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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

October – News from the EU Courts

This month has seen the Court examine a wide range of interesting issues. Advocate General Sharpston has been chewing over the issue of the VAT treatment of food supplied by staff canteens in *Danfoss A/S and AstraZeneca A/S v Skatteministeriet* (C-371/07). Meanwhile in *Ireland v European Parliament, Council of the European Union* (C-301/06) Advocate General Bot considered the issue of data retention and the legal basis for such EU measures. In particular he attempted to draw the boundary between those measures coming under the EC Treaty and those which must be adopted under the EU Treaty provisions on police and criminal cooperation in judicial matters.

The Court has held that the rules protecting employees when they are transferred to a new employer do not have the effect of obliging the preservation and transfer of a lease of business premises to the new owner, even if this could result in job losses (*Kirtruna SL v Red Elite de Electrodomesticos SA and Others* (C-313/07). In relation to another insolvency situation, in *Svenska Staten v Anders Holmqvist* (C-310/07), the Court had to clarify in which Member State employees are entitled to protection when they work in more than one country.

Meanwhile the case of *Markku Sahlstedt and others v Commission* (C-362/06) provides an interesting ruling on the ability of individuals to challenge the designation of protected sites under the Habitats Directive before the CFI. In *VTB-VAB NV v Total Belgium NV and Galatea BVBA v Sanoma Magazines Belgium NV (C-261/07 and C-299/07)* Advocate General Trstenjak stated his belief that new rules on unfair commercial practices precluded national blanket bans of combined offers of goods to consumers.

New parents will be interested in the case of *Stefan Grunkin and Dorothee Regina Paul v Leonard Matthias Grunkin-Paul and Standesamt Stadt Niebüll* (C-353/06). This concerned a German law which permitted foreign parents to give their children double barrelled surnames whilst denying this right to German parents. It was held that this was incompatible with EC law when it prevented the registration of the name of a German child who was born and already legally registered abroad.

The case of *Gyorgy Katz v Istvan Rosland Soc* (C-404/07) considered the standing of victims in private criminal prosecutions. It was held that national courts are not obliged by EU law to permit a victim to be heard as a witness in a private criminal prosecution instituted by the victim. In the absence of such a possibility, however, it must be possible for the victim to be permitted to give testimony which can be taken into account as evidence.

Coming up in November

There will be a hearing in the case of *L'Oreal and Others* (C-487/07), which concerns trade mark protection and whether traders may compare their products to competitors' trade-mark protected products, with particular reference to their respective smells. Is the use of smells, therefore, worth it? The judgment in *Société Papillon v Ministère du Budget, des Comptes publics et de la Fonction publique* (C-418/07) should clarify the tax treatment of groups of companies involving subsidiaries owned through a foreign intermediary.

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. Please see the glossary of terms in Annex III for an explanation of the abbreviations used in this Update.

1. CIVIL JUSTICE

1.1 Judgment in Nicole Hassett v South Eastern Health Board and Cheryl Doherty v North Western Health Board (C-372/07)

2 October 2008, First Chamber

Jurisdiction – Validity of company decisions – Registered seat - Brussels Regulation

Background
The questions before the Court stem from medical negligence claims brought in the Irish courts against Irish health boards. The claimants were seeking damages for personal injuries caused by the negligence of doctors employed by the respective health boards. A settlement was reached and the health boards attempted to have the doctors in question joined to the case in order that they might contribute to the settlement. Both doctors were members of the Medical Defence Union (MDU), a professional association providing indemnity to its members in professional negligence cases, which is registered and established in the UK. MDU refused to indemnify the doctors and the parties attempted to have the MDU joined to the case. A dispute arose as to whether the Irish courts had jurisdiction when the issue in point was, arguably, concerning the validity of an English company's (MDU) decision. The Irish court asked the Court whether such a question does fall to the exclusive jurisdiction of the English courts, as set down in Article 22(2) of Regulation 44/2001, dealing with jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

Judgment
The Court decided to take a more restrictive view of the provision in question than that of MDU. It stated that the provision is intended to cover disputes concerning the validity of a decision of an organ of a company with respect to the applicable company law or in relation to other rules on decision-making, such as the articles of association. The doctors in question were objecting to the way in which MDU had rejected their claims without due consideration and thus deprived them of their membership rights. As such the Court determined that the dispute did not fall within the scope of Article 22(2) of the Regulation.

Link
Judgment

1.2 Reference in Vorarlberger Gebietskrankenkasse v WGV Schwabische Allgemeine Versicherungs AG (C-347/08)

Lodged 28 July 2008

Jurisdiction – Judgments in civil and commercial cases – Brussels Regulation

Background
This case concerns Regulation 44/2001, dealing with jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. The case refers a couple of questions concerning jurisdiction, asking in what circumstances a social security institution may bring an action against an insurer in its domestic courts when the injured party is resident in another Member State.

Link
Reference

2. COMMON FOREIGN AND SECURITY POLICY

2.1 Judgment in People's Mojahedin Organization of Iran v Council of the European Union (T-256/07)

23 October 2008, Seventh Chamber

Terrorism - Financial restrictions on organisations – Reasons

Background
This case concerns the inclusion of the People's Mojahedin Organization of Iran (PMOI) in the European Community list of persons or entities whose funds must be frozen to combat terrorism pursuant to Regulation 2580/2001 and Council decisions updating the list. Despite a judgment of the CFI dated 12 December 2006 annulling the Council decision ordering the freezing of the PMOI's funds, including for lack of sufficient statement of reasons and right to a fair hearing, the Council informed the PMOI that in its opinion the grounds for inclusion in the list were still valid. In light of a decision by the UK national authority proscribing the PMOI as an organisation concerned with terrorism the Council adopted Decision 2007/445 maintaining the PMOI on the EC list. PMOI contended that following the CFI judgment, no decision to maintain the applicant on the EC list could be validly adopted and sought to annul it. Despite an order being made by the Proscribed Organisations Appeal Commission (POAC) in the UK for the Home Secretary to remove the PMOI from the national list of proscribed organisations, the Council adopted a further Decision 2007/868 maintaining the PMOI on the EC list. The UK Parliament withdrew the PMOI from the national list of proscribed organisations but the Council adopted a further Decision 2008/583 maintaining the PMOI on the EC list noting that new information had been brought to its attention. The PMOI's action for annulment of this last Decision is still pending (Case T-284/08).

Judgment
The CFI dismissed the application for annulment of the first Decision. It reasoned that the Council was obliged to ensure that subsequent fund-freezing measures adopted after its first judgment were not vitiated by the same defects. The Council had observed the formal and procedural rules set out by the Court in that judgment. It placed PMOI in a position to make its case properly regarding the evidence incriminating it, it observed its rights of defence and satisfied the obligation to state reasons. The Court annulled the second Decision in so far as it concerned the PMOI. It reasoned that the Council's statement of reasons, that the Home Secretary intended to bring an appeal against the POAC's decision, was manifestly insufficient to provide legal justification for continuing to freeze the PMOI's funds.

Link
Judgment

3. CONSUMER LAW

3.1 Opinion in VTB-VAB NV v Total Belgium NV and Galatea BVBA v Sanoma Magazines Belgium NV (Joined Cases C-261/07 and C-299/07)

21 October 2008

Freedom to provide services - Combined offers - Consumer

Background
This case concerns Community legislation in the field of consumer protection and free movement. The Belgian Law of 14 July 1991 on trade practices and consumer information

and protection prohibits any combined offer by a seller to a consumer whereby the acquisition of products and services is tied to the acquisition of other, even identical, products or services. There is an exhaustive list of exceptions to this in that law. The Belgian court asks whether Directive 2005/29 concerning unfair commercial practices and Article 49 TEC concerning the freedom to provide services preclude national legislation which fundamentally prohibits combined offers.

Opinion
Advocate General Trstenjak opined that the Directive and Article 49 TEC preclude a national provision such as that in question, which prohibits combined offers regardless of the circumstances of the case. The Advocate General explained that unlike the Belgian Law, the Directive presupposes that commercial practices are fair as long as the precisely defined legal conditions for a prohibition are not fulfilled. Such selling techniques may in principle be prohibited only if they constitute an unfair commercial practice, which requires an assessment of the actual commercial practice involved in a particular case.

Link
Opinion

3.2 Reference in Aventis Pasteur SA v OB (by his mother and litigation friend) (FC) (C-358/08)

Lodged on 5 August 2008

Product Liability Directive – Compatibility of national laws – Substitution of a defendant

Background
The House of Lords made a reference to the Court in relation to the interpretation of Directive 85/374 on product liability. Under Article 11 of the Directive there is a ten-year period for enforcing rights. The Court is being asked whether it is consistent with the Directive for the national laws of a Member State to allow a new defendant to be substituted, after the expiry of the ten-year period, where the original defendant does not fulfil the criteria in the Directive as to what constitutes a producer.

Link
Reference

3.3 Reference in Angelo Grisoli v Regione Lombardia and Commune di Roccafranca (C-315/08)

Lodged 15 July 2008

Public Health – Provision of community pharmacy services – Consumer protection

Background
This case concerns the establishment of pharmacies in rural Italy. The Court is asked to determine whether Articles 152 and 153 TEC, which regulate public health and consumer protection, are compatible with rules providing for only one single pharmacy in a commune with a population of less than 4000 inhabitants. The Court is also asked about the compatibility of provisions that prohibit the opening of a second pharmacy in communes with a population of greater than 4000 inhabitants unless 50% of the commune's population live more than 3 kilometres from the first pharmacy.

Link
Reference

4 CRIMINAL LAW

4.1 Judgment in György Katz v István Roland Sós (C-404/07)

9 October 2008, Third Chamber

Standing - Rights of the victim - Private prosecutions

Background
The Hungarian court asked for an interpretation of provisions of Framework Decision 2001/220, on the standing of victims in criminal proceedings. It asked whether it must be interpreted as meaning that the national court must be guaranteed the possibility of hearing the victim as a witness in criminal proceedings which have been instituted by him as a substitute private prosecution. Mr Katz acted as a substitute private prosecutor pursuant to national law, which allows victims of crime to take action where the public prosecutor terminates proceedings.

Judgment
The Court reasoned that while a victim who acts in the capacity of a substitute private prosecutor may claim the rights attaching to the status of victim provided for under the Framework Decision, the Framework Decision does not supply further details concerning the rules of evidence applicable to victims in criminal proceedings. The Framework Decision requires Member States, first, to ensure that victims enjoy a high level of protection and have a real and appropriate role in their criminal legal system and, second, to recognise victims' rights and legitimate interests and ensure that they can be heard and supply evidence. It leaves to the national authorities, however, a large measure of discretion with regard to the specific means by which they implement these objectives. The Court ruled that the Framework Decision is not to be interpreted as obliging a national court to permit the victim to be heard as a witness in criminal proceedings instituted by such a substitute private prosecution. In the absence of such a possibility, however, it must be possible for the victim to be permitted to give testimony which can be taken into account as evidence.

Link
Judgment

4.2 Reference in Criminal proceedings against Artur Leymann, Aleksei Pustovarov (C-388/08)

Lodged on 5 September 2008

European Arrest Warrant – Criminal offence

Background
The Korkein Oikeus in Finland has referred a series of questions to the Court on the interpretation of the Framework Decision 2002/584 on the European Arrest Warrant (EAW) and the surrender procedures between Member States. The Framework Decision sets out in what circumstances a person may be prosecuted for another offence once surrendered to a Member State for prosecution of the originally cited offence. In certain circumstances the consent of the executing authority will be required. The Court is asked to clarify what factors should be used to determine whether the description of an offence on which the prosecution is based is different from the offence on which the surrender under the EAW was founded or has been subsequently altered i.e. a different type of narcotics offence. The questions also seek to ascertain what relevance the potential deprivation of liberty or otherwise that might result

from a successful prosecution has on the consent procedure set out in the Framework Decision.

Link
Reference

5. E-COMMERCE

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

16 October 2008, Fourth Chamber

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

Background
This case concerns the interpretation of Directive 2000/31, on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market. 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 German Appeal Court referred a question to the ECJ asking whether under the Directive a service provider is obliged to provide a telephone number to customers in order to allow for direct and effective contact; and if not whether a second means of communication needs to be provided.

Judgment
The Court went against Advocate General Colomer's opinion which had stated that it would be acceptable for a service provider to provide only one means of communication. The Court therefore held that whilst a service provider is not obliged to provide a telephone number, he is obliged to provide a second means of communication which is sufficient for the company to respond quickly, directly and effectively to consumer enquiries. It also held that this means of communication must be provided to customers prior to the conclusion of a consumer contract. It noted that the second means of communication does not have to be in the form of a telephone number or an address. The Court noted that this allows for an online enquiry form to be utilised by a service provider as its second means of communication in addition to the first means of communication, for example an email address.

Link
Judgment

6 EMPLOYMENT & EQUAL TREATMENT

6.1 Judgment in Kirtruna SL v Red Elite de Electrodomesticos SA and Others (C-313/07)

16 October 2008, Fourth Chamber

Acquired rights – Assignment of a lease - Requirement on landlord to accept transfer

Background
In June 2006 Red Elite de Electrodomesticos went into liquidation. At the same time as the decision to liquidate was made, it was decided to award some of its stores and business

establishments to Electro Calvet. Electro Calvet accepted liability for the contracts of 127 employees by subrogation. The order stipulated that the transfer of Red Elite's business establishments was to be without prejudice to the rights of any landlords of premises concerned in relation to the business. Kirtruna and Ms Vigano owned commercial premises which were leased to Red Elite. The leases were subsequently transferred to Electro Calvet. In response, Kirtruna and Ms Vigano raised an action for eviction on the basis of an assignment of the lease without consent, in contravention of the provisions of the lease agreement. The referring court considered that if the action for eviction was successful, Electro Calvet would be forced to leave the premises, which would lead to the termination of the contracts of employment. In this connection, a reference was made to the Court on the interpretation of Articles 3 and 5 of Directive 2001/23 on the safeguarding of employees' rights in the event of transfers of undertakings. Specifically, the Court was asked whether Directive 2001/23 could be interpreted to mean that, in the transfer of businesses which have gone into liquidation, protection is given to employment contracts as well as other contracts which have a direct and immediate effect on the safeguarding of those contracts.

Judgment
Although the Court reasoned that the objective of the Directive is to protect the rights of employees where there has been a change of employer, it held that in the event of a transfer by reason of insolvency or liquidation, the Directive does not require the transfer of a lease of commercial premises entered into by the transferor with a third party. It acknowledged that this was the case even where the termination of the lease will likely lead to the termination of employment contracts which did transfer as part of the undertaking. The Court took the view that the termination of the employment contracts would not necessarily be solely determined by the non-preservation of the lease. It could instead be due to additional circumstances such as the failure to agree a new lease or the failure to find alternative commercial premises.

Link
Judgment

6.2 Judgment in Svenska Staten against Anders Holmqvist (C-310/07)

16 October 2008, Fourth Chamber

Approximation of laws – Insolvency of employer – Protection of employees

Background
A reference to the Court was made from a Swedish court concerning Directive 80/987 on the protection of employees in the event of the insolvency of their employer and how the protections apply to the employees of companies with activities in two or more Member States. Mr Holmqvist was a driver for a Swedish company. He made deliveries of goods from Italy to Sweden and was responsible for the loading and unloading activities in both countries. The company had no offices or presence in Italy. On the occasion of the company's insolvency proceedings, the Swedish authorities claimed that Mr Holmqvist was not entitled to the salary guarantees under Swedish law to the extent that he carried out his job in other Member States, and that he should make the relevant claims elsewhere. Swedish legislation provides that the guarantee fund will only cover those workers who have carried out their work principally in Sweden. The Directive provides that when a company has activities in more than one Member State, the worker should be compensated by the fund in the country where he usually carries out his work. The Swedish court asked to what extent it was necessary for the business to have a branch, presence or activities in another Member State for this to apply.

Judgment
The Court considered that when interpreting the words *"activities in at least two Member States"* in Article 8a of Directive 80/987, it was necessary to move away from the concept of "establishment" as was laid down in the Court's previous rulings in the Everson and Mosbaek cases. Accordingly, the Court held that for an undertaking established in one Member State to be regarded as carrying out activities in the territory of another Member State, the undertaking is not required to have a branch or fixed establishment in the latter. In order to determine that the undertaking is carrying out activities there, it must have a "stable economic presence" in that State and "human resources" enabling it to carry out those activities. The Court concluded that in relation to transport companies, the fact that a worker delivers goods between the home Member State and another one, does not mean it has a "stable economic presence" in the latter.

Link
Judgment

7. ENVIRONMENT

7.1 Opinion in Markku Sahlstedt and others v Commission (C-362/06)

23 October 2008, Advocate General Bot

Habitats Directive – List of designated sites – Annulment action – Standing

Background
This is an appeal from a ruling of the CFI. A number of landowners and an association of farmers and foresters (MTK) had brought an action to annul Commission Decision 2005/101. This Decision set down a list of sites of Community importance for the Boreal biogeographical region in application of the Habitats Directive (Directive 92/43). The claimants considered that the provisions of the Directive had not been respected as to the sites chosen and the process for selecting those sites. The CFI had rejected the action, considering that the claimants did not have sufficient standing, under Article 230 TEC, to challenge the Decision, as they were not directly concerned by it. Indeed the CFI considered that nothing in the Decision affected the rights and duties of the landowners concerned and that Member States, Finland in this case, retained a margin of discretion in putting in place the relevant conservation measures.

Opinion
The Advocate General concluded that the Court should overturn the ruling of the CFI and find that the action was admissible. He considered that the landowners did constitute a closed circle of members who were affected by the Decision. They have rights concerning property covered by the designated sites; they were identifiable by the Commission at the time it adopted the Decision; and the Decision in question did affect the legal situation of the property owners and the exercise of their legal rights. The Advocate General noted in particular the importance of property rights when considering whether potential claimants are individually and directly concerned by a Community act. Given that the majority of MTK members would be able to bring such an action against the Decision, Advocate General Bot concluded that MTK should have standing. As such he recommended that the CFI's decision should be overturned and the case referred back to the CFI for a judgment.

Link
Opinion

8. FREE MOVEMENT

8.1 Judgment in Stefan Grunkin and Dorothee Regina Paul v Leonard Matthias Grunkin-Paul and Standesamt Stadt Niebüll (C-353/06)

14 October 2008, Grand Chamber

Discrimination on grounds of nationality – Conflict of law – Personal names

Background
The matter relates to the conflict existing between the legislation of two Member States in relation to determining the surname of a person. Leonard Matthias Grunkin-Paul, the child, was born in Denmark to parents that hold only German nationality. Although his birthplace and residence are in Denmark, he is a German national. Under Danish law a surname is determined in accordance with the rule of law of the country of residence, whereas German law states that the law of your country of nationality determines the rule. Danish law allows the registration of a combination of the parents' names. German law does not allow this for German nationals, but allows it according to the laws applicable to non-German nationals. The parents chose to register a compound name for the child in Denmark, where they were residing at the time of birth. They were later refused registration by the German authorities.

Judgment
The Court held that the refusal by a Member State to register the surname of one of its nationals, when that surname was lawfully registered and recognised in a different Member State, rendered it appreciably more difficult for that person to exercise his right to move and reside freely in the Community territory. A choice of law rule by which a person's surname is to be determined in accordance with the law of his nationality is not in itself incompatible with the EC Treaty. Such a rule must, however, respect the citizen's right to freedom of movement and residence in the territory of the Community. In consequence, the authorities of a Member State, in registering the name of a citizen, cannot automatically refuse to recognise the name under which that person has already been lawfully registered in another Member State, unless the recognition would conflict with the overriding public interest.

Link
Judgment

8.2 Judgment in Commission v Greece (C-36/08)

2 October 2008, Sixth Chamber

Freedom of establishment - Free movement of medical professionals

Background
This case concerns the alleged failure of Greece to fulfil its obligations under Directive 93/16 on the free movement of medical professionals and the mutual recognition of medical training degrees throughout the EU. Greece had adopted rules concerning the length of service necessary before a medical professional may legitimately call himself a specialist, which the Commission believed resulted in restrictions in the free movement of medical professionals.

Judgment
The Court held that by adopting and strictly maintaining national rules which do not conform to the provisions of the Directive, Greece had failed to fulfil its obligations.

Link
Judgment

9. INSOLVENCY

9.1 Reference in German Graphics Graphische Maschinen GmbH v V van der Schee (C-292/08)

Lodged on 2 July 2008

Insolvency proceedings – Reservation of title – Brussels Regulation

Background
In a reference made by the High Court of the Netherlands, the Court is asked about the compatibility of Regulation 1346/2000 on insolvency proceedings with Regulation 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels Regulation). In particular, to what extent and how the scope of the Brussels Regulation should be interpreted before applying it to judgments in the area of insolvency.

Link
Reference

10. INTELLECTUAL PROPERTY

10.1 Judgment in Directmedia Publishing GmbH v Albert-Ludwigs-Universität Freiburg (C-304/07)

9 October 2008, Fourth Chamber

Protection of databases – Extraction

Background
The German Federal Court of Justice asked whether the transfer of data from a given database and their incorporation into a different one is considered forms of extraction within the meaning of Article 7(2)(a) of Directive 96/9 on the legal protection of databases. As part of a project for the collection and drafting of an anthology of the most important verses in German poetry and literature, a university professor compiled a list of the verse titles he was going to use in the anthology and he published it on the internet. A company called Directmedia Publishing GmbH was at the time marketing a CD-ROM of the best German poems. In selecting the poems for the CD-ROM, Directmedia consulted the list published on the internet and selected those verses it thought best suited to insert in its product. Of the verses contained in the CD-ROM, 98% were named in the university's internet list. The professor and the university sued Directmedia on the grounds that by reproducing and distributing its CD-ROM, the company was infringing the copyright of the professor, as compiler of the anthology, and the right of the university as maker of the database.

Judgment
The Court held that Article 7(2)(a) defines 'extraction' as the permanent or temporary transfer of all or a substantial part of the contents of a database to another medium by any means or in any form. It did not agree with Directmedia's argument that by consulting the list only as a reference guide and by critically evaluating and selecting from it, it did not commit 'extraction' because it did not physically copy the contents of the database either directly or indirectly. Instead, the Court held that the aim of the Directive was to protect '*sui generis*' the copyright of an original work and it did not matter to what extent and how a database had been copied. When material contained in a database is systematically and methodically reproduced and

arranged into another, it will be considered extracted. Extraction does not presuppose the physical copying of data. The degree of independence and critical evaluation of the data demonstrated by the company was immaterial.

Link
Judgment

10.2 Opinion in Ireland v European Parliament, Council of the European Union (C-301/06)

14 October 2008 Advocate General Bot

Retention of data - Law enforcement - Article 95 TEC – Legal basis

Background
Ireland asked the Court to annul Directive 2006/24 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks on the ground that it was not adopted on an appropriate legal basis. Ireland submitted that the choice of Article 95 TEC, ensuring the functioning of the Internal Market, as the legal basis for the Directive was incorrect. It claimed that the main aim of the Directive is to facilitate the investigation, detection and prosecution of serious crime, including terrorism and that it should therefore be based on Title VI of the EU Treaty, Articles 30, 31(1)(c) and 34(2)(b), concerning police and judicial cooperation in criminal matters.

Opinion
Advocate General Bot drew a boundary between measures coming under the EC Treaty (Community pillar) and those which must be adopted within the framework of Title VI of the EU Treaty (the third pillar). Measures which harmonise the conditions under which providers of communications services must retain data in the course of their commercial activities belong to the Community pillar. They reduce the risk of obstacles to the Internal Market in electronic communications by presenting operators with common requirements. Measures harmonising the conditions under which the competent national law enforcement authorities may access, use and exchange retained data in the discharge of their duties belong to the third pillar. The direct involvement of such authorities with private operators and the mandatory transmission by the latter of data for law-enforcement purposes fall within the scope of police and judicial cooperation in criminal matters within the meaning of Title VI of the EU Treaty. The Advocate General noted that it was regrettable that this would require EU-level measures on data retention by providers of electronic communications services and on their cooperation with competent national law-enforcement authorities to be split (i.e. into separate measures based on one pillar or the other). He opined that in so far as Directive 2006/24 does not contain any provisions harmonising the conditions for access to data and their use for activities specific to the state or to state authorities and unrelated to the fields of activity of individuals and, in particular, does not contain any provisions liable to come within the notion of police and judicial cooperation in criminal matters, it was correctly adopted under the Community pillar (Article 95 TEC). In any event, where a measure has a twofold component, with the result that it could be covered by both the EC Treaty and the EU Treaty, the EC Treaty has priority.

Link
Opinion

10.3 Reference in Mbedieningsgroothandel CV and others v Diesel SpA (C-324/08)

Lodged 16 July 2008

Intellectual Property – Trade marks

This case concerns the situation where goods bearing a trade mark have been placed on the market for sale within the EEA by a party who is not the trade mark holder and without the trade mark holder's explicit consent. The issue for determination is whether or not the same criteria are applied in determining whether the goods have been placed on the market with the implicit consent of the trade mark holder, where such goods have already been marketed outside the EEA by the trade mark holder himself or with his consent. If different standards are to be applied, the Court is being asked what standard should be used to determine whether the goods have been placed on the market with the implicit consent of the trade mark holder.

Link
Reference

11. PROFESSIONAL PRACTICE

11.1 Reference in Krzysztof Pesla v Justizministerium Mecklenburg-Vorpommern (C-345/08)

Lodged 28 July 2008

Legal education – Article 39 TEC – Assessment of equivalence

Background
This case concerns the proceedings between Krzysztof Pesla and the Ministry of Justice for Mecklenburg-Vorpmmern over the question of equivalence in legal training in relation to the first state law examination in Germany. The German court asks whether it is compatible with Article 39 TEC, concerning the freedom of movement of workers, for a finding of equivalence to be established solely where the individual can demonstrate equivalence to those mandatory subjects required under the German legal examination regime. Alternatively it asks whether the only criterion for demonstrating such equivalence should be whether the university diploma itself obtained by the EU citizen together with the additional evidence of educational performance and experience matches the intellectual level of the first German State examination in law and the extent of that education. In the alternative it asks whether it is compatible with Article 39 TEC to take the material examined in the mandatory subjects of the first German State examination to demonstrate equivalence but in the light of legal education successfully completed elsewhere in the Community.

Link
Reference

12. PUBLIC PROCUREMENT

12.1 Opinion in Mikhaniki A.E. v Ethniko Simvoulio Radiotileorasis, Ipourgos Epikpatias (C-312/07)

8 October 2008, Advocate General Poiares Maduro

Public procurement – Exclusion of a bidder – Conditions – Constitutional rights

Background
The preliminary reference from Greece concerns the extent to which Member States can impose conditions in a tender process that are not provided for in the EU public procurement rules. The additional condition applied was of a constitutional nature in Greece. The tender related to the construction of a high-speed train line and a challenge by Mikhaniki to the award of the contract to Sarantopoulos (subsequently Pantechniki). Greek legislation required the successful tenderer to certify that there were no incompatibilities or conflicts of interest that would affect the contract awarded. Mikhaniki challenged Pantechniki's certification because the major shareholder and vice-president of Pantechniki was the father of Mr Sarantopoulos who was on the board of various media companies. While the legislation in question did not require this relationship to be disclosed, Greek constitutional requirements did require the disclosure of relationships with media companies. The Greek court asked to what extent the reasons set down in Directive 93/37 on coordination of procedures for the award of public works contracts, for exclusion of parties from a tender are exhaustive. It also asked the extent to which the imposition of such additional conditions would comply with Community law.

Opinion
The Advocate General considered that Article 24 of the Directive did not set down an exhaustive list of reasons for which a company may be excluded from a tender procedure. Additional criteria may be added, provided they seek to guarantee the level of transparency and equality of treatment that is necessary for the development of effective competition. Such criteria must also be proportional; something that the Greek legislation was not, given that it stated that there was a generalised incompatibility between the ownership of media companies and of companies that tender for public works contracts.

Link
Opinion

13. SOCIAL SECURITY

13.1 Reference in the Queen (on the application of M) (FC) v Her Majesty's Treasury and two other actions (C-340/08)

Lodged 23 July 2008

Social Security - Terrorism

Background
This case concerns Regulation 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban. It provides that no funds shall be made available, directly or indirectly, to, or for the benefit of, a natural or legal person, group or entity designated by the United Nations Sanctions Committee and listed in its Annex. The House of Lords asks whether this applies to the provision by the State of social security or social assistance benefits to the spouse of a person designated by the Sanctions Committee on the ground only that the spouse lives with the designated person and will or may use some of the money to pay for goods and services which the latter will consume or from which he will benefit.

Link
Reference

13.2 Reference in Christel Reinke v AOK Berlin (C-336/08)

Lodged 18 July 2008

Emergency treatment – Reimbursement – Private health care - Regulation 574/72

Background
This case concerns the question of reimbursement of the costs of emergency treatment where that treatment was provided in a private clinic rather than a state hospital as a result of that hospital refusing to provide the treatment due to overcrowding. The German court questioned whether the level of reimbursement is to be limited to the reimbursement rates provided for in Article 34(4) of Regulation 574/72, which concerns the implementation of Community rules on the application of social security schemes to employed persons, to self-employed persons and to their families moving within the Community. In addition the court asks whether a national provision, under which reimbursement of the cost of medical treatment in a private hospital in another Member State is excluded, even in the case of emergency treatment, is compatible with Articles 49 TEC and 50 TEC, concerning the freedom to provide services, and 18 TEC, concerning the freedoms of movement and establishment.

Link
Reference

14. TAXATION

14.1 Judgment in RHH Renneberg v Staatssecretaris van Financiën (C-527/06)

16 October 2008, Third Chamber

Income tax on non-residents – Negative income from property

Background
The matter relates to the interpretation of Articles 39 TEC, concerning the free movement of workers, and 56 TEC, concerning the free movement of capital. It asked whether a Member State is allowed to refuse a non-resident taxpayer, who receives the entirety of his professional taxable income in that Member State, to deduct rental losses for a property owned and located in his country of residence, when such a deduction is granted to resident taxpayers. Mr Renneberg, a Dutch resident, moved to Belgium in 1993 where he bought a property through a mortgage with a Dutch bank. Between 1996 and 1997 he returned to work in the Netherlands where he paid income tax on his professional income. During this period he continued to be liable for property tax in Belgium. The Dutch tax office refused to deduct negative property income for Mr Renneberg's property in Belgium from his tax liability. The referring court asks whether the discrepancy in treatment constituted a breach of Community law.

Judgment
The Court stated that according to the principle of freedom of movement of workers granted by Article 39 TEC any discrimination based on nationality between workers of the Member States is forbidden. Before discrimination can be established it must be possible to make a comparison between the situation of resident and non-resident taxpayers and establish that, under the exact same circumstances, they are being treated differently. The Court found that Article 39 TEC prohibits a Member State from refusing to allow a non-resident taxpayer, receiving the entirety of his taxable income in that Member State, to deduct negative rental income from a property in the Member State of residence, when the former Member State does allow such deductions in respect of resident taxpayers in a similar situation.

Link
Judgment

14.2 Judgment in Heinrich Bauer Verlag BeteiligungsGmbH v Finanzamt für Großunternehmen in Hamburg (C-360/06)

2 October 2008, Second Chamber

Corporation Tax - Freedom of establishment – Valuation of unlisted shares

Background
Reference for a preliminary ruling was made to the Court in proceedings relating to a dispute concerning the valuation of financial interests of Heinrich Bauer Verlag, which has holdings in two companies based abroad, for the purposes of determining the wealth tax liability of its parent company. Specifically, the Court was asked whether, if in the valuation of unlisted shares in a capital company a financial interest in a German partnership is valued lower than a financial interest in a partnership established in another Member State, this is compatible with Article 43 TEC, prohibiting the restriction of freedom of establishment on natural persons, and Article 48 TEC, which extends Article 43 TEC to companies by giving them the status of a natural person.

Judgment
The Court examined the question referred in the factual and legislative context of the German system of valuing the financial interests of unlisted companies for the determination of wealth tax. Under German law, the holdings of companies in foreign partnerships are assessed at market value. By contrast, the valuation of their holdings in national partnerships is on the basis of their net asset value. The Court held that such a difference in tax treatment gives rise to a tax disadvantage for the parent company. It also creates a restriction on freedom of establishment which can only be justified if the tax provision pursues a legitimate aim compatible with the EC Treaty and is underpinned by overriding reasons of public interest. The defendant had argued that the need to ensure cohesion of the tax system could justify a restriction on the freedom of establishment. The Court held that this would only be the case where a direct link can be established between the tax advantage and the offsetting of that advantage by a corresponding tax levy. In this instance no such link was held to exist and accordingly Articles 43 and 48 TEC precluded the application of the German tax legislation.

Link
Judgment

14.3 Judgment in Canterbury Hockey Club v HMRC (C-253/07)

16 October 2008, Fourth Chamber

VAT – Club membership fees - Exemption from VAT

Background
This case concerns the interpretation of the Sixth VAT Directive, Directive 77/388. The case was raised in court proceedings between Canterbury Hockey Club, Canterbury Ladies Hockey Club (the Hockey Clubs) and HM Revenue and Customs (HMRC) concerning the application of VAT to affiliation fees which were charged by England Hockey Limited for payment of services which it supplied to the Hockey Clubs. The Hockey Clubs claimed that these fees should be exempt from VAT because they are members-only sports clubs and England Hockey is a non-profit making organisation. Therefore the affiliation fees paid to the latter should be exempt from VAT under Article 13A(1)(m) of the Directive which provides VAT exemption in respect of certain services closely linked to sport supplied by non-profit making

organisations to persons taking part in the sport. HMRC believed that the fees should be standard rated for VAT purposes. The Hockey Clubs appealed to the VAT and Duties Tribunal on this issue which held in their favour. However, HMRC appealed against this decision to the High Court whereupon a cross-appeal by the Hockey Clubs resulted in the issue being referred to the ECJ for determination.

Judgment
The Court held that the provisions of the Directive should be interpreted as meaning that, in the context of individuals taking part in sport, the exemption described in Article 13A(1)(m) includes services supplied to corporate persons and to associations which, in the national court's opinion, are supplied by non-profit making organisations where the beneficiaries of these organisations and corporate persons are taking part in sport. The Court found that the nature of the exemption turned on the issue of the nature of the service supplied and its relationship with sport. Therefore as the service in this case clearly concerned sport and was being supplied to non-profit making organisations, it clearly fell within the ambit of the exemption.

Link
Judgment

14.4 Opinion of the Advocate General in Stichting Centraal Begeleidingsorgaan voor de Intercollegiale Toetsing v Statssecretaris voor Financien (C-407/07)

9 October 2008, Advocate General Sharpston

VAT – Public Interest – Exemption for services

Background
A reference was made to the Court by the Supreme Court of the Netherlands in relation to the exemption from VAT of activities which are considered to be in the public interest. The VAT exemption also applies to members of a group, which has been specifically formed to provide those members with services which are necessary in order for them to provide those services. This exemption is however subject to two conditions. First, there must be exact reimbursement by the members to the group of their share of the joint expenses. Second, the exemption must not lead to the distortion of competition. In this connection, the question referred was whether the exemption that applies to such groups also extends to services provided to only one or more members of that group individually.

Opinion
Whilst the Advocate General agreed with the Netherlands' Government and the Commission's position that the conditions for VAT exemption in Article 13 of the Sixth VAT Directive are to be interpreted strictly, his opinion does state that interpretation should be "tempered according to the nature of the exemption concerned". On this basis the Advocate General considered that where a particular service is provided by a group to one or more of its members individually, the nature of the relationship between the provider and the recipient of the service remains unaffected. The distinction between collective and individual interest is not determinative as an independent criterion. Therefore, services supplied to individual members of a group are VAT exempt provided the remaining conditions of exemption are satisfied.

Link
Opinion

14.5 Opinion in Danfoss A/S and AstraZeneca A/S v Skatteministeriet (C-371/07)

23 October 2008, Advocate General Sharpston

VAT – Right to deduct – Canteen meals

Background
This preliminary reference from the Danish courts seeks to clarify the VAT treatment of meals provided by a company canteen for business meetings between staff and business associates. According to the Danish legislation businesses had not been able to deduct input VAT in relation to expenditure on business lunches in company canteens. VAT-registered businesses were however subject to VAT on supplies made by staff canteens. Administrative practice in Denmark had been to assess the VAT on sales in company canteens according to a calculated cost price method. In 1999 the Danish tax tribunal found this method to be contrary to the Sixth VAT Directive and, as a result of the ruling, both claimants sought a refund of output VAT.

Opinion
Advocate General Sharpston concluded that there were two sets of provisions to be considered: Articles 5(6) and 6(2) of the Directive on "private use" of the good or service in question; and Article 17(6) on exclusions from the right to deduct in relation to expenditure that is not strictly business expenditure (such as entertainment). She noted that the two sets of provisions are mutually exclusive. When canteen meals are provided to staff and business contacts for purposes other than principally business purposes, the provisions on private use (Articles 5(6) and 6(2)) are to be applied and as such they are to be treated as supplies made for consideration. This is so, only if VAT paid on goods or services forming the taxable amount are deductible. Such meals are, however, capable of serving such business purposes if they, for instance, facilitate ongoing meetings. In relation to the exclusion from the right to deduct, the Advocate General concluded that Denmark could not maintain such an exclusion when the administrative practice had already recognised the right to deduct on the date of the Directive's entry into force. After the Directive's entry into force, Member States cannot subsequently revert to excluding such expenditure from the right to deduct. Interestingly, the Advocate General also recommended that the Court review its case law to find that the Directive entered into force on 23 May 1977, rather than 1 January 1979, which is what the Court has stated previously.

Link
Opinion

14.6 Opinion in Hein Persche v Finanzamt Lüdenscheid (C-318/07)

14 October 2008, Advocate General Mengozzi

Taxation – Donations to foreign entity – Free movement of capital

Background
Mr Persche, a German national, made a donation to a charitable organisation in Portugal, subsequently claiming a tax deduction for a donation in kind, valued at €18,180. The German tax authorities refused the deduction sought on the basis that tax relief in the form of deduction is only available for a donation to a resident charity. Following a challenge by Mr Persche, the German court referred a question to the Court asking how the EC Treaty rules on the free movement of capital are to be applied to the situation where a national of one Member State makes a donation of goods to a charitable organisation in a second Member State. It asks whether a national rule is permissible if it only confers a tax benefit on the donor when the charitable organisation is resident in the same Member State. Furthermore it asks

whether the burden of proof lies on the donor to prove the facts asserted or whether the competent authorities have to obtain assistance from their foreign counterparts according to Directive 77/799 on mutual assistance by competent authorities in the field of direct taxation.

Opinion
Advocate General Mengozzi argued that a tax donation to a charitable organisation in another Member State does fall within the provisions on free movement of capital of the EC Treaty. He stated that the German tax authorities were wrong to disallow a tax deduction for a charitable donation by a German citizen on the basis that the beneficiary organisation was located in another Member State. This constituted a restriction on the movement on capital within the Internal Market. Regarding the burden of proof the Advocate General noted that under German law, if the beneficiary body is established in Germany, it is not for the donor to establish that that body manages its charitable activities in accordance with its statutes. He considered that in the case of a charitable organisation in another Member State, donors should be allowed to provide supporting documents in order to enable the national tax authorities to check that the conditions under the national rules are met. Where these documents are not provided or the authorities are unable to verify the information they can refuse the deduction. Tax authorities can, however, make use of the cooperation mechanisms set up under mutual assistance provisions.

Link
Opinion

14.7 Reference in Latex Srl v Agenzie delle Entrate, Amministrazione Dell'Economia e delle Finanze (C-316/08)

Lodged 15 July 2008

VAT – Right to deduct – Complete exclusion

Reference
This reference from the Italian courts seeks to ascertain whether Article 18(4) of the Sixth VAT Directive allows Member States to remove completely the right to deduct and provide only for the possibility of refunds. If so, the court goes on to ask whether the Member States are under a duty to provide such refunds in a reasonable time.

Link
Reference

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			
European arrest warrant	Artur Leymann, Aleksei Pustovarov C-388/08			
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		
Legality of national legislation enforcing obligatory retirement ages	Age Concern England v Secretary of State for Business, Enterprise and Regulatory Reform	2 July 2008	18 September 2008	

	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			
Protection of databases (extraction)	Directmedia Publishing GmbH v Albert Ludwigs Universitat Friburg C-304/07		9 October 2008	
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'	Commission v Austrian C-564/07			

services				
VAT and duty on documented legal transactions	Renta, S.A. v Generalitat de Catalunya C-151/08			
VAT applicability to legal advice services- Legal aid paid by State legal aid offices	Commission v Finland C-246/08			
Legal education. German legal exams and assessment of equivalence	Krzysztof Pesla v Justizministerium Mecklenburg-Vorpommern C-345/08			
State aid				
Calculation methods for recovery of aid	Département du Loiret v Commission C-295/07	4 June 2008	5 June 2008	
Taxation				
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			
Treatment of meals in staff canteen for VAT purposes	Danfoss A/S and AstraZeneca A/S v Skatteministeriet C-371/07		23 October 2008	
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