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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

September – News from the EU Courts

The UK regulations concerning mandatory retirement seem to have been granted a preliminary reprieve this month when Advocate General delivered the opinion in *The Incorporated Trustees of the National Council for Ageing (Age Concern)* (C-388/07). This case questions the validity of UK rules allowing employers to require workers to retire at the age of 65. It was found that the justifications for less favourable treatment in the UK legislation were not contrary to EU age discrimination rules.

Lawyers might need to consider more carefully the drafting of arbitration clauses in commercial agreements following the Advocate General's opinion in *Allianz SpA and Others v West Tankers Inc* (C-185/07). The opinion concluded that according to the Brussels Regulation, anti-suit injunctions could not be brought to stop litigation in another Member State, even if that litigation had been commenced contrary to an existing arbitration agreement.

The Court delivered an interesting ruling in *Union General de Trabajadores* (C-428/06), concerning whether autonomous regions in Member States are allowed to apply different tax rates or whether this constitutes unlawful State aid. The Court clarifies the degree of autonomy from central government that such regions must have before such measures will not constitute State aid. Such developments will doubtless be of interest to those considering possible tax variations within some of the UK devolved administrations.

The CFI also rejected the claim for damages that had been brought by tour operator, MyTravel, in respect of its merger with First Choice, which had wrongly been blocked by the Commission. In *Mytravel v Commission* (T-212/03) it was held that the Commission's error had not been sufficiently serious as to incur the non-contractual liability of the Community. This emphasises the high margin of error that has to be met before the Court will order the Commission to pay out damages in relation to merger decisions.

Coming up in October

In October, the Court is set to give a ruling in *Heinrich Bauer Verlag* (C-360/06). This case concerns the valuation of unlisted shares in a company and the difference in valuation given to a financial interest in a German partnership compared to that in another Member State and whether this is compatible with Articles 43 TEC and 48 TEC.

Individuals and organisations wishing to make charitable donations to charities outwith their home Member State should pay attention to the expected opinion in Hein *Persche v Finanzamt Lüdenscheid (C-318/07)*. This will look at the legality of taxing donations to charities in the home Member State differently to those made to charities in other Member States.

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. ARBITRATION

1.1 Opinion in Allianz (formerly Riunione Adriatica di Sicurta Spa) and Others v West Tankers Inc (C-185/07)

4 September 2008, Advocate General Kokott

Anti-suit injunctions - Brussels I Regulation – Arbitration agreements

Background
This case concerns the prohibition on commencing or continuing proceedings in one Member State where this would be a breach of an arbitration agreement in another. It stems from a preliminary reference made by the House of Lords. The facts of the case centre on a shipping accident which took place in Italy in 2000 where a vessel owned by West Tankers Inc and chartered by Erg Petroli collided with Erg's jetty in Syracuse. Erg made a claim against its insurer, Riunione Adriatica di Sicurtà SpA, (since 1 October 2007 Allianz SpA), which paid compensation for the damages arising up to the insurance ceiling. Erg also took arbitration proceedings against West Tankers for the uninsured losses under their charterparty agreement in London. Allianz also sued West Tankers in Italy for recovery of the amount paid to Erg. In 2004 the English High Court heard an application made by West Tankers seeking an injunction against Allianz from bringing the action in Italy. West Tankers argued that the subject matter of the case was covered by the charterparty agreement and was thus covered by the arbitration clause in that agreement. An anti-suit injunction was subsequently issued against Allianz but on appeal to the House of Lords a question arose as to whether it is consistent with Regulation 44/2001 for a court of a Member State to make an order to restrain a person from commencing or continuing proceedings in another Member State on the ground that such proceedings are in breach of an arbitration agreement.

Opinion
Advocate General Kokott gave the opinion that Regulation 44/2001 does preclude a court of a Member State from making such an order restraining a person from legal proceedings in another Member State because of an existing arbitration clause. The Advocate General concluded that the important factor was not whether the anti-suit injunction fell within the scope of the Regulation, but whether the proceedings being commenced in the other Member State did. Therefore the Regulation should not apply in the same way to court proceedings brought as part of the arbitration itself. It was for national courts, in the context of the litigation in question, to decide whether they had jurisdiction and how to proceed on the basis that the contentious facts were subject to an arbitration clause. The Advocate General appeared to be of the view that most courts would not ignore the fact that a matter should be referred to arbitration if the relevant provision in the agreement was clear as to its scope.

Link
Opinion

2. COMPETITION LAW AND STATE AID

2.1 Judgment in Sot.Lelos kai Sia EE and Others v GlaxoSmithKline AEVE Farmakeftikon Proïonton (C-468/06)

16 September 2008, Grand Chamber

Article 82 TEC – Abuse of dominant position – Pharmaceutical products

Background
In November 2006 a reference for a preliminary ruling was made by the Greek Court of Appeal. The question referred was whether it was the responsibility of national competition authorities to apply Community competition rules in the same way to all markets, and particularly in relation to the different national pharmaceutical markets, where there is considerable State intervention affecting prices. The reference sought to ascertain whether there had been an abuse of a dominant position by GlaxoSmithKline because of its refusals to meet fully orders placed with it by pharmaceutical wholesalers. It was argued that such refusals were motivated by the intention to limit export activities and thereby reduce competition from parallel trade. The ECJ was essentially being asked whether such refusals to supply by a dominant firm resulting in a limitation of parallel trade constituted an abusive practice.

Judgment
In its judgment the Court considered whether there were particular circumstances in the pharmaceuticals sector which would justify a refusal to meet orders. On the basis that the parallel export of pharmaceutical products from a Member State where the prices are low to a Member State in which the prices are higher would enable buyers to tap into an alternative source of supply, it was held that parallel exports should be seen as more than just of minimal benefit to the final consumers. The Court held that in the ordinary course of things a refusal to supply by a dominant company in order to prevent parallel exports would constitute an abuse. The Court went on to state that companies may nevertheless react in a reasonable and proportionate way to protect their commercial interests when confronted with significant orders placed by a wholesaler for the purposes of export. In other words, a company holding a dominant position may not refuse to meet its regular orders as a means to put a stop to parallel exports. It is however for the national authorities to determine whether in fact the orders are "ordinary" in terms of the previous business relations between the wholesaler and the pharmaceutical company concerned.

Link
Judgment

2.2 Judgment in MyTravel v Commission (T-212/03)

9 September 2008, Court of First Instance

Damages – Rejection of merger – Non-contractual liability

Background
In 1999 the European Commission found that the proposed merger between MyTravel (previously Airtours) and First Choice would have been incompatible with the common market as it would have created a collective dominant position in the UK market for European package holidays. MyTravel sought to overturn the decision before the CFI, which annulled it on 6 June 2002. MyTravel then brought a case before the CFI to claim compensation for the loss caused by the Commission's incorrect decision.

Judgment
The Court confirmed the circumstances in which individuals can seek damages from the Community institutions in relation to non-contractual liability when they commit a sufficiently serious breach of a law that is intended to confer rights on individuals. The institution needs, however, to have "manifestly and gravely disregarded" the limits of its discretion before this liability is engaged. The Court noted that the fact that the Commission's merger decision was annulled was not in itself sufficient to make the Commission liable for damages. The Court pointed out that, in considering whether the Commission had committed sufficiently serious errors, it was important to consider: the complexity of merger cases; the time constraints

placed on the Commission; and the margin of discretion enjoyed by the Commission in analysing individual cases. Because the Commission had conducted a proper examination of the merger application and followed the procedure correctly, it could not be held liable if its conclusion was incorrect. While setting the Commission a relatively high threshold before it could be found liable, the Court did note that such liability could be engaged if there are manifest and grave defects in the Commission's economic analysis of a merger.

Link
Judgment

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

11 September 2008, Third Chamber

State aid - Autonomous region – Differing taxation levels

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 proscribed in Article 87(1) TEC.

Judgment
Following on from previous case law of the Court, such as that examining the legitimacy of tax provisions in the Azores, the Court looked again at the criteria for determining whether such a tax constituted a selective State aid. In order not to, the region in question must enjoy a high degree of autonomy from central government. While leaving the national court to determine aspects of the case, the Court did find that the regions in question were autonomous from an institutional point of view (a distinct political status from central government). It also found them to have procedural autonomy from central government, as it appeared that the final decision to adopt this rate of tax was made entirely by the regional government. The Court noted this autonomy is not affected by the existence of any conciliation procedures that exist to resolve potential conflicts with national legislation, provided the final decision still rests with the regional government. Finally, in order not to constitute State aid, the region must be economically and financially autonomous. The Court decided that it was for the national court to determine whether the reduced tax rate was in anyway offset by other arrangements, such as the size of the region's contribution to central government or social security arrangements, thus constituting compensation.

Link
Judgment

3. COMMON FOREIGN AND SECURITY POLICY

3.1 Judgment in Kadi and Al Barakaat International Foundation v Council (Joined Cases C-402/05 and C-415/05)

3 September 2008, Grand Chamber

Restrictive measures against persons – Terrorism – UN Resolutions

Background
The United Nations Sanctions Committee designated Mr Kadi and the Al Barakaat International Foundation as associated with Usama bin Laden, Al-Qaeda or the Taleban. In accordance with resolutions of the Security Council, UN Member States must freeze the funds and other financial resources of such persons or entities. To give effect to the resolutions, the Council amended Regulation 881/2002, ordering the freezing of funds and economic resources of the persons and entities listed, in order to include the claimants. The CFI rejected Mr Kadi's and Al Barakaat's action for annulment of the Regulation. It ruled that in principle the Community courts have no jurisdiction, except concerning *jus cogens*, to review the validity of the Regulation as Member States are bound to comply with Security Council resolutions according to the Charter of the United Nations, an international treaty which prevails over Community law.

Judgment
While the ECJ confirmed that the Council was competent to adopt the Regulation, it set aside the CFI judgment. It found that Community courts must ensure the review of the lawfulness of all Community acts in the light of the fundamental rights which form an integral part of the general principles of Community law. This includes the review of Community measures which are designed to give effect to resolutions adopted by the Security Council. It annulled the Regulation in so far as it froze Mr Kadi's and Al Barakaat's funds as their rights of defence, including the right to be heard, and the right to an effective legal remedy had not been respected. Indeed, the Regulation had no procedure for communicating the evidence justifying the inclusion of the names of the persons concerned in the list. Moreover, the lack of guarantee, enabling the case to be put in the circumstances, constituted an unjustified restriction on the right to property. The Court maintained the effects of the Regulation for a period of three months in order to allow the Council to remedy the infringements.

Link
Judgment

4. EMPLOYMENT & EQUAL TREATMENT

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

23 September 2008, Grand Chamber

Effect of directives before transposition – Survivors' pensions – Age discrimination

Background
Mrs Bartsch is the widow of Mr Bartsch who was twenty-one years her senior. 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 argued that the provision in question was 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.

Judgment
The Court found itself in agreement with the earlier opinion of Advocate General Sharpston and 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 Court found that the general principles of equality do operate in certain circumstances to prohibit age discrimination but that there was not a general Community rule prohibiting it. Such general principles operate only through the application of other Community laws. 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 Court 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. During a Directive's transposition period, Member States are prevented from adopting measures that are incompatible with the Directive but the age-gap clause did not relate to the transposition of Community law nor was it adopted during the Directive's transposition period. Since the situation at hand did not fall within the scope of Community law, the Court could not apply the general principle of equality. Had the Directive been in force, the scheme operated by BSH would have fallen foul of it.

Link
Judgment

4.2 Opinion in The Incorporated Trustees of the National Council on Ageing (Age Concern) v Secretary of State for Business, Enterprise and Regulatory Reform (C-388/07)

23 September 2008, Advocate General Mazák

Compulsory retirement – Age discrimination – Validity of UK Regulation

Background
Directive 2000/78 outlaws various forms of discrimination in the workplace, including age discrimination. In 2006 the UK implemented aspects of this Directive concerning age discrimination through the Employment Equality (Age) Regulations. Provision was made in Regulation 30, however, for the compulsory retirement of employees, stating that dismissal of a person for reasons of retirement was lawful when that person was of the age of 65 or over. Age Concern challenged the legality of the Regulation in question, arguing that it was invalid in light of the Directive. It argued that the Directive did not permit Member States to introduce a general justification for discrimination but rather that they had to list those acts of less favourable treatment that may be justified by the employer.

Opinion
Advocate General Mazák dismissed the argument of Age Concern that, in terms of the justifications given for any differences in treatment, the UK Regulations were not sufficiently precise to be valid. He concluded that the implementing legislation did not have to specify a list of the types of less favourable treatment that could be justified. It was sufficient to make an allowance for differences in treatment that constitute a proportionate means of achieving a legitimate aim. The Advocate General did not think, in principle, that the provisions of the UK Regulation, allowing employers to force retirement, were contrary to Community law, provided that they could be objectively justified in the context of national employment and labour market

policy, and that the means used to achieve the policy objective were not "inappropriate and unnecessary for the purpose".

Link
Opinion

4.3 Opinion in Mirja Juuri v Fazer Amica Oy (Case C-396/07)

4 September 2008, Advocate General Colomer

Acquired rights – Contemporaneous timing of transfer and new collective agreement

Background
This case concerns the timing of changes to an employment relationship and the timing of a transfer of a business. Mrs Juuri had been an employee in the restaurant of a business that operated in the metallurgical sector. Her terms and conditions were fixed through a collective agreement covering the metallurgical sector, which was due to expire on 31 January 2003. On 12 December 2002 a new collective agreement for the sector was agreed and was to take effect on 1 February 2003. On 1 February, however, the company transferred its restaurant service to another company and the workers concerned were made subject to a collective agreement applying to the hotel and restaurant sector. This saw Mrs Juuri's salary decrease, allegedly by 300 euro per month, her having to work at other sites and a further 100 euro decrease in salary due to shorter working hours. Mrs Juuri resigned on 19 February 2003 and has pursued a claim for compensation to the Finnish Supreme Court for what she views as an illegal breach of contract by her new employer.

Opinion
The coincidence of timing of the transfer and the end of the collective agreement raised doubts for the Finnish courts, particularly in relation to the need to compensate the worker. While Directive 2001/23 on acquired rights states that the new employer need only respect existing collective agreements until they expire, it also states that any substantial detrimental change in the worker's working conditions resulting from the transfer shall be regarded as a termination of the contract by the employer. The Advocate General concludes that it is for the national court to determine whether the transferee and transferor colluded to evade the objective of the law (*fraude à la loi*). If so, he considered that the collective agreement should not necessarily be considered to end on the date set for its expiry and therefore that this could constitute a breach of Article 3(3) of the Directive, which requires the transferee to respect existing collective agreements. In terms of the resultant responsibilities on the employer and the need to compensate the worker financially, the Advocate General conducted a thorough examination of Community law and the intention of the Directive. He concluded that Article 4(2) merely attributed responsibility to the employer when the contract is terminated because of substantial detrimental change, rather than determining the legal consequences of this. It was for the national court to determine the extent of this responsibility in light of Article 3 and of any aggravating or attenuating circumstances allowed in national law.

Link
Opinion

4.4 Reference in Colin Wolf v Stadt Frankfurt am Main (C-229/08)

Lodged 28 May 2008

Age discrimination – Upper recruitment age - Mandatory retirement age

The German national court asks a number of detailed questions of the Court, seeking an interpretation of Directive 2000/78 establishing a general framework for equal treatment in employment and occupation. In particular it seeks a ruling on whether the setting of a maximum age for the recruitment of employees is permissible. The German court goes on to ask whether it is a legitimate aim to seek to engage officials who will be in service for as long as possible and whether such age limits could be linked to various aspects of pension entitlement.

Link
Reference

4.5 Reference in Francisco Vincente Pereda v Madrid Movilidad S.A. (C-277/08)

Lodged 26 June 2008

Injury at work - Holiday entitlement - Carry over to subsequent year

This is a Spanish reference concerning Article 7(1) of Directive 2003/88 on working time. The reference asks whether an employee who has booked annual leave, which he subsequently cannot take due to an accident in the workplace before the period of leave, has the right to carry over the particular period of annual leave, even when the year in question has ended.

Link
Reference

4.6 Reference in Dr Susanee Gassmayr v Bundesministerin für Wissenschaft und Forschung (C-194/08)

Lodged on 9 May 2008

Workers – Pregnancy - Health and safety conditions

The referring court asks whether the measures in Directive 92/85, on health and safety conditions at work for pregnant workers who have recently given birth, have direct effect. If so, it asks whether it is to be inferred that there is an on-going liability to pay expectant mothers an allowance for on-call duties while they are on maternity leave.

Link
Reference

5. ENVIRONMENT

5.1 Judgment in Gävle Kraftvärme v Lansstyrelsen i Gavleborgs lan (C-251/07)

11 September 2008, Fourth Chamber

Environment – Incineration of waste – Directive 2000/76

Background
A Swedish company, Gävle Kraftvärme is the operator of the production plant for Gävle's district heating network. It applied to the national environmental court for permission to extend the existing solid-fuel furnace plant to operate at a higher capacity. In its application, it made reference to the addition of two new furnaces (one waste and one biofuel), both of which it stated as being "co-incineration" plants. The court confirmed this classification. The regional

authority appealed the ruling, however, and it was subsequently held that the existing furnace was to be classified as a "co-incineration" plant, and the second furnace (waste) as an "incineration" plant. Gävle Kraftvärme appealed the decision of the Court of Appeal before the Supreme Court. Given that the classification of the installation determines the requirements for the operation of a production plant, the Supreme Court stayed the proceedings and sought a ruling from the Court. In its referral, the Supreme Court asked whether or not in a combined power and heating plant, each individual furnace is to be assessed as a separate plant for the purposes of Directive 2000/76 on the incineration of waste. The referring court also sought clarification as to whether a plant which is constructed for waste incineration but which functions primarily in the production of energy is to be classified as an incineration plant or a co-incineration plant.

Judgment
The Court held that in a co-generation plant each individual unit/furnace is to be treated as a separate plant for the purposes of classification. To allow the units to be classified as a single whole could enable a plant to evade the stricter rules that apply to an incineration plant if it was classified on the whole as a co-incineration plant. In relation to the Supreme Court's second point, the Court held that the competent authority would need to look at the plant's main purpose in order to determine its classification as an "incineration plant" or a "co-incineration plant". In assessing its main purpose, the Court stated that account should be taken of various factors, such as the volume of energy generated by the plant and the material products produced by the plant in relation to the quantity of waste incinerated.

Link
Judgment

6. FREE MOVEMENT AND FREEDOM OF ESTABLISHMENT

6.1 Judgment in Petersen (C-228/07)

11 September 2008, Third Chamber

Freedom movement of persons – Incapacity benefits

Background
The Austrian court asked the ECJ a question on unemployment benefits paid in advance to persons claiming incapacity before a full analysis of their circumstances can be made. The benefit was paid on the basis that the person was unemployed and had completed a minimum eligibility period. Following an assessment of his capacity to work the benefit was to be offset against any permanent benefits granted. The question asked was whether such a benefit was an unemployment benefit in terms of Regulation 1408/71. If it was, the ECJ was asked whether Article 39 TEC precluded a national provision which suspended the benefit if the person lived abroad.

Judgment
The ECJ considered that the purpose and object of the advance unemployment benefit was to replace the remuneration lost by reason of unemployment and thereby provide for the maintenance of the unemployed person. It considered that it was paid in the same way as unemployment benefit. It therefore found that although it was linked to an application for incapacity benefit, it was directly related to the risk of unemployment and was therefore an unemployment benefit in terms of Regulation 1408/71. The ECJ ruled that Article 39 TEC prevents a Member State from making the grant of such an unemployment benefit subject to a residence condition, inasmuch as no argument had been put forward to show that such a condition was objectively justified and proportionate. A provision of national law must be

regarded as indirectly discriminatory if it is intrinsically liable to affect migrant workers more than national workers and if there is a consequent risk that it will place the former at a particular disadvantage.

Link
Judgment

6.2 Judgment in Commission v Germany (C-141/07)

11 September 2008, Fourth Chamber

Article 28 TEC – Cross-border provision of medicinal products

Background
German law on pharmacies allows hospitals to use external providers rather than setting up their own pharmacy. Certain duties are placed on external providers, such as requiring them to be situated within a close proximity of the hospital which they supply. This makes it practically impossible for these services to be provided by pharmacies outwith the vicinity of the hospital, meaning that pharmacies from other Member States have been unable to supply German hospitals. Article 28 TEC prohibits all measures hindering intra-Community trade, and the Commission sought to declare that the German legislation constituted a failure to fulfil these obligations. While restrictions on trade can be justified by overriding public-interest grounds, the Commission argued that those in force in Germany were not suitable, necessary nor proportionate.

Judgment
The Court held that German legislation did indeed violate Article 28 TEC as the rule had equivalent effect to a quantitative restriction on the free movement of goods. The Court continued, however, that this was justified. The duties imposed on external providers of pharmacies for hospitals could be justified by the need to protect public health, guaranteed by Article 30 TEC.

Link
Judgment

6.3 Opinion in Commission v Austria (Case C-161/07)

18 September 2008, Advocate General Poiares Maduro

Accession country workers – Freedom of establishment – Unjustified restriction

Background
This case relates to the derogations to the free movement of workers rules, which were authorised for a transitional period in relation to workers from the accession states in 2004. Austria took up these derogations to treat most workers from those acceding Member States (except Malta and Cyprus) in the same way as workers from third countries. Austrian employment law attempts to define in what circumstances a worker is deemed to be in an employment relationship. This includes a presumption that members of partnerships and partners holding a minor stake (less than 25%) in a limited liability company are in an employment relationship when they perform activities for that business that are typically performed in a work relationship. Partners can rebut such a presumption by requesting a determination by the Austrian labour market service. Such a determination is, however, required when a citizen of a 2004 EU accession country attempts to register a company or partnership. An exemption from this can be obtained if the individual has worked and resided

legally in Austria for a five-year period. Given the Austrian restrictions on workers from the countries in question, it was exceedingly difficult to exercise an activity in Austria.

Opinion
The Advocate General noted that the freedoms of establishment and of movement for workers constitute two separate Community freedoms. The aforementioned derogation only permitted Member States temporarily to restrict the free movement of workers. The Advocate General believed that, in respect of citizens of the acceding states, the Austrian provisions constitute an unjustified restriction on the freedom of establishment. The Austrian legal definition of worker was found to be wider than under Community law. It was extended to individuals, such as minority partners, who were exercising their freedom of establishment, in addition to those who were relying on their rights of free movement as a worker. Whilst this posed no problems for individuals from other Member States, it had the effect of preventing nationals of the 2004 accession countries from exercising their freedom of establishment. This was something for which Community law did not provide a derogation. Consequently, the Advocate General found that the provision was contrary to Article 43 TEC.

Link
Opinion

6.4 Reference in Miloud Rimoumi and Gabrielle Suzanne Marie Prick v Ministre des Affaires étrangères et de l'Immigration (C-276/08)

Lodged on 26 June 2008

Freedom of establishment - Family reunion

The reference by the Luxembourg Tribunal Administratif concerns Articles 2(2)(a), 3(1) and 7(2) of Directive 2004/38 on the right of citizens and their families to move and reside freely within the territory of the Member States. Specifically, the question asks at what stage a non-EU family member must join an EU citizen in order to benefit from the various EU provisions on rights of residence i.e. whether this can be before or after the EU citizen has exercised his rights of free movement and become established in another Member State. If an EU citizen has become established in another Member State, it asks whether he is entitled to be joined by a family member thereafter without them having to fulfil other conditions.

Link
Reference

6.5 Reference in London Borough of Harrow v Nimco Hassan Ibrahim and Secretary of State for the Home Department (C-310/08)

Lodged 11 July 2008

Non-EU family members – Conditions of residence

The case brought by the London Borough of Harrow concerns the situation where an EU national is joined in a Member State by a non-EU national spouse and their EU national children. Specifically, the point of referral relates to circumstances where the EU national has left the Member State in question but the non-EU national spouse and children have chosen to remain there and in doing so, are dependent upon social assistance. The Court is asked whether in that situation the spouse and children have to satisfy certain conditions in order to enjoy a right of residence in the Member State or whether they automatically enjoy such a right derived from Community law.

Link
Reference

7. HUMAN RIGHTS

7.1 Reference in Rosalba Alassini v Telecom Italia SpA (C-317/08)

Lodged 15 July 2008

Human Rights – Article 6 ECHR - Direct effect – Electronic communications

This is an Italian case concerning Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and Community legislation on electronic communications. It asks whether Article 6 (right to a fair trial) has direct effect in Community law and, if so, whether provisions concerning mandatory mediation in relation to disputes between operators and end users are compatible with this.

Link
Reference

8. INTELLECTUAL PROPERTY

8.1 Opinion in Verein Radetzky-Orden v Bundesverinigung Kameradschaft 'Feldmarschall Radetzky'(C - 442/07)

18 September 2008, Advocate General Mazák

Trade marks - Notion of genuine use - Non-profit making association

Background
This case concerned the use of trade marks by a military charity in Austria. The charity had a trade mark over words and figurative marks registered for various classes of use. The Austrian trade mark authority revoked the trade mark in respect of use for education, training, entertainment, sporting and cultural activities and the organisation of military events. It argued that the charity was a non-profit making organisation and therefore could not use the trade mark in that way. The argument was essentially that a purely non-profit making organisation, whose main activity was collecting and distributing donations, could not be protected by trade mark law in these areas. The charity lodged an appeal and the Court has been asked to determine whether or not Directive 89/104 could be construed as meaning a trade mark is genuinely used by a charity where it is used on advertising material, on business paper and in announcements for events.

Opinion
The Advocate General noted that the concept of genuine use does not exclude use by a charity of its own trade mark when advertising its services. He noted that the trade marks in this case were used by the charity for soliciting donations, on its literature and in publicity for its events. Advocate General Mazák noted that genuine use of a trade mark by a charity would depend on the type of activities which the charity was engaged in and that the way in which it provides goods and services should be taken into account. The Advocate General stated that he believed use of a trade mark by a charity when collecting donations from the public and distributing them to charitable causes indicates to donors the identity of the charity in question and the purposes for which the donations are used. This therefore does constitute

genuine use of a trade mark within the meaning of the Directive and consequently the Advocate General believed that the court should reinstate the trade mark in question.

Link
Opinion

8.2 Reference in Google France, Google Inc. v Louis Vuitton Malletier (Case C-236/08)

Lodged 3 June 2008

Advertising – Search engines – Reproducing or imitating registered trade marks

This case concerns the possible infringement of the exclusive right guaranteed to the owner of a trade mark in the context of online search engines – in this case Google. This preliminary reference follows the decision of a Paris court in February 2008, which held that the trademark rights of Louis Vuitton Malletier had been infringed by Google by virtue of the fact that they had sold keywords (for the purposes of advertising) to unlicensed internet based retailers. The question referred to the Court asks whether a trade mark proprietor can prevent a search engine from offering keywords that reproduce or imitate registered trade marks.

Link
Reference

9. LEGAL SERVICES

9.1 Reference in Commission v Finland (C-246/08)

Lodged 3 June 2008

VAT applicable to legal services – Legal aid - Legal aid offices

Finnish law provides that VAT is not chargeable on legal advice services when payment is provided for in part through the legal aid scheme of Finnish legal aid offices. Corresponding services provided by the private sector are subject to VAT. The Commission believes this differing treatment to be a case of different VAT treatment of the same service and argues that although legal aid services provided free of charge are free of VAT (due to an exemption at Article 4(5) of the Sixth VAT Directive), where there is part payment, they cannot be regarded as free from VAT. It is argued that, if the Finnish legal aid offices were regarded as public authorities for tax purposes, excluding them from VAT liability would be detrimental to competition.

Link
Reference

9.2 Reference in Dr Erhard Esching v UNIQA Sachversicherung AG (C-199/08)

Lodged 15 May 2008

Legal expenses insurance rules - Clause restricting choice of lawyer - Mass claims

An Austrian reference on whether Article 4(1) of Directive 87/344 (concerning legal expenses insurance) should be interpreted as prohibiting a standard clause entitling the insurer in a collective redress situation to choose the legal advisers, as this would curtail the insured's

power to appoint his own. If the Directive does not prevent the insurer from choosing the lawyer, the Austrian court asks what requirements need to be met for a claim to be considered a "mass tort", thus depriving insured individuals from choosing their own lawyer.

Link
Reference

10. PUBLIC PROCUREMENT

10.1 Reference in Wasser- und Abwasserzweckverband Gotha und Landkreisgemeinden v Eurawasser Aufbereitungs- und Entsorgungsgesellschaft mbH (C-206/08)

Lodged 19 May 2008

Service concession – Water supply and treatment - Payment from third parties

The German court seeks to ascertain whether the contracting out of certain water services (supply of water and treatment of waste water) should be considered a service concession rather than a service contract, within the meaning of the public procurement rules, simply because payment is not made by the contracting authority but rather the service provider has the right to charge third parties. The court goes on to ask whether the degree of risk assumed by the supplier in providing the service is a factor in determining whether there is a service concession, if the method of payment is not decisive.

Link
Reference

11. TAXATION

11.1 Judgment in Commissioners of HMRC v Isle of Wight Council & Others (C-288/07)

16 September 2008, Grand Chamber

Sixth VAT Directive - Public authorities – Off-street parking – Distortion of competition

Background
Until the ECJ's judgment in *Fazenda Pública* (C-446/98) UK public authorities had presumed they were liable to pay VAT in respect of off-street parking services they provided. Following that ruling, however, they considered themselves exempt under Article 4(5) of the Sixth VAT Directive. This article provides that authorities governed by public law should not be considered taxable entities for the purpose of paying VAT in respect of the activities they carry out in their role as public bodies. If their treatment as non-taxable entities, in respect of economic activities, would lead to significant distortion of the market, however, then the public authorities should remain liable to pay VAT. Additionally the Directive provides a list of activities in respect of which public bodies remain liable to pay VAT despite engaging in them as public authorities. The Isle of Wight Council along with other UK local authorities have made claims for the reimbursement of VAT already paid amounting to over 100 million pounds. The councils took the view that this type of economic activity did not distort the market and furthermore, being public bodies, that they were exempt from paying VAT. HMRC refused to reimburse them and the matter went to the High Court, which referred it to the ECJ.

Judgment
The main point of referral concerned the interpretation of "distortions of competition" in Article 4(5), and whether the distortion was to be assessed by reference to the specific local market of each local authority or whether it was to be assessed in relation to the activity in general terms, without reference to a local market. The Court held that the assessment should be made in relation to the activity itself and not in relation to what activity may be encountered locally. To hold otherwise would distort the treatment of public bodies on a national level and would be inconsistent with the Community principles of fiscal neutrality and legal certainty. It was also held that in assessing whether the activity of the public body led to a distortion of competition, the existence of potential competition (provided it is real and not purely hypothetical) would be sufficient for the purposes of Article 4(5).

Link
Judgment

11.2 Judgment in Hans Eckelkamp and Others v Belgium (C-11/07)

11 September 2008, Third Chamber

Free movement of capital - Inheritance tax - Articles 56 and 58 TEC

Background
This case concerns the compatibility of Belgian inheritance tax rules with the EC Treaty rules on free movement of capital and of citizens. In essence the Belgian legislation did not permit certain charges (such as debts secured against a mortgage) to be deducted from the inheritance tax assessment of immovable property when the deceased had been residing in another Member State. Such charges would have been deductible if the deceased had been resident in Belgium. In 2002, Ms Eckelkamp had taken a loan from Hans Eckelkamp, secured against a property in Belgium. Ms Eckelkamp died in Düsseldorf at the end of 2003, leaving her estate to Hans Eckelkamp and other members of the family. In 2004 inheritance tax was calculated, following a declaration on the value of the estate made by the heirs. The Belgian tax authorities had advised the heirs that as the deceased had been non-resident, the debts in question should not be mentioned on the declaration. They followed this advice and paid the tax. Later on, however, they claimed a refund. The Belgian court dismissed the claim, stating it was time-barred. It noted, however, that the debt should have been declared and that the Belgian rule in relation to non-resident testators should have been disapplied as contrary to Community law. On appeal the heirs argued the direct effect of Community law and the duty of administrative authorities to reconsider decisions taken in contravention of it.

Judgment
The Court agreed with the earlier Advocate General's conclusion that the provisions of the Belgian legislation amounted to arbitrary discrimination within the meaning of Article 58(3) TEC and were therefore incompatible with the Treaty provisions on the free movement of capital. While arguments were examined as to why a difference in treatment based on residence was objectively justified, the Court did not agree that the mere fact of residence satisfied any overriding pubic interest.

Link
Judgment

11.3 Opinion in SPF Finances v Truck Center SA (C-282/07)

18 September 2008, Advocate General Kokott

Withholding tax – Loan interest – Foreign companies

Background
If a Belgian company pays loan interest to a foreign parent company, a withholding tax is applied, whereas payments to Belgian residents are exempt but subject to the corporate income tax imposed on the company. A double taxation treaty exists between Belgium and Luxembourg. This exempts such payments from the withholding tax unless the parent owns more than 25% of the subsidiary company. In this case, it allows the parent company in Luxembourg to reduce its tax base with respect to the amounts of tax withheld in Belgium. This mechanism does not, however, remove completely double taxation on this income. From the years 1994 to 1996 Truck Center had calculated the interest due on a loan from its parent in Luxembourg, but had neither paid the interest nor retained the withholding tax. When the tax authorities attempted to impose the withholding tax, the Belgian court considered the relevant aspects of the double taxation treaty to be contrary to the EC Treaty provisions on the freedom of establishment.

Opinion
Advocate General Kokott considered that the arrangements in place between Belgium and Luxembourg were not contrary to the provisions of the Treaty. It was noted that the effective collection of taxes is in the public interest and that this is a justification for the differences in treatment or restrictions on the freedom of establishment. The Advocate General noted that the withholding of tax in relation to payments to foreign companies did not constitute an illegal discrimination, nor did it discriminate in terms of the companies' cash flow, as similar pre-payments of tax were imposed on the Belgian recipients of similar payments. She also noted that after the imposition of the respective taxes on capital income, the Luxembourg companies did not appear to be taxed more highly than the Belgian companies.

Link
Opinion

11.4 Opinion in Société Papillon v Ministère du Budget, des Comptes publics et de la Fonction publique (C-418/07)

4 September 2008, Advocate General Kokott

Taxation – Groups of resident companies – Control through foreign subsidiary

Background
This case concerns the tax treatment of a group of companies in one Member State, when subsidiaries are owned and controlled by the parent through a foreign intermediary company. Société Papillon is the French parent company that owned wholly a Dutch company, Artist Performance and Communication (APC). APC owned 99.99% of the shares in Kiron, a French company, which in turn owned various subsidiaries. Société Papillon requested an integrated tax treatment of this group of companies by the French tax authorities but was refused because the chain of ownership was broken by a Dutch company, which was not subject to French corporate taxation. This was the subject of challenge and the question as to whether the French authorities could refuse the integrated tax treatment of the group, because of the existence of an intermediary company in another EU Member State, was eventually sent to the ECJ by the Conseil d'Etat.

Opinion
The Advocate General found that the French rules did indeed constitute a restriction on the freedom of establishment set down in the EC Treaty, as they would have permitted the group in question to be taxed in a consolidated manner, had APC been located in France and subject to French corporate taxes. The French rules make no provision for a non-resident

intermediary. She also stated that the French system could not be justified by the need to ensure the proper allocation of tax competence between Member States with respect to avoiding double deduction of losses or tax evasion. The claimant was only asking for French resident companies to be treated in an integrated manner. She continued to note, however, that the need to preserve the coherence of the tax system could constitute a justification of such a measure. It should be for the national court to determine whether the measures are necessary to prevent the double deduction of losses within the group and are proportionate to this aim.

Link
Opinion

11.5 Reference in Milan Kyrian v Celní úřad Tábor (C-233/08)

Lodged 30 May 2008

Tax - Enforcement of orders – Mutual assistance

This case concerns the application of rules from 1976 on mutual assistance between Member States' authorities in the enforcement of claims relating to taxes and duties. The Czech court asks the ECJ to what extent the court in the executing state is allowed to review the enforceability of the enforcement order and ensure that it has been served correctly on the debtor. The court continues to ask whether the order is unenforceable if it is not in a language the debtor understands or in an official language of the state where enforcement is sought.

Link
Reference

12. TRADE LAW

12.1 Judgment in FIAMM and FIAMM Technologies v Council and Others (C–120/06)

9 September 2008, Grand Chamber

Appeals - Accountability of EU Institutions – Failure to comply with WTO Agreements

Background
In 1993 the Council adopted Regulation 216/2001 which laid down common rules for the import of bananas in Member States. Within this Regulation was a provision granting certain countries, notably African and Caribbean, preferential treatment in terms of the import of bananas from there. In response to this provision, the United States lodged a complaint with the WTO Dispute Settlement Body (DSB), which held that the provision was incompatible with the WTO rules on barriers to trade. The Council amended the Regulation but the US remained unsatisfied and the DSB agreed that the Regulation as amended was unsatisfactory. As a result, the WTO authorised the US to levy increased customs duty on the import of certain Community products. Six companies alleged before the CFI that the Commission and Council's conduct had caused them to suffer damage as a result of the US's retaliatory response. In its judgment, the CFI stated that the WTO agreements are not part of the rules against which the actions of the Community institutions can be reviewed. The actions for compensation were accordingly dismissed.

Judgment
On appeal before the Court, two Italian companies and their US subsidiaries asked the Court to set aside the CFI's judgment in relation to them. Specifically, both companies were arguing

that the CFI had been unclear in its reasoning in respect of the direct effect of decisions of the DSB. In its judgment, the Court confirmed the CFI's decision and stated that the Community courts were not authorised to review the legality of the conduct of either the Commission or the Council in respect of rules arising from WTO agreements or from a decision of the DSB, even where to do so would be solely for compensatory reasons. The Court also stated that while the CFI is obliged to give reasons for its decision, it does not have to address each argument individually if its response to those arguments can be sufficiently inferred from its decision. The appeal was dismissed.

Link
Judgment

ANNEX I: CASE TRACKER

'C' indicates a case before the ECJ, whereas 'T' indicates the CFI.

Topic	Case	Hearing	*Opinion*	*Judgment*
Civil justice				
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				
Legal expenses insurance rules- choice of lawyer clause- mass claims	Dr Erhard Esching v UNIQA Sachversicherung AG C-199/08			
Standing in private prosecutions	István Roland Sós C-404/07	19 June 2008	10 July 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				
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	18 September 2008		
Right to claim unemployment benefit while residing in another Member State	Jorn Petersen v Arbeitsmarktservice Niederosterreich C-228/07		15 May 2008	11 September 2008
Legality of national legislation enforcing obligatory retirement	Age Concern England v Secretary of State for Business,	2 July 2008	18 September 2008	

ages	Enterprise and Regulatory Reform C-388/07			
Age discrimination- justification of mandatory retirement age	Colin Wolf v Stadt Frankfurt am Main C-229/08			
Injury at work- holiday entitlement- carry over to subsequent year	Francisco Vincente Pereda v Madrid Movilidad S.A. C-277/08			
Free Movement				
Failure to implement Directive 2004/83 on the right of EU citizens to move and reside freely within the EU	Commission v UK C-122/08			
Health and Safety				
Workers- pregnancy- health and safety conditions	Dr Susanee Gassmayr v Bundesministerin Fur Wissenschaft und Forschung C194/08			
Intellectual Property				
Advertising- search engines- reproducing or imitating registered trade marks	Google France, Google Inc v Louis Vuitton Malletier C-236/08			
Public Procurement				
Remedies available to unsuccessful tenderer in relation to breach of transparency duties (advertising)	Wall AG v Stadt Frankfurt am Main C-91/08			
Service concession- water supply and treatment- payment from third parties	WAZV Gotha v Eurawasser Aufbereitungs und Entsorgungsgesellschaft mbH C-206/08			
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
Local conditions on temporary provision of patent lawyers' services	Commission v Austrian C-564/07			
VAT and duty on documented legal	Renta, S.A. v Generalitat de			

transactions	Catalunya C-151/08			
VAT applicability to legal advice services- Legal aid paid by State legal aid offices	Commission v Finland C-246/08			
State aid				
Calculation methods for recovery of aid	Département du Loiret v Commission C-295/07	4 June 2008	5 June 2008	
Taxation				
Autonomous regional tax policies conflicting with national tax law	Unión General de Trabajadores de la Rioja C-428/06		8 May 2008	11 September 2008
Offsetting of profits and losses	Société Papillon v Ministère du budget C-418/07		4 September 2008	
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				
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