 FREE MOVEMENT

12.1 Reference in Nicolas Bressol and Others and Céline Chaverot and Others v Gouvernement de la Communauté française (C-73/08)

Lodged 22 February 2008

Education - Professional qualifications

The reference is made by the Constitutional Court of Belgium. The appellants are part of an autonomous authority responsible for the higher education policies and administration of the same in its territory. The appellants want to know if they can adopt measures regulating and specifically limiting the number of students admissible to certain educational programmes, particularly medical studies, during the first two years of undergraduate studies. The educational programmes concerned are financed principally out of public funds. The region in question has faced a greater influx of students coming from a neighbouring Member State as a result of a restrictive policy practised by that State. The appellants claim that that situation could place an excessive burden on public finances and jeopardise the quality of the education provided. The appellants request clarification on Article 12 and Article 18(1) TEC, in conjunction with Article 149(1) TEC, the second indent of Article 149(2) TEC and the third indent of Article 150(2) TEC.

Link
Reference

12.2 Reference in Commission v the United Kingdom of Great Britain and Northern Ireland (C-122/08)

Lodged 9 May 2008

Community law – Failure to implement Directive 2004/83

By virtue of this reference, the Commission calls on the Court to declare that having failed to take appropriate administrative measures, the UK has failed to fulfil its obligations in respect of Directive 2004/83 on the right of Union citizens to move and reside freely within the EU.

Link
Reference

13 INTELLECTUAL PROPERTY

13.1 Opinion in Sony Music Entertainment (Germany) GmbH v Falcon Neue Medien Vertrieb GmbH (C-240/07)

22 May 2008, Advocate General Colomer

Directive 2006/116 - Copyright - Protection of non-EU rightholders

Background
This dispute between German music producer Falcon Neue Medien Vetrieb GmbH ("Falcon") and Sony Music Entertainment Germany GmbH ("Sony") concerns the distribution of Bob Dylan recordings. Falcon had issued two CDs in the name of Bob Dylan including tracks previously recorded in earlier albums. Sony argued that they had acquired the rights to these songs and that Falcon's actions were in breach of intellectual property laws. Falcon argued that Sony could not claim protection under copyright laws as the recordings in question date from 1964 and 1965 and until 1966 Germany did not have a relevant copyright law. The appeal court found for Falcon, stating that sound recordings prior to 1 January 1966 were not protected in Germany. Sony then requested the appellate court to refer a question to the ECJ as to whether Directive 2006/116, which allows for works protected in one Member State to be protected throughout the EU, applied as they had copyright protection over the Dylan tracks in 1995 in the UK.

Opinion
Advocate General Colomer set out in his opinion that the terms of protection provided for in Directive 2006/116 could apply in this case as although the subject matter had not been protected in the Member State in question, it had been protected in another Member State – the UK. However, the Advocate General confirmed that national provisions governing the protection of rightholders who are not Community nationals do not constitute national provisions within the meaning of Article 10(2) of Directive 2006/116 which deals with this point. Nothwithstanding this provision, the Advocate General made reference to Article 7(2) of the Directive which states that terms of protection, as laid down in Article 3 which deals with duration of protection, shall also apply in the case of rightholders who are not Community nationals, provided Member States grant them protection. Therefore, the Advocate General concluded, it is up to the national judge to consider whether, in accordance with Article 7(2) of Directive 2006/116 and with the international treaties applicable in the domestic jurisdiction, the conditions of protection as laid out in Directive apply to non-Community nationals or not.

Link
Opinion

14 PUBLIC PROCUREMENT

14.1 Judgment in SECAP SpA v Comune di Torino and Santorso Soc. Coop. arl v Comune di Torino (Joined cases C-147/06 and C-148/06)

15 May 2008, Fourth Chamber

Award of contracts - Abnormally low tenders

Background
Directive 93/37 concerning the coordination of procedures for the award of public works contracts applies to contracts whose estimated value is no less than the equivalent of €5,000,000. Italian legislation however, states that contracting authorities are obliged to exclude tenders which are abnormally low except in circumstances where less than five tenders are received. SECAP and Santorso each took part in separate competitive tender procedures announced by the Turin City Council. In both cases the companies' estimated tenders were lower than the relevant thresholds for the Directive to be applicable. According to the Council notices, the contracts were to be awarded on the basis of the lowest price and abnormally low tenders would not be automatically excluded but verified. Both companies' bids were deemed not be abnormally low, but were unsuccessful after other abnormally low

tenders had been verified. SECAP and Santorso brought proceedings against the Council stating that Italian legislation obliged the Council to exclude automatically abnormally low tenders, allowing no discretion for a verification procedure. The matter reached the Council of State which stayed proceedings and referred the matter to the ECJ.

Judgment
The Court stated that the imperative and absolute terms of the national legislation could deprive tendering parties which submitted abnormally low tenders from the opportunity to have their bids verified. Additionally, if the public work contracts have a cross-border connotation attracting operators from other Member States, such restrictive legislation would be considered incompatible with Community law. The contracting authority must also have the power to assess tenders and award the contract by applying principles of lowest price or the most economically advantageous bid. This does not preclude national legislation and the contracting authorities themselves from setting out reasonable thresholds for the automatic exclusion of abnormally low bids. However, those thresholds must be reasonable. For example in situations where an excessively large number of tenders has been received by the contracting authority, The Court stated that it would be reasonable for the contracting authority to exclude automatically abnormally low tenders on the grounds that the process of examination of all bids would exceed its administrative capacities or it would jeopardise the implementation of the project due to the delay in examining the bids. On the basis of this principle, the Court found that Italian legislation, by setting a very low threshold of five valid tenders, cannot be regarded as reasonable. Therefore, the Court stated that the fundamental principles of Community law on freedom of establishment and freedom to provide services do not allow national legislation to impose a duty on contracting authorities to automatically exclude abnormally low tenders, where the number of valid tenders received is more than five and basing the exclusion on a mathematical criteria formulated by the legislation itself, without giving the contracting authority the opportunity to carry out a process of verification and validation of the tenders.

Link
Judgment

15 TAX

15.1 Judgment in Staatssecretaris van Financiën v Orange European Smallcap Fund NV (C-194/06)

20 May 2008, Grand Chamber

Dividends – Compensation – Withholding tax in another Member State

Background
This preliminary reference comes from the Netherlands and concerns the taxation of collective investment funds. These funds are liable to corporation tax at 0%. Tax is paid by investors in the fund, rather than the fund itself, after distribution of the profits. Where dividends are paid to the fund from Dutch companies, tax is deducted at source and later reimbursed to the fund. The tax scheme also compensates these funds for tax levied abroad on the dividends paid out by foreign companies. Tax paid is set off against Dutch tax liability, but as these funds are taxed at 0% no corporation tax is attributable and so no tax credit can be given in respect of foreign dividends. A scheme was introduced to allow credit to be given against any income tax liability of investors in the fund, resident in the Netherlands, which would be due under Dutch legislation or by virtue of a double taxation treaty. Compensation is reduced according to the proportion of investors in the fund who are not resident in the Netherlands. No relevant double taxation treaty was in force with respect to German and Portuguese residents. A

dispute arose as to the tax liability in relation to dividends paid to Orange by German and Portuguese companies and the extent to which the tax concession should be reduced in respect to the fund's non-resident investors. The Dutch court asks whether this is compatible with Article 56 and 58 TEC on the free movement of capital.

Opinion
The Court stated first that the rules on free movement of capital do not prevent Member States from having a tax system that grants such tax concessions in respect of dividends paid from foreign companies, where tax has been withheld at source and where the system limits such credit to the amount that resident would have been credited by virtue of a double taxation treaty. The Court goes on to state, however that Member States cannot put in place a system to the extent that the concession granted is then reduced in proportion to the non-resident investors in the fund. The Dutch system made such reductions to the detriment of all investors – resident and non-resident – without distinction. The fact that certain investors were resident in a country that had in place a tax treaty providing for the crediting of tax deducted was not a relevant factor.

Link
Judgment

15.2 Judgment in Lidl Belgium GmbH & Co. KG v Finanzamt Heilbronn (C-414/06)

15 May 2008, Fourth Chamber

Foreign subsidiary – Offset of losses - Freedom of establishment - Direct taxation

Background
A Convention for the avoidance of double taxation in the fields of taxation of income and capital of businesses and land taxation exists between Luxembourg and Germany. Article 5 of the Convention provides that a taxable person residing in one of the two States, who receives income generated by an industrial or commercial undertaking established in the other State, is only taxable for that income if the undertaking is permanently established in the territory of that State. Lidl Belgium is a distributor of goods and in 1999 it also established itself in Luxembourg. The registered office of Lidl Belgium is in Germany. During the 1999 accounting period, the company's permanent establishment in Luxembourg incurred a loss. In calculating its revenue for the purposes of the German tax authorities, Lidl Belgium sought to deduct the loss incurred in Luxemburg from its tax base. The Tax Office refused to allow the deduction. The Federal Finance Court, to which the case was referred, stayed the proceedings and referred the matter to the ECJ. It asked whether Article 43 and 56 EC preclude national tax legislation from refusing to deduct losses incurred by a company's permanent establishment in another Member State, from the overall taxable income levied on the company, when the same national tax regime allows for the deduction to be made from the taxable income of a resident permanent establishment.

Judgment
The Court ruled that a Member State applying a tax regime that treats taxable entities in different ways depending on whether they are permanently established in its territory or in that of another Member State may discourage a foreign company from setting up permanent business establishments. Therefore, such a tax regime would constitute a restriction on the freedom of establishment. However, restrictions on the freedom of establishment are permissible if justified by overriding reasons of public interest. The Court took the view that to give the right to a company to choose to have its losses deducted from the taxable income payable by it in the Member State where it is established or to have it calculated in another would seriously undermine the allocation of power to levy tax between Member States. It also took the view that there would be the danger that the losses would be calculated twice in both

Member States and the company would achieve an unfair tax advantage in one of the two States. In light of these two arguments the Court stated that the need to safeguard the allocation of the power to tax between Member States and the need to prevent the possibility that the loss may be taken into account twice, constitute justifiable restrictions on the freedom of establishment. Therefore, it stated that Community law does not preclude a tax regime, such as that set up under the double taxation Convention between Germany and Luxembourg, from not allowing a company to deduct the losses incurred by its subsidiary established in another Member State from the taxable income payable by that company in the country where it has its registered office.

Link
Judgment

15.3 Judgment in Ecotrade SpA v Agenzia delle Entrate – Ufficio di Genova 3 (Joined cases C-95/07 and C-96/07)

8 May 2008, Third Chamber

Sixth VAT Directive - Right to deduct VAT- Reverse charge

Background
An Italian company, Ecotrade, traded in ingredients for the manufacture of cement and made a number of shipments in 2000 and 2001 using non-Italian shipping companies. Ecotrade and its suppliers believed such services to be VAT exempt (as shipping) and did not enter them in their VAT returns. The tax authorities inspected Ecotrade and contended that these were services for the intra-Community transport of goods. As such, Ecotrade should have declared the VAT and entered it as input tax, which it would then have been able to deduct as output tax. The company acknowledged the error and there was no suggestion of fraud. In effect its tax liability was the same. The tax authorities demanded payment of the tax concerned but did not allow Ecotrade to deduct the same amounts, as the time limit for doing so, set in the national legislation, had expired. In addition fines were imposed. The Italian court asked whether the Directive allowed Member States to apply a shorter time limit to the right to deduct tax (two years) compared to the longer period within which the tax authorities could demand payment of the tax (four years).

Judgment
The Court, referring to the Sixth VAT Directive, stated that a taxable person has the right to deduct VAT at the moment when the tax becomes chargeable. Furthermore, the taxable person is entitled to deduct VAT which is due or has been paid in the territory of the country in respect of which goods and services are to be supplied to him by another taxable person. However, the Court also stated that the right to deduct VAT cannot be exercised without any time limit as this would be contrary to the principle of legal certainty. Therefore, the Court took the view that the period of two years set by Italian legislation was adequate for allowing a taxable person to deduct VAT. On the other hand, the Court also found that a company or taxable entity cannot be penalised for misunderstanding its accounting obligations, especially when the mistake does not give rise to a risk of tax loss by the authority concerned. The Court stated that the Sixth VAT Directive precludes national legislation from implementing a tax reassessment and recovery practice which penalises a company solely on the grounds of a misunderstanding on its part and which would deny the company its related right to deduct VAT.

Link
Judgment

15.4 Opinion in Belgium v N.V. Cobelfret (C-138/07)

8 May 2008, Opinion of Advocate General Sharpston

Companies - Exemption from taxation

Background
Under Belgian legislation the dividends received from a subsidiary company by the parent company should be included in the tax assessment of the parent company. 95% of the amount of the dividends can be deducted from the parent company's taxable profits. However, the deduction is not cumulative and cannot be used outside the relevant tax period. This means that if in one taxable year the company does not make any profits, it cannot request for the deduction to be applied and in addition, if the deduction exceeds the profits made, the excess amount cannot be carried forward. Cobelfret NV, a Belgian company, received dividends from its subsidiary companies located in both Belgium and the UK. In three separate years Cobelfret reported losses and was not allowed to use the deduction for the corresponding tax periods. However, in 1996 the deduction to which the company was entitled exceeded its taxable profits. The company was unable to carry the excess portion forward to the following year when once again it made a loss. The company brought proceedings against Belgium and it argued that the Member State had not complied with the provisions of Article 4(1) of the Directive 90/435 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States. Article 4(1) provides that where a parent company receives dividends from a subsidiary, the Member State where the parent company resides must either refrain from taxing the profits made from the dividends (exemption method) or tax the profits but allow the parent company to deduct from its taxable base that fraction of corporation tax paid by the subsidiary in relation to the profits made from the dividends (imputation or credit method).

Opinion
Advocate General Sharpston agreed with the claimant and stated that the Belgian tax rules did not implement the methods set out by the Directive. She stated that according to the national rules, dividends received from a subsidiary by a parent company would always be included in the parent company's tax assessment but not always deducted, especially where the parent company has not made taxable profits during the taxable period. This policy would lead to higher taxes and would reduce the amount of loss the parent company could carry forward. The Advocate General found that the Belgian system did not provide for the exemption of dividends as unequivocally expressed by the Directive. Therefore, she concluded that Article 4 of the Directive precludes national legislation from deducting dividends received by a parent company from its subsidiary only in so far as the parent company has made some taxable profits during the tax period considered and where the dividends are first added to the parent company's tax base and then deducted from it only at 95%.

Link
Opinion

15.5 Reference in Commission v Portugal (C-105/08)

Lodged 6 March 2008

Financial services - Tax treatment of foreign income

Background
The Portuguese Code on Corporation Tax (CIRC) sets out provisions for the tax treatment of income relating to interest paid to financial institutions. These provisions allow for a higher tax

to be levied where the financial institution is based outside of Portugal. The Commission has argued that this constitutes a restriction on the provision of loan services, including mortgages, by financial institutions based in another Member State and is seeking an order that this amounts to a failure on Portugal's part to fulfil its obligations under Articles 49 TEC and 56 TEC and Articles 36 and 40 of the EEA Agreement.

Link
Reference

ANNEX I: CASE TRACKER

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

Topic	Case	Hearing	*Opinion*	*Judgment*
Citizenship				
Rights of residence of the spouse of an EU national	Blaise Baheten Metlock v Minister for Justice C-127/08			
Civil justice				
Language of documents served in legal proceedings	Weiss und Partner v Handelskammer Berlin C-14/07		29 November 2007	8 May 2008
Enforcement of judgments – failure to comply with court injunction	Marco Gambazzi v Daimler Chrysler Canada Inc C-394/07			
Mutual recognition of decision on placement of child in custody	A C-523/07			
Consumer				
Right of seller to claim compensation when consumer cancels within "cooling off" period	Messner v Firma Stefan Kruger C-489/07			
Criminal				
Standing in private prosecutions	István Roland Sós C-404/07	19 June 2008		
Prosecution of a national for a crime already prosecuted in another Member State	Staatsanwaltschaft Regensburg v Klaus Bourquain C-297/07		8 April 2008	
Prosecution of a national for a crime already prosecuted but discontinued in another Member State	Vladimir Turansky C-491/07			
Employment				
Discrimination on grounds of disability	S. Coleman v Attridge Law, Steve Law C-303/06	9 October 2007	31 January 2008	
Indefinite sick leave	Stringer v HMRC C-520/06	20 November 2007	24 January 2008	
Indemnity for commercial agents	Turgay Semen v Deutsche Tamoil GmbH C-348/07			
Right to claim unemployment benefit	Jorn Petersen v Arbeitsmarktservice		15 May 2008	

while residing in another Member State	Niederosterreich C-228/07			
Legality of national legislation enforcing obligatory retirement ages	Age Concern England v Secretary of State for Business, Enterprise and Regulatory Reform C-388/07			
Freedom of information				
Access to European Council documents	Sweden and Maurizio Turco v Council Joined Cases C-39/05 and C-52/05		29 November 2007	
Free Movement				
Failure to implement Directive 2004/83 on the right of Union citizens to move and reside freely within the EU	Commission v UK C-122/08			
Immigration				
Power of Council to legislate on immigration issues	Parliament v Council C-133/06		27 September 2007	6 May 2008
Intellectual property				
Entitlement to copyright protection of new media	Sony Music Entertainment v Falcon Neue Medien Vertrieb GmbH C-240/07			22 May 2008
Professional Practice				
Privilege of in-house lawyers under EC competition	Akzo Nobel T-253/03 R T-125/03 R Appeal notice 8 December 2007 (C-550/07)	28 June 2007		17 September 2007
Setting of mandatory minimum lawyers' fees	Hospital Consulting Srl C-386/07			
Local conditions on temporary provision of patent lawyers' services	Commission v Austrian C-564/07			
State aid				
Calculation methods for recovery of aid	Département du Loiret v Commission C-295/07	4 June 2008		
Taxation				
Corporate tax regime – parent and foreign subsidiary	Finanzamt Hamburg-Am Tierpark v Burda Verlagsbeteiligungen GmbH C-284/06		31 January 2008	

Autonomous regional tax policies conflicting with national tax law	Unión General de Trabajadores de la Rioja C-428/06		8 May 2008	
Offsetting of profits and losses	Société Papillon v Ministère du budget C-418/07			
Tax treatment of charitable donations to foreign entities	Hein Persche v Finanzamt Lüdenscheid C-318/07	17 June 2008		
VAT applicable to UK postal services	TNT Post UK Ltd v HMRC and Royal Mail Group Ltd C-357/07	18 June 2008		
Entitlement of bookmakers' agents to VAT exemptions	Tierce Ladbroke SA v Belgium C-232/07			
Transport				
Air passenger rights when flight cancelled	Eivind F Kramme v SAS C-396/06		27 September 2007	
Imposition of public service obligations on publicly-run bus company	Antrop v Council C-504/07		1 April 2008	

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 *Judgment*s 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, *Opinion*s 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 *Opinion*s 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 *Judgment*s
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