



VIEWPOINT



Cécile Kyenge MEP
Equality and Diversity in the professions

IN FOCUS

EQUALITY AND DIVERSITY

Progression in the field of LGBT rights in Europe and internationally, by Jonathan Cooper OBE

Equal opportunities for law students: ELSA and Break Into Law

Law Society of Scotland Equality and Diversity Initiatives

Solicitors for social mobility: Law Society's Ambassadors Project and Diversity Access Scheme

Breaking down barriers: Law Society mentoring programme

Increasing Social Mobility: Blind Recruitment

Member States disagree on gender equality proposals

LAW REFORM

Out with the old, in with the Nairobi? WTO's 10th Ministerial Conference concluded

Big Mac Tax: McDonald's Luxembourg tax affairs under investigation

The United Kingdom rejoins the "Prüm Decisions"

Digital Single Market: bringing down barriers to online access to goods and digital content in the EU

Great Danes? Denmark rejects greater EU integration

The Netherlands takes over as the Presidency of the Council of the EU

Setting a new standard: Parliament and Council agree on Data Protection Regulation

Passenger Name Records given flight: Agreement reached on PNR Directive

Tackling Terror: Commission proposes a new directive on terrorism

Taxation: the Council makes inroads

Commission Green Paper on retail financial services

PROFESSIONAL PRACTICE

One more hurdle in the rat race? SRA opens consultation on SQE

Law Society of England and Wales Recommends Minimum Salary for Trainee Solicitors

LAW SOCIETIES' NEWS
Trainee solicitors' visit to the European Court of Justice

Law Society's Graham Turnbull Essay Competition

January office reception

Chancellor of the Exchequer's announcement on review of Regulation for legal services

Opportunity to apply for ECJ referendaire position

Office move: 'End of an era' for the Law Society of Scotland

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CASE LAW CORNER

ONGOING CONSULTATIONS

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Editorial

Happy New Year from all here at the Brussels Office. With various (New Year's) resolutions already coming under strain, and the excesses of Christmas transfigured into hazed, regretful memories, we proudly present our January edition of the Brussels Agenda.

This month's topic is Equality and Diversity. By way of introduction, consider the following statistics on diversity in the legal profession:

- **71%** of senior British judges attended independent schools (compared to 7% of the population as a whole);
- **75%** of senior British judges attended Oxbridge (compared to less than 1% of the population as a whole);
- In England and Wales, some **25%** of judges are female. If one looks at the stratified data, then it emerges that there is only one female Justice in the Supreme Court and that only 21 out of 108 High

Court judges are female. Moreover, looking at the entry data, only 43% of recommended candidates are women;

- In England and Wales, women make up **56%** of in-house solicitors (compared to 48% among all solicitors). However, when looking at the type of practice, the situation is slightly different. Women make up less than 30% of the workforce of legal consultancies but more than **60%** of local government bodies and advice centres.

As always, the Brussels Agenda is here to present facts, viewpoints and questions rather than enforce answers. Why are equality and diversity important issues? What should our end goals be in this regard? What are the obstacles faced in the profession? What are the ways forward?

We hope that your opinions will be informed by our excellent external contributions from, amongst others, Cecile Kyenge MEP and Jonathan Cooper OBE. This edition also includes articles detailing some of the Law Societies' diversity initiatives. Alongside our 'In Focus' section you will find contributions from the Brussels Office on a range of pertinent topics including international trade, tax, data protection and much more.

[Back to Contents](#)

[Next Item](#)

Viewpoint	In Focus	Law Reform	Professional practice	Law Societies' News	Just Published
Law Reform	Data Protection, Privacy and Technology			Just Published	



Cécile Kashetu Kyenge MEP Equality and Diversity in the professions

To have been a medical doctor for many years has been an extraordinary journey of human and professional growth. As a surgeon, you have to be calm and collected, but at the same time you have to decide and act quickly, facing emergencies with great lucidity of mind and acting promptly for the sake of your patient.

Being not just a woman, but also a black immigrant, taught me much over the years in the art of facing prejudice, discrimination and attacks. But it was only when I came into politics that I realised fully that equality and diversity are still controversial issues: at which point I put to good use all those skills that I learned as a professional doctor! My nomination in Italy to Minister for Integration in 2013 was praised by many, but it also created hysterical reactions of rejection. For some it seemed a subversion of the natural order, something which confused them and therefore scared them.

The insults and the threats did not discourage me, and I never felt personally offended. It made me sad, though, to realise how much confusion, bitterness and anger lives in the hearts of many, and in particular to have to watch the cynical speculation of people's fear and naivety. I always felt injury was done to the entire community, not to me personally.

Don Milani was a priest who, 50 years ago, set up a revolutionary evening school for the children of his parishioners, poor mountain peasants; but above all he was a man of extraordinary civil conscience, and he denounced the hypocrisy of apparently democratic institutions. He used to say: "*There is nothing as unjust as giving the same to those who are not the same*".

During the course of history, human societies have found innumerable reasons and ways of distinguishing between high and low, in and out. The oldest, most common and stubborn form of discrimination has always been the one against women, but also ethnic origin, nationality, religion, sexual orientation, physical and mental conditions, social class and political beliefs have been used as reasons to divide humanity and apportion, in different measures, rights, resources and dignity.

And when this inequality becomes systemic, it is not enough to give in the same measure; those who are disadvantaged are not able to compete fully, carrying the weight of injustice which makes them slower.

Public institutions, in order to be truly just, must give unequally to the ones who are unequal. This is what is today called affirmative action. We must give more attention, more resources, more care and more credit to those who have been left behind, and it is for this reason that European Union policies are not only geared towards eliminating discrimination, but also towards empowering people who are marginalised.

Culture and education are two fundamental components of the empowerment process. A woman who has a clear understanding of her abilities and entitlements, who is confident in taking decisions and assuming responsibility, who is not conditioned by stereotypes and fights every day to realise her potential, certainly has a better chance of not becoming a victim of violence, and of transmitting a sense of self worth to her

family, friends and colleagues.

I believe that women, and not only European women, are now a long way into their irreversible journey towards autonomy; and I also believe that it is now men who are feeling disoriented and need help. Many psychologists and sociologists are talking of "male crisis" and even of a "disappearance of the paternal figure", and it is not by chance that the Istanbul Protocol introduces, in its chapter on gender violence, male education and treatment for the abusers.

In Italy the association "Maschile Plurale" fights violence against women through collaborative work with men. They have recently launched an innovative campaign which shows men living happily in non traditional roles and situations, like men staying at home to take care of the family, men proud of the success of their partner, men doing housework or crying. This is very important because women not only suffer from prejudice and stereotyping but can also feel as if they have to hold themselves in check, afraid to damage the ego of their partners by being too successful.

I am always happy, and moved, when I receive letters from people, particularly women, who say they have been encouraged and inspired by my achievements. We have a long way to go yet, but the first steps are always the hardest, and walking in company makes the travel lighter.

Biography



Cécile Kashetu Kyenge MEP was born in Kambove in the Democratic Republic of Congo on 28 August 1964, arriving in Italy with a student visa in 1983. She has a degree in medicine and surgery from the Università Cattolica del Sacro Cuore in Rome and is a specialist in ophthalmology at the University of Modena and Reggio Emilia. In February 2013 she was elected member of the Chamber of Deputies for Italy's Democratic Party in Emilia-Romagna. Two months later she was appointed Italian Minister for Integration in the grand coalition government formed by Enrico Letta, becoming Italy's first black cabinet minister.

On 25 May 2014 she was elected as an MEP. Her role in Parliament involves being Vice Chair of the Delegation to the ACP-EU Joint Parliamentary Assembly, a Member of the Committee on Civil Liberties, Justice and Home Affairs, and a Substitute for the Committee on Culture and Education.

Kyenge MEP has also founded an intercultural Association (DAWA) to promote mutual awareness, integration and cooperation between Italy and Africa, particularly in her country of birth, the Democratic Republic of Congo. She is also the spokesperson of the association "March First", which works to promote the rights of migrants in Italy. She collaborates with various organizations and associations in national campaigns on the rights of citizenship. She collaborates with many Italian magazines, including *Combonifem* and *Corriere Immigrazione*, an online newspaper and a weekly journal on the culture of Italy of the present and future.

[Previous Item](#)

[Back to Contents](#)

[Next Item](#)

[Viewpoint](#)

[In Focus](#)

[Law Reform](#)

[Professional practice](#)

[Law Societies' News](#)

[Just Published](#)



In Focus

EQUALITY AND DIVERSITY

Jonathan Cooper OBE

Progression in the field of LGBT rights in Europe and internationally

The rapid progress of affording legal rights to lesbian, gay, bisexual and transgender (LGBT) people in Europe has been astonishing. Within the space of a generation we have seen consensual same-sex relations go from being a criminal offence throughout most of the continent, to achieving marriage equality in the UK, France, Belgium, Spain, Portugal, Luxembourg, the Netherlands, Denmark, Finland, Sweden, Norway, Iceland, and Ireland – the first country to do so by popular referendum. This story, of the triumph of equality and diversity, is also a story of the triumph of the rule of law.

In the landmark decision of *Dudgeon v the United Kingdom 1981* at the European Court of Human Rights, the court decreed that the criminalisation of homosexuality amounts to a violation of a person's right to privacy. This precedent was later applied by the court in relation to both Ireland and Cyprus. Moreover this judgment was incorporated into the eligibility criteria for the Council of Europe, which declared that states could not join the Council without removing bans on consensual same-sex intimacy. Following this, 19 further countries across the continent, including Georgia, Serbia, and Ukraine, decriminalised. This wave of change is evidence of the law's capacity to shape the world for the better.

However, despite the fact that the criminalisation of homosexuality has been proven to violate LGBT people's fundamental human rights to privacy, dignity, and freedom from non-discrimination, 78 jurisdictions across the globe continue to maintain these persecutory laws which demean and degrade LGBT people. Their continued existence undermines the rule of law within these countries, by making the fundamental rights which should be afforded to all citizens not apply to LGBT people. Moreover these laws engender human rights violations against LGBT people, including mob violence, honour killings, and 'corrective rape'. This is purely because criminalisation puts LGBT people beyond the reach of the law, making them vulnerable to vigilante-style violence, as crimes are not investigated, police forces turn a blind eye, and perpetrators go unpunished: impunity flourishes.

Other laws pertaining to LGBT people which have similarly devastating effects include the 'anti gay propaganda' laws in Russia which violates LGBT people's freedom of expression. Similarly, anti gay organisation laws like those in Nigeria and soon to be in Uganda, remove LGBT people's right to freedom of association. Nigeria's law goes even further to criminalise same-sex couples living together. All of these laws persecute LGBT people on the arbitrary basis of identity, and undermine states like Russia's professed commitments to inclusive democracy or the rule of law.

More damningly, most of the states which criminalise homosexuality are party to international accords which criminalisation conflicts with, like the UN's International Covenant on Civil and Political Rights. Further, criminalising states claim to applaud the values of the Universal Declaration of Human Rights. This is blatantly absurd given this document was written to instil the idea that human rights apply to every human being without exception, and to protect vulnerable minorities from the tyranny of the majority. For LGBT people in these 78 jurisdictions, nearly half of the world, international law merely amounts to empty words.

The criminalisation of LGBT people poses one of the great tests for international law today. It fundamentally undermines any chance for global equality and diversity, and thus progress. As long as these criminalising penal codes remain all over the world, international law continues to look weak, hollow, and ineffectual. For if it cannot defend the most marginalised, those targeted by the very governments they live under, then it fails to defend those it was principally designed to protect.



Jonathan Cooper OBE is a barrister at Doughty Street Chambers and a Human Rights specialist with experience before English and International courts and tribunals, as well as conducting training programmes and advising on human rights issues in jurisdictions all over the world. Jonathan is the Chief Executive of the Human Dignity Trust, a legal charity that supports those who want to challenge anti-gay laws wherever they exist in the world.

[Previous Item](#)

[Back to Contents](#)

[Next Item](#)

[Viewpoint](#)

[In Focus](#)

[Law Reform](#)

[Professional practice](#)

[Law Societies' News](#)

[Just Published](#)

Equal opportunities for law students – ELSA and Break Into Law

The gap between legal studies and professional life is sometimes wide, making it challenging for law students to gain employability skills and knowledge on their career opportunities. A way to overcome this challenge is to get involved in The European Law Students' Association (ELSA) and take part in activities organised jointly with DLA Piper, a global law firm.

The legal profession is welcoming more students from diverse backgrounds. Because some of these students are the first in their families to attend law school, they benefit from additional mentorship and support. Membership in a student organization gives students the additional insight and advice they require to succeed. It allows students to network, build a strong CV, and learn about what employers are looking for. Potential employers can also easily approach students via an association or student organization.

ELSA partnered with DLA Piper with the objective of providing students from underrepresented backgrounds with access to the legal sector. DLA Piper invites ELSA members to their offices to hear about career opportunities and to learn employability skills from their lawyers. Break into Law is DLA Piper's global initiative focused on removing barriers to the wide range of legal and non-legal careers within the legal profession.

"This training has been amazing. It has been a great opportunity to discover a unique law firm. I really liked

how kind, polite, open-minded and willing were the people who spoke to us. They were all respectful, prepared and also funny. Above all they have been honest and encouraging, thank you again!" (ELSA participant at the DLA Piper Career Insights Training Program in Italy).

"Thank you for organizing this day, allowing us to break into and really get into the day-to-day practice of a law firm such as DLA Piper. We learned more than we expected, and we are most grateful. As Jeremy Bentham said "the power of the lawyer is in the uncertainty of the law." I think within a day we have seen that if the law is sometimes unclear or equivocal, hard work, great team spirit, passion, determination and team work makes jurisprudence, makes the difference, makes a match point!" (Margaux Frisque, ELSA member participant at the ELSA Career Insights workshop in France).

One more interesting opportunity for law students to get an insight to professional world, and on the other hand for employers to hire interns with international expertise is called the Student Trainee Exchange Programme. It is an international legal internship programme run by and for law students. ELSA created the programme more than 30 years ago and administrates the whole recruitment procedure on behalf of the employer, making it easy for the students to apply as well. More than 400 law students gain work experience abroad every year thanks to the employers taking part in the programme and the volunteers taking care of the administration and promotion.

In conclusion, partnerships between civil society organizations and private companies can benefit young people. The partnership between ELSA and DLA Piper is one such example of a highly beneficial program. Students from underrepresented groups can build a competitive CV and expand their professional network while making new friends.

ELSA is the world's largest independent law students' association with 40,000 members. ELSA provides opportunities for international exchange, diversified legal education and personal professional development for law students and young lawyers.

ELSA and DLA Piper run several Break Into Law programmes around Europe in cooperation annually.

[Previous Item](#)

[Back to Contents](#)

[Next Item](#)

[Viewpoint](#)

[In Focus](#)

[Law Reform](#)

[Professional practice](#)

[Law Societies' News](#)

[Just Published](#)

Law Society of Scotland Equality and Diversity Initiatives

Street Law

The Law Society of Scotland launched its **Street Law** programme with five pilot schools in Glasgow in 2014. Street Law is an innovative, interactive way of teaching law and sees trained law students deliver a number of law classes to school pupils. During 2015, the programme was rolled out to further schools across a wider range of local authorities. Feedback from teachers, pupils and the students who have delivered the classes has been highly positive and the programme has now expanded across Scotland. It will be delivered in over 30 schools in the 2015/16 school year.

The Society is targeting the programme at schools that do not have a tradition of pupils going on to study law at university. It is hoped that Street Law will help interested pupils from such schools consider a legal career – either as a solicitor or elsewhere in the justice sector. The Society is also increasingly linking its Street Law programme with other initiatives at law firms, in-house organisations and its own careers days.

Legal Education Trust

The Law Society of Scotland is in the process of establishing a **Legal Education Trust** to provide financial assistance and mentoring support to able students from less advantaged backgrounds to assist during both undergraduate studies and the vocational Diploma in Professional Legal Practice on their path to qualification as a solicitor. A fixed sum bursary will be available for each study year to students who meet eligibility criteria based on income of parents or guardians. Students will only be eligible to apply if they have received an offer to study the LLB degree at a university accredited by the Law Society of Scotland.

Experience in other widening participation initiatives demonstrates that mentoring support is of equal importance as financial assistance and, therefore, mentoring will be a requirement for all successful applicants who will benefit from the guidance, advice, support and encouragement from a member of the Scottish solicitors profession. Fundraising for the Trust is due to commence in January 2016 and will continue on an ongoing basis with a view to supporting an increasing number of students year on year. Anybody interested in donating to the Legal Education Trust should contact Liz Campbell, Executive Director of Education, Training and Qualifications at the Law Society of Scotland at lizcampbell@lawscot.org.uk.

Solicitors for social mobility: Law Society's Ambassadors Project and Diversity Access Scheme

Background

The Law Society of England and Wales is committed to ensuring that talented individuals who aspire to a career as a solicitor have fair access and opportunities to pursue their ambition, regardless of their socio-economic background. This includes celebrating solicitors who have achieved professional success, pursuing their ambitions despite financial and social obstacles.

In March 2014, the Society hosted a Social Mobility Dinner as an opportunity to reflect on progress with key stakeholders and to identify opportunities for coordination and increased impact. Stakeholders discussed gaps in the current approach, whilst generating new ideas, one of those mooted being the promotion of role models within the profession, to highlight the importance of equal opportunities.

Ambassadors Project

Of the many accomplished and talented individuals from all walks of life in the solicitor's profession, many will have experienced and overcome socio-economic hurdles in the pursuit of their career ambitions and professional success. The Society's **Ambassadors Project** celebrates the success of such solicitors, showcasing their achievements and sharing their stories. It aims to inspire potential entrants from all backgrounds, emphasising that the profession welcomes talent and hard work above all else.

The Project was launched at the Excellence Awards in October 2015 with a photography exhibition, featuring the portraits and short biographies of the 10 solicitor ambassadors. The exhibition together with the full stories of the ambassadors can be found on the Project [website](#).

The Project will run on a rolling annual basis, as a celebration of social diversity and meritocracy in the profession. Each year, 10 inspiring solicitors will be awarded and have their success recognised, creating a 'bank' of highly visible role models. It aims to be a flagship celebration, complementing the Society's other work on social mobility and raising awareness of the issues relating to fair access.

Diversity Access Scheme

This Society's Diversity Access Scheme (**DAS**) also aims to increase social diversity in the profession by supporting promising entrants from disadvantaged backgrounds or those facing exceptional obstacles to qualification. Support is given through financial assistance with LPC fees, access to high-quality work experience and professional mentors. Each year, 10 DAS scholarships are awarded to students who demonstrate academic ability, determination and commitment to a career in law. The application process is competitive and involves an application form, essay question, assessment and panel interview.

Leila Lesan, the Society's social mobility and wellbeing policy adviser, confirms that typical DAS candidates are likely to be the first in their families to go to university, having neither well off parents nor contacts in the profession. Lesan comments that such candidates tend to have the advantage of being talented and determined to succeed against the odds.

The **DAS PLUS** award, piloted in 2015, provides successful candidates working at Law Centres with assistance to cover LPC fees as well as guaranteeing a training contract at a Law Centre. One DAS PLUS award is made annually. Lesan comments that DAS PLUS award will demonstrate the Society's support to the social advice sector which has been greatly affected by legal aid cuts. Lesan adds that DAS is funded by charitable donations from the [Law Society Charity](#), law schools and a range of corporate sponsors.

Breaking down barriers: Law Society mentoring programme

Research undertaken in 2009-10 by the Law Society of England and Wales raised concerns over a lack of representation at Partner level and above for female solicitors, those from BAME (black, Asian and minority ethnic) and LGBT (lesbian, gay, bisexual and transgender) groups, and those with disabilities.

One initiative aiming to combat this is the Law Society's **mentoring programme**, aimed at practising solicitors who do not currently have access to any such scheme, for example in their place of work. The idea is to provide visible role models for solicitors from the underrepresented groups outlined above through mentoring, in order to avoid any isolation of people from such groups.

Signing up as a mentor provides an opportunity for solicitors to share their knowledge and skills. As explained by the Law Society's [article](#) on the subject, "*mentors should hold a practicing certificate (PC) unless there is a good reason why they do not, such as working in an area like central government where no PC is required, or they are recently retired*".

Diversity and inclusion consultants [Brook Graham](#) assisted in the development of the programme and will also manage it, matching mentors and mentees and providing training. Initial commitment to the programme will last 12 months, with regular meetings and monitoring.

According to the Law Society's [article](#) "*this is a pilot programme and it is an exciting opportunity for solicitors to access professional support in a structured way at little cost*". Full details of the scheme can be viewed on the Law Society's [website](#).

[Previous Item](#)

[Back to Contents](#)

[Next Item](#)

[Viewpoint](#)

[In Focus](#)

[Law Reform](#)

[Professional practice](#)

[Law Societies' News](#)

[Just Published](#)

Increasing Social Mobility: Blind Recruitment

The Law Society of England and Wales has identified the need for a toolkit on fair recruitment, with data showing that **28.6 per cent** of solicitors attended independent or public schools compared to around 7 per cent of the general population of England and Wales. There is also evidence to suggest that larger firms often recruit from a small pool of talent, [focusing on Russell Group](#) universities accounting for 20 out of more than 115 universities across England and Wales. These universities tend to have the lowest proportion of disadvantaged students and the highest levels of privately educated students.

This evidence suggests that students from disadvantaged backgrounds may face multiple barriers to the profession.

What is blind recruitment? In its "Elitist Britain" [report](#), The Child Poverty and Social Mobility Commission made recommendations to employers on improving social mobility, one of which is to use school and university blind applications.

Such applications usually omit the type of school attended and the name of the university attended, but may also omit A-level grades and even the applicant's name. Essentially any information that an organisation feels might bias recruiters may be withheld. The idea is that such recruitment practices, particularly in the legal sector, may encourage more effective assessment methods, rather than relying on information such as university rankings as an indicator of a candidate's potential as a trainee solicitor.

Why consider blind recruitment?

Despite receiving praise from the Social Mobility and Child Poverty Commission Chair, Alan Milburn, on its efforts to improve social mobility, statistics demonstrate that the legal profession must do more to achieve a more balanced membership.

Research by The Sutton Trust shows that children with professional parents are three times more likely to go to a Russell Group university than those with working class parents, whilst according to another report **78% of partners at Magic and Silver Circle firms** attended a Russell Group university.

It seems that family and academic background can still have a very real impact on a candidate's chances of accessing the legal profession. Barriers can be academic, financial or social - or a mixture. Implementing elements of blind recruitment may help to reduce the disparity between candidates from different socio-economic backgrounds, removing any bias (conscious or otherwise) harboured by recruiters and paying less heed to factors such as the university attended and grades achieved at school.

It is hoped that blind recruitment could play a useful role in encouraging social diversity in the profession, in line with the government's [stated aspiration](#) for a "*One Nation Society*" where "*your progress in life – the job you do, the income you earn, the lifestyle you enjoy – depends on your aptitude and ability, not your background or your birth*".

[Previous Item](#)

[Back to Contents](#)

[Next Item](#)

[Viewpoint](#)

[In Focus](#)

[Law Reform](#)

[Professional practice](#)

[Law Societies' News](#)

[Just Published](#)

Member States disagree on gender equality proposals

The Employment, Social Policy, Health and Consumer Council adopted [conclusions](#) on equality between women and men in the field of decision-making on 7 December 2015. Here the Council welcomed the [Report](#) on the Review of the Implementation of the *Beijing Platform for Action in the EU Member States: Gender Equality in Power and Decision-making*, which gives an overview of women's and men's engagement in

political, economic and social decision-making in the period from 2003 to 2014.

The Council also called on the Member States and the Commission to take certain actions on the basis of the report. All of these actions are non-legislative in nature, such as reporting and making studies, disseminating data or reviewing progress.

Member States are urged to "*recognise the benefits of pursuing a balanced representation of women and men in political decision-making*" and promote this balanced representation, for example by introducing a 'zipper system' where male and female candidates appear alternately on voting lists. Public and private companies and other organisations are to pursue a more equality-friendly corporate culture, including flexible working arrangements and transparency in recruitment and promotion practices, and to encourage the involvement of top management in these efforts.

The Commission is to adopt a new strategy for gender equality after 2015, promote this strategy and report on gender equality, monitor progress, and actively pursue gender balance at all levels of decision-making within its ranks.

The fact that the list does not include any legislative initiatives or binding promises from the Member States, coupled with the fact that the Council **failed** to agree (yet again) on the women on boards **proposal**, indicates that the Council is deeply divided in matters relating to gender equality. It looks like the women on corporate boards proposal may soon face a similar fate to the maternity leave proposal, which was withdrawn earlier in 2015 by the Commission, despite the heavy lobbying that the Luxembourg Presidency did on the file. The Dutch Presidency does not mention this in its priorities.

Previous Item	Back to Contents	Next Item			
Viewpoint	In Focus	Law Reform	Professional practice	Law Societies' News	Just Published



Out with the old, in with the Nairobi? WTO's 10th Ministerial Conference concluded

The tenth **WTO Ministerial Conference** (MC10) (Nairobi, 15 to 19 December) resulted in the adoption of the so-called "**Nairobi Package**" comprising six Ministerial Decisions on agriculture, cotton and measures aimed at assisting least-developed countries (LDCs). The EU sent a delegation of ten, led by the European Parliament's International Trade Committee Chair, Mr Bernd Lange (S&D, DE).

The Nairobi Package was **celebrated** by some as potentially marking the end of the "Doha round". That round was launched in 2001 and encountered early obstacles such as divisions between participants, the rapid development of certain members (e.g. China), and a lack of engagement by the US on agricultural issues as a result of its **powerful farming lobby**. The Doha round, which had aimed to focus on agriculture as a means of helping LDCs to lift themselves out of poverty through international trade, has largely been superseded by bilateral or regional deals. However, Ministers at Nairobi stated that there remained a "*strong commitment of all Members to advance negotiations on the remaining Doha issues.*"

On trade in services for LDCs, a Nairobi **Ministerial Decision** extends until 31 December 2030 the waiver period under which non-LDC WTO members can grant preferential treatment to LDC services and suppliers. The importance of this exceptional waiver is that it allows members to deviate from **most favoured nation** obligations in the WTO's General Agreement on Trade in Services (commonly referred to as the **GATS**), under which one member must not discriminate among services from other members.

WTO members also agreed a timetable for the implementation of a deal to **eliminate tariffs on IT products**, valued at over \$1.3 trillion per year. These negotiations followed the **Information Technology Agreement**, originally agreed in July 2015, and included both developed and developing countries accounting for some 90% of trade in IT products. All WTO members will benefit from the duty-free market access to the markets of those members eliminating tariffs on the products in question. According to the **UK government Department for Business Innovation and Skills**, "*consumers and businesses are set to benefit from lower priced IT goods following the conclusion of negotiations...*"

Building on the 2013 Trade Facilitation Agreement (the "**Bali Decision**"), which introduced multilateral guidelines enabling LDC exports to qualify more easily for preferential market access, the Nairobi Package provides more detailed directions on issues such as determining when a product qualifies as "made in an LDC" and situations where inputs from other sources can be "cumulated" when determining origin. The **decision** also "*calls on preference-granting members to consider simplifying documentary and procedural requirements related to origin*". The **WTO hopes** that rules of origin will allow effective market access for

LDCs on a lasting basis.

In 2013, the EU **pledged funding** worth €400m over five years towards achieving the aims of the Bali Decision, and within this framework the EU made a **pledge** at MC10 for €600,000 to support the continued implementation of reforms, making LDCs' customs procedures more efficient.

According to a Commission **press release**, the EU is now "*the world's most generous Aid for Trade donor*", with total contributions to the poorest trading nations amounting to €12 billion per year.

Finally, Liberia and Afghanistan, both of which are LDCs, concluded negotiations regarding the terms of the WTO Membership and will become formal members in 2016.

[Previous Item](#)

[Back to Contents](#)

[Next Item](#)

[Viewpoint](#)

[In Focus](#)

[Law Reform](#)

[Professional practice](#)

[Law Societies' News](#)

[Just Published](#)

Big Mac Tax: McDonald's Luxembourg tax affairs under investigation

On 3 December, the European Commission launched a **formal probe** into the tax affairs of McDonald's Europe Franchising (McDonald's EF), claiming that tax rulings granted by Luxembourg breach EU state aid rules by allowing the corporation to avoid paying tax in the Grand Duchy on royalties received from franchise restaurants in Europe and Russia. This is the latest in a series of investigations by the Commission in the wake of the 'LuxLeaks' scandal, with the Commission having already found the tax practices of Starbucks and Fiat in the Netherlands and Luxembourg, respectively, to be unlawful (see **Brussels Agenda, November 2015**).

The Commission has **stated** that the tax rulings are not in the spirit of a longstanding US-Luxembourg **double taxation treaty**. In a press release, Commissioner Margrethe Vestager said that "the purpose of Double Taxation treaties between countries is to avoid double taxation – not to justify double non-taxation".

At the time of the Luxembourg rulings in 2009, McDonald's EF argued that their US branch was a 'permanent establishment' under Luxembourg law, whilst it was not so in the US under US law. On this basis, Luxembourg recognised that the corporation should pay most tax on its profits in the US branch, whilst the US authorities did not recognise the branch as permanently established. As a result the Commission claims that Luxembourg exempted the profits from taxation despite knowing they were not being taxed in the US.

A first ruling in March 2009 required McDonald's EF to prove that their royalties, transferred to the US via Switzerland, were declared and subject to taxation in both those countries. However since the profits were not in fact subject to tax in the US, McDonald's EF was unable to provide the required evidence. The corporation therefore requested a second ruling, arguing that Luxembourg should nevertheless exempt those profits not taxed in the US from taxation in Luxembourg. A second ruling in September 2009 removed the requirement for proof that profits were taxed in the US, the **effect** of which was to exempt almost all of McDonald's EF's income from taxation in Luxembourg.

McDonald's has **stated** that the corporation "*complies with all tax laws and rules in Europe and pays a significant amount of corporate income tax*", and is "*confident that the inquiry will be resolved favourably*".

Further Commission investigations into tax rulings in Belgium, Ireland (in respect to Apple's tax practices) and Luxembourg (in respect of Amazon) are ongoing, some of which subject to **delays**. Meanwhile, both the **Dutch** and **Luxembourg** governments have indicated their intention to appeal the Commission's decisions in the Starbucks and Fiat cases.

[Previous Item](#)

[Back to Contents](#)

[Next Item](#)

[Viewpoint](#)

[In Focus](#)

[Law Reform](#)

[Professional practice](#)

[Law Societies' News](#)

[Just Published](#)

The United Kingdom rejoins the 'Prüm Decisions'

On 8 and 9 December the UK's House of Commons and House of Lords voted to rejoin the '**Prüm Decisions**'; EU measures which enable police forces across the European Union to access each other's databases containing DNA profiles, fingerprints and vehicle registration records in order to prevent and investigate crime.

The UK had stopped participating in December 2014, when it opted out of all the EU policies on criminal justice measures adopted before the coming into force of the Lisbon Treaty in 2009.

There was a recognition that the UK participation would increase the exchange of DNA profiles, fingerprints and vehicle registration data with other EU Member States. The evidence presented by the Government indicated that the process itself is more efficient, being wholly (for vehicle registration data) or partially (for

DNA profiles and fingerprints) automated and subject to strict response times. This makes the Prüm system a much more useful operational tool for the police working on real time investigations.

The Government suggested that the potential policing benefits are considerable, and that there could be benefits, too, for innocent individuals if a Prüm search enables them to be eliminated from police investigations more quickly.

The question of the jurisdiction of the Court of Justice of the European Union remains open: the Government recognised that acceptance of the Court's jurisdiction is an inevitable consequence of participating in Prüm. Despite this, the Government drew a distinction between law enforcement cooperation measures, such as Prüm, and substantive criminal law measures.

Recognising the risks involved in rejoining the Prüm decisions, the following safeguards were introduced:

- Member States will only be allowed to search the DNA profiles or fingerprints of individuals who have been convicted in the UK;
- To reduce the risk of adventitious matches, the UK will
 - (i) only share crime scene profiles with other Member States which have more than eight loci, and
 - (ii) will only routinely release personal (demographic) information on individuals in its DNA database where 10 or more loci match;
- A proportionality test will be applied so that personal information following a hit is not sent to another Member State if the offence being investigated is not sufficiently serious; and
- There will be a requirement for a formal Letter of Request for the release of personal information relating to minors, following a verified hit.

Previous Item	Back to Contents	Next Item			
Viewpoint	In Focus	Law Reform	Professional practice	Law Societies' News	Just Published

Digital Single Market: bringing down barriers to online access to goods and digital content in the EU

On 9 December 2015 the Commission submitted a package of proposals and announcements on the Digital Single Market (DSM). This package included three legislative proposals, two proposed directives on online contracts and a third regulation on portability of digital content, as well as a communication on the modernisation of copyright. The basic **aim** in these proposals is to simplify and promote access to digital content and online sales across the EU.

The core question that the Commission wants to address is how to incentivise companies and customers based in the EU to operate more frequently and freely across the national borders. For the traders the essential barriers relate to the costs of trading across borders, and the availability of consumer remedies if something goes wrong. The proposals on online contracts accordingly include the harmonisation of some key mandatory EU contractual rights for consumers, as well as remedies concerning online shopping for **goods** and **digital content**.

However, the Commission is also concerned about companies dividing the EU market with the use of geoblocking. The Commission took a first stab at this topic with the proposal on portability of digital content. This proposed regulation aims to allow EU residents to travel with the digital content they have purchased or subscribed to at home, ensuring that users will have access to their games, films and music as if they were at home when travelling across the EU.

The proposal on portability does not directly attack geoblocking in a wider sense, that is, when an EU buyer resident in one Member State wants to purchase online goods or digital content from another Member State. The Commission **consultation** on geoblocking in this wider sense closed on 28 December, and further proposals are likely to follow in the spring.

The final big announcement is the long awaited Commission communication on copyright, "*Making EU copyright rules fit for the digital age*". This sets out the Commission's vision for the modernisation of EU copyright rules. The reform includes four complementary pillars. Accordingly, the Commission's main aim is to widen access to content across the EU, allowing for better circulation of content across the Member States. This can include exceptions that allow the use of copyrighted materials without prior permission for research, teaching, innovation, the right to panorama and the EU implementation of the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled.

The reform should also ensure a fairer market place, where the use of works is properly authorised and the creators and industries remunerated. Finally, the reform should provide better tools to fight piracy. At this stage the Commission is not aiming to create a fully harmonised system, however, it does acknowledge that, should reforms prove inadequate, it will consider wider instruments, such as single copyright title and single copyright code.

The UK Law Societies are following these proposals and communications closely. The Law Society of England and Wales has already submitted responses to the online [contract law](#) and geoblocking consultations, combining views from consumer, intellectual property and competition law angles. We are also in the process of analysing the texts and will provide timely updates on our thoughts as well as further actions. There will be more to follow on this subject!

[Previous Item](#)

[Back to Contents](#)

[Next Item](#)

[Viewpoint](#)

[In Focus](#)

[Law Reform](#)

[Professional practice](#)

[Law Societies' News](#)

[Just Published](#)

The Netherlands takes over as the Presidency of the Council of the EU

On 1 January 2016, the Netherlands took over the six-month Presidency of the Council of Ministers, which runs until 30 June. The Presidency prepares and chairs Council meetings and preparatory bodies, and represents the Council in relations with other EU institutions. The Dutch Presidency will work together with Slovakia and Malta in a 'Presidency Trio', which sets objectives and ensures political continuity.

In a [letter](#) to the Dutch House of Representatives, the Dutch Foreign Ministry set out key principles for the Dutch Presidency. Based on the [European Council's strategic agenda](#), adopted in 2014, the priorities are as follows:

- A Union that focuses on the essentials, adding to what Member States must do themselves, encouraging better quality legislation and reducing administrative burdens and associated costs.
- An innovative Union focused on growth and jobs, removing the remaining internal market barriers and focusing on research and innovation.
- A Union that built on the fundamental values and trust of its citizens, offering opportunities to input to policy making, by strengthening transparency and increasing citizens' involvement.

The priorities for specific policy areas are as follows:

- **Trade/Foreign Affairs** –The Presidency will concentrate on TTIP and EU-Japan negotiations, the implementation of [agreements](#) adopted at the WTO Nairobi Ministerial Conference in December, and the debate on the EU's role in the multilateral trade system. The Presidency will work towards common positions on the regulation of trade in torture instruments and conflict minerals. There will be a focus on the enforcement of human rights, combating child labour, ensuring compliance with the EU Action Plan for Human Rights and Democracy for 2015-2019 and the ongoing reform of trade defence instruments.
- **Single Market** – boosting the digital economy and encouraging innovation are top priorities, being the essential drivers for economic growth. The Presidency wishes to improve cross-border e-commerce and the free flow of data, modernise copyright and simplify VAT, as well as focusing on the Digital Single Market (copyright and online contracts) and strengthening implementation of the Services Directive. Ongoing legislative dossiers include single-member private limited liability companies and proposals for a regulation on the portability of online content.
- **Justice and home affairs** – this crucial dossier will cover migration and security, following a year marked by unprecedented migration levels and several terrorist attacks. Ongoing work includes the Smart Borders Package, the Regulation on safe countries of origin, a Directive on combating terrorism, a Visa Package, Proposals on firearms and EU Passenger Name Records, and a European Border & Coast Guard Package. A Better Migration Management Package is also expected, whilst the Presidency will lead work on the relocation mechanism and Action Plan on Migrant Smuggling.
- **Economic and Financial Affairs** – The Presidency will concentrate on stimulating growth and jobs through healthy public finances, structural reforms and investment. This includes continuing Capital Markets Union proposals, including a new Securitisation Package and reviewing the Prospectus Directive. Ongoing dossiers include European Deposit Insurance Scheme, Financial Transaction Tax and Bank Structural Reform. Proposals are expected on corporate taxation, a pan-European venture capital fund-of-funds and multi-country funds.
- **General Affairs** – The Presidency intends to conclude the inter-institutional agreement on better regulation and is likely to start negotiations on proposals for a mandatory (lobbying) Transparency Register.

EU-UK relations will be a key issue for the Presidency. It is not yet clear exactly what actions will be taken, pending the outcome of negotiations carried out in 2015 and a referendum date. At the [European Council summit](#) on 17-18 December, David Cameron set out four key areas for reform, addressing concerns of the British public over UK membership. Council President Donald Tusk [agreed](#) to table a "concrete text" to all leaders ahead of the next summit in February. The Netherlands is keen for Britain to remain, as it provides a counter-weight to the Franco-German axis, whilst the UK is an important trading partner of the Netherlands. Dutch PM Mark Rutte warned that Brexit would be "a killer for the London financial centre."

Great Danes? Denmark rejects greater EU integration

On 3 December 2015 Denmark's citizens rejected by referendum their government's proposal of strengthening integration with the European Union in matters of Criminal Justice and Security.

With the advent of the Lisbon Treaty, Denmark was being excluded from whole areas of cooperation in the field of Justice and Home Affairs.

Denmark has a blanket opt-out from all such measures adopted by qualified majority, and the Government wished to convert it into a system of case-by-case opt-in similar to that currently held by the UK and Ireland.

Voter turnout was 72% and the referendum was lost by 53% to 47%.

The Danes voted against adopting the opt-in arrangement on 22 legislative acts relating to cross-border crime. This included an act regarding the participation of Denmark in Europol, the European police organisation which handles criminal intelligence and cooperation on international organised crime in Europe.

This means that Denmark will not be able to stay in Europol as a full member, as its Prime Minister Lars Løkke Rasmussen confirmed immediately after the result. The Danish Government is seeking an agreement that can allow the country to continue as a member with some form of parallel agreement, but this will not cover all parts of the cooperation.

The Commission's chief spokesperson Margaritis Schinas wrote: "*The Commission President informed the Prime Minister that with this result in the referendum, it will be impossible for Denmark to cooperate fully as part of Europol. They will ask experts to look into a limited cooperation that is politically and legally possible. They underlined that this will be a difficult process which will take a lot of time.*"

Setting a new standard: Parliament and Council agree on Data Protection Regulation

On 15 December, negotiators from the Parliament and Council reached agreement on the Data Protection Regulation. Replacing the 1995 Directive, the Regulation is part of a package, which also includes the Directive on data protection for police and justice authorities (on which a **final compromise text** has been published). The Regulation was approved by the Parliament's Civil Liberties Committee on 17 December and by the Council on 21 December. A plenary vote in the Parliament is expected in early 2016. The Regulation would apply from early 2018.

The long-awaited deal marks an important milestone for data protection legislation, setting a common data protection standard across the EU. The agreement was **welcomed** by commentators including Jan Philip Albrecht, the EP Rapporteur on the Regulation, who stated that "*[t]he new rules will give users back the right to decide on their own private data. [...] Users will have to give their consent by a clear and affirmative action for their data to be used.*"

Commissioner Jourova said that the new rules will give a necessary boost to the Digital Single Market and enable easier cooperation between Member States' law enforcement authorities. Reacting to the agreement, Monique Goyens, Director General of the European Consumer Organisation (BEUC) said that the new law will "*give stronger rights to consumers to claim back ownership of their data.*" She added however that "*[t]he strength of this new law will hinge on how supervisors do their job and force business to abide by the rules.*"

The key elements of the new Regulation include:

- jurisdictional rules reaching outside the EU when data controllers offer goods or services to, or monitor, data subjects in the EU;
- a maximum administrative fine of 4% of an undertaking's global turnover, or €20m. The fines are tiered according to nature of the infraction;
- a watered down 'one-stop shop' mechanism, so that in cases involving multi-jurisdictional breaches, the relevant supervisory authorities will need to be consulted;
- clearer rules on data portability and the right to be forgotten;
- a requirement that data breaches are notified to the supervisory authorities within 72 hours, and to

affected data subjects 'without undue delay';

- greater record-keeping requirements and stronger internal data protection policies for controllers and processors (with the exception of organisations employing fewer than 250 employees);
- the availability to data subjects of more extensive information on data processing and its grounds;
- a compulsory requirement to engage data protection officers both for public bodies and for controllers and processors whose core activities include systematic monitoring of data subjects or large scale processing of sensitive data or criminal offences; and
- a requirement for high-risk processing activities to undergo a data protection risk assessment.

As expected, the new Regulation will pose a significant challenge for many businesses, especially due to the level of fines which may be imposed on enterprises. This will force many organisations to strengthen their internal compliance procedures. Many of the new rules will be further clarified by guidance notes from the European Data Protection Board and the supervisory authorities in coming months.

[Previous Item](#)

[Back to Contents](#)

[Next Item](#)

[Viewpoint](#)

[In Focus](#)

[Law Reform](#)

[Professional practice](#)

[Law Societies' News](#)

[Just Published](#)

Passenger Name Records given flight: Agreement reached on PNR directive

On 4 December, the Council **confirmed** it had reached an agreement with the European Parliament on the **proposal for a directive on the use of Passenger Name Record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime**. A plenary vote in Parliament is expected early in 2016. Once adopted, Member States will have two years to transpose the provisions of the directive.

The directive aims to regulate the transfer of PNR data from airlines to Member States, as well as the processing of such data by the competent authorities. It applies to flights entering and departing from the EU. Additionally, there is a provision for the optional collection of data for passengers on intra-EU flights, which was one of the more controversial issues discussed during the trilogue negotiations. Each Member State will be obliged to set up a Passenger Information Unit (PIU) which will collect PNR data for transferral to the relevant authorities.

Among the most important provisions of the directive are the specified purposes for which data can be processed in the context of law enforcement activities, the exchange of such data between Member States and with third countries, storage of data (initially for six months before being masked and stored for a further four and a half years) and the proposed implementation of strong safeguards for protection of privacy and personal data.

The proposal had previously attracted considerable criticism from MEPs and privacy activists because it allowed for indiscriminate data collection. In 2013, it was rejected by the Civil Liberties Committee (LIBE) on grounds that it did not meet the criteria of necessity and proportionality. The Council adopted its general approach on the proposal in April 2012.

The revised draft report on the proposal was adopted by LIBE in July this year, subject to more than 800 amendments. The directive was then negotiated in trilogue from July to December.

[Previous Item](#)

[Back to Contents](#)

[Next Item](#)

[Viewpoint](#)

[In Focus](#)

[Law Reform](#)

[Professional practice](#)

[Law Societies' News](#)

[Just Published](#)

Tackling Terror: Commission proposes a new directive on terrorism

On 2 December, the Commission proposed a new **directive on terrorism** as part of the **European Agenda on Security**. The proposed directive aims to tackle the cross-border dimension of terrorism through an overhaul of the existing EU framework for criminalising terrorist offences.

The definition of terrorist offences in the proposed directive is based on the existing framework of legislation at EU level, namely the Council Framework Decision 2002/475/JHA (as amended by 2008/919/JHA) and the 4th Anti-Money Laundering Directive. However, the proposal would add important elements to the definition, such as travelling abroad for terrorism, recruitment and training for terrorism and the financing of such activities, in line with the Financial Action Task Force (FATF) **interpretive note** to Recommendation 5 of the **FATF International Standards** on Combating Money Laundering and the Financing of Terrorism & Proliferation.

It is important to note that, as a result of the broadened definition used in the proposal, it would not always be necessary to prove to the Commission the presence of a direct terrorist act or offence, nor for a link to be

established to a specific terrorist offence. Articles 4-14 of the proposed directive covers offences relating to a terrorist group or terrorist activities, including terrorist training or recruitment, travelling for terrorism and terrorist financing. The wording of Article 15 of the directive as currently proposed is such that, in order for such offences to be punishable, it would "*not be necessary that a terrorist offence be actually committed, nor shall it be necessary to establish a link to a specific terrorist offence*".

The proposal also addresses the problem of terrorist propaganda, covering offences committed on the internet and in particular via social media. Finally, the new directive would seek to ensure that victims of terrorism receive immediate access to professional support services regardless of where in the EU they live.

The proposal is part of a package which also includes an [Action Plan against illegal trafficking of firearms and explosives](#) aiming to better detect, investigate and seize firearms and explosives used for criminal and terrorist purposes.

[Previous Item](#)

[Back to Contents](#)

[Next Item](#)

[Viewpoint](#)

[In Focus](#)

[Law Reform](#)

[Professional practice](#)

[Law Societies' News](#)

[Just Published](#)

Taxation: the Council makes inroads

Corporate taxation continues to be in focus, with the Economic and Financial Council discussing several initiatives at its meeting of 8 December 2015.

In this meeting the Council formally **approved** the new **Directive** on automatic exchange of information on tax rulings. These new rules will require the Member States to exchange information automatically on advance cross-border tax rulings and advance pricing arrangements. The Commission will also be required to develop a secure central directory, where information on these rulings will be stored.

This directory will be accessible to all Member States and, to the extent that it is required for monitoring the correct implementation of the Directive, the Commission. The new rules will be applied from 1 January 2017.

The Council also discussed further the work carried out on the Financial Transaction Tax (FTT) by the participating Member States. It seems now that the FTT will be adopted by **10** and not 11 Member States, with Estonia withdrawing from the enhanced cooperation. The Council announced that there is an agreement on shares and derivatives, and it acknowledged the need for further analysis on real economy and pension schemes.

To fend off a possible legal **challenge** by the UK and Sweden, it looks like the participating Member States are now also back to discussing the proposal in the full Council. In its conclusions the Council emphasised how the final agreement must be satisfactory for all Member States, including those not taking part in the enhanced cooperation.

Finally, the Council also discussed the Common Consolidated Corporate Tax Base (CCCTB) proposal. It looks like the old proposal will be withdrawn and the Commission will present new proposals starting in early 2016, in an attempt to lead the Member States step by step into adopting the CCCTB. A **consultation** on the CCCTB will remain open until 8 January 2015, which, along with the Commission **Roadmap** from October 2015, indicates that the Commission will use this staged process to coach the Member States first into adopting instruments where there is more likely to be agreement between them. Only then will the more controversial features be introduced: first the EU is likely to implement the OECD **anti-BEPs** actions, then the Commission will propose a CCTB – a common corporate tax base without consolidation – combined with possibly a separate loss offset instrument, and only if this is a success, then the full CCCTB would be re-introduced.

2016 therefore promises to be another busy year for taxation legislation. In addition to the Commission taking an active role, this is one of the priorities for the Dutch Presidency. According to Jeroen **Dijsselbloem** (President of the Eurogroup and Dutch Finance Minister): "*the Netherlands wants to make as much progress as possible in clamping down on tax avoidance by multinational corporations*", ensuring that the Netherlands does not look weak on corporate taxation after the Commission decision in the Starbucks case.

It of course remains to be seen whether the Member States will run out of steam or whether unanimity can be reached.

[Previous Item](#)

[Back to Contents](#)

[Next Item](#)

[Viewpoint](#)

[In Focus](#)

[Law Reform](#)

[Professional practice](#)

[Law Societies' News](#)

[Just Published](#)

Commission Green Paper on retail financial services

The Commission is continuing with its work on the Capital Markets Union, and published a **Green Paper** on

retail financial services on 10 December 2015. In this Green Paper the Commission seeks views on how to improve choice, transparency and competition in retail financial services to the benefit of European consumers and how to facilitate true cross-border supply of these services, so that financial firms can make the most of the economies of scale in a truly integrated EU market. It is also looking at and discussing the impact of digitalisation on retail financial services with a view to allow for growth of innovative solutions in this area in the EU. The deadline for responses is 18 March 2016.

[Previous Item](#)

[Back to Contents](#)

[Next Item](#)

[Viewpoint](#) [In Focus](#) [Law Reform](#) [Professional practice](#) [Law Societies' News](#) [Just Published](#)



Professional Practice

One more hurdle in the rat race? SRA opens consultation on SQE

In December the Solicitors Regulation Authority (SRA), the regulatory body for solicitors in England and Wales, published a **consultation** concerning a proposed Solicitors Quality Exam (SQE), to be based on the SRA's "**Competence Statement**". In this consultation the SRA aims to address **concerns** over "*the lack of a common basis for assessing the quality of output*" from the various providers of Law Degrees, the GDL and LPC, the 2,000-odd firms offering traineeships and the rise of **non-traditional routes** into the profession.

Although the SRA **proposal** suggests that the SQE should be at graduate level or equivalent, it **seems that** the second part of a proposed two-part assessment would aim to test trainees on their competencies at the point of qualification.

By comparison, the Bar Standards Board has **approved** the requirement for a **Bar Course Aptitude Test (BCAT)** before enrolment on the Bar Professional Training Course. However, the BCAT has been deferred until at least March 2016 pending a **review**. Justice Ministers and regulators have **come under fire** for similar consultations having been launched at different times by the regulatory bodies.

Questions have been raised over the need for multiple bodies to regulate entry into the profession. It seems unlikely that the SQE would replace the LPC, giving rise to **concerns** that the exam would merely impose a further hurdle at the end of an already lengthy process.

The **Law Society** has expressed concern over the SRAs apparent preference for an option involving a series of centralised knowledge and skills assessments against the Competence Statement, but without approved pathways to entry or course requirements. This could spell the end of the qualifying law degree, Legal Practice Course and training contract as they are currently known. The SRA is clear that "*pre-qualification workplace experience is an important part of qualifying as a solicitor in England and Wales and is likely to form part of any new system*".

Whilst the SRA hopes the SQE could improve access to the profession and diversity, it has been **suggested** that there may be an adverse impact on less advantaged students who do not have access to members of the profession. The Law Society has **suggested** that "*the financial impact of these proposed changes would disproportionately affect poorer students*", and that the current two year training contract is "**about right**". Furthermore, the 2013 Legal Education and Training Review (**LETR**) concluded that that the current system is "*not fundamentally broken*".

Speaking at a Westminster legal policy forum on education and training on 8 December, Alberto Costa MP (Justice Select Committee) **asked** SRA representatives how standards for legal training could be maintained with a multitude of regulators involved. He is **reported** as saying that a consumer "*really doesn't know the difference*" between someone regulated by the Chartered Institute of Legal Executives and someone who trained as a barrister. "*What they want is high quality advice from a lawyer*".

The SRA **consultation** runs until 4 March 2016.

[Previous Item](#)

[Back to Contents](#)

[Next Item](#)

[Viewpoint](#) [In Focus](#) [Law Reform](#) [Professional practice](#) [Law Societies' News](#) [Just Published](#)

Law Society of England and Wales Recommends Minimum Salary for Trainee Solicitors

On 11 November 2015, the Law Society of England and Wales introduced a recommended minimum salary for trainee solicitors. The recommendation is that providers of training contracts in England and Wales should pay

their trainee solicitors at least £20,276 in London and £18,183 outside of London.

The standard route to qualify as a solicitor in England and Wales is to take either a Qualifying Law Degree or the GDL (a one year postgraduate conversion course), followed by the LPC (a one year course focusing on legal practice), and then a training contract (a two year period of structured on-the-job training in at least three areas of law) - this recommended minimum salary relates to the "training contract" stage of this process.

What was the previous requirement?

Prior to 1 August 2014, firms were required to pay their trainee solicitors at least £18,590 if they were in Central London, and £16,650 elsewhere. On 1 August 2014, the Solicitors Regulation Authority replaced this with a requirement that firms pay trainee solicitors at least the national hourly minimum wage (£6.70 per hour).

Law Society research into the likely impact of this move foresaw a negative impact in particular for entrants from less affluent backgrounds, and a disproportionate impact on black, Asian, minority ethnic (BAME) representation in the solicitors' sector.

In early 2015, the Law Society and Junior Lawyers Division - the community for LPC students, LPC graduates, trainee solicitors and solicitors up to five years qualified - ran a consultation on the introduction of a recommended minimum salary for trainee solicitors, with the results of that consultation in favour of its introduction.

Reasons for Recommendation

The introduction of the recommended minimum salary is aimed at improving social mobility and diversity in the legal profession in England and Wales. By any economic model, if the solicitors profession were to offer lower wages at graduate level, demand to enter the profession would decrease. The question we must then ask is: "Where would the drop in demand come from?" The answer is probably that the drop will come from individuals who are from a less advantaged socio-economic background, as typically they are less able to afford to take a job or repay student loans at a lower wage.

The recommended minimum salary is based on the Living Wage - a wage calculated according to the basic cost of living in the UK - and the average repayment of law school fees. If firms comply with this recommended minimum salary, the intention is that this will enable social mobility to be improved in the profession by making a career in law affordable for all.

The Future

Whether or not the recommended minimum salary will have the desired effect remains to be seen; however, it is without a doubt a step in the right direction. Of course there are sound commercial reasons for social mobility, which many firms and employers around the country accept. By creating a profession that is open to all, the profession will attract the best calibre of candidates in all areas of practice. Firms, the profession as a whole and consumers of legal services all benefit.

Max Harris was the 2015 Chair of the Junior Lawyers Division of the Law Society of England and Wales.

[Previous Item](#)

[Back to Contents](#)

[Next Item](#)

[Viewpoint](#)

[In Focus](#)

[Law Reform](#)

[Professional Practice](#)

[Law Societies' News](#)

[Just Published](#)



Trainee solicitors visit to the European Court of Justice

On 15 December the Joint Brussels Office of the Law Societies arranged a visit to the European Court of Justice in Luxembourg. Ben Wild and Peter Finney, trainee solicitors currently seconded to the Brussels Office, were joined by a number of trainees from UK and international law firms with a presence in Brussels, and accompanied by Rita



Giannini, the Law Society's EU Policy Advisor for Justice.

The group was treated to a fascinating tour of the ECJ buildings, including the Grand Chamber and its antechamber, the

General Court, the judicial deliberation rooms and the library (claimed to be the largest collection of legal literature in the world). There were also briefings from Stanislas Adam, Legal Secretary to Advocate General Sharpston QC, as well as an assistant to the newly appointed UK General Court Judge Ian Forrester QC.

After a case briefing from Margaret Lawunmi, legal secretary to Advocate General Sharpston, the group then attended a hearing in front of 15 judges in the Grand Chamber of the Court of Justice on the topic of migration (cases *C-155/15 – George Karim v Migrationsverket* and *C- 63/15 - Mehrdad Ghezlbash v Staatssecretaris van Veiligheid en Justitie*). The cases concerned asylum seekers under the Dublin III Regulation and the Right to an Effective Remedy, in actions brought against the Swedish and Dutch states, respectively.

The visit culminated in a delightful and informative lunch with Judge Forrester and the UK's Court of Justice Judge Christopher Vajda QC, both of whom took the time to chat with the group and answer questions concerning, amongst other topics, the workings of the ECJ, the judicial appointment process and the level of UK engagement through staffing at the ECJ.

The visit was thoroughly enjoyed by all who attended, and the Law Societies' Joint Brussels Office would like to extend a huge thank you to the ECJ and to Messrs Vajda QC and Forrester QC, in particular, for welcoming us.

[Previous Item](#)

[Back to Contents](#)

[Next Item](#)

[Viewpoint](#)

[In Focus](#)

[Law Reform](#)

[Professional Practice](#)

[Law Societies' News](#)

[Just Published](#)

Law Society's Graham Turnbull Essay Competition

Every year the Law Society holds an essay competition and prize-giving event aimed at law students, trainee solicitors, pupil barristers and junior lawyers. This year, David Anderson QC, the independent reviewer of terrorism legislation, will be the guest judge.

The title for the 2016 competition is: 'A most radical recommendation? Should interception warrants be judicially authorised or does there need to be democratic accountability?'

As independent reviewer of terrorism legislation, David Anderson QC, is an unrivalled expert in this field and in the protection of human rights in the face of counter-terrorism measures.

The competition is named after English solicitor Graham Turnbull who did much to promote respect for human rights. Graham was killed in February 1997, aged 37, while working as a human rights monitor on the United Nations Human Rights Mission in Rwanda. The Society is proud to honour Graham's commitment to human rights through this competition, which aims to encourage awareness and knowledge of international human rights issues and remedies among young lawyers.

For more details please visit the Law Society's [website](#).

Previous Item	Back to Contents	Next Item
Viewpoint	In Focus	Law Reform
Professional Practice	Law Societies' News	Just Published

January office reception

The Brussels office of the joint UK Law Societies will be holding an office reception in conjunction with its office partners on 26 January 2016.

Invitees include officials from the EU Institutions, UK and other lawyers based in Brussels, representatives from the Council of Europe, the Austrian, German and Belgian Bars, and members of the European Law Students' Association.

The venue will be the Brussels office.

Time: TBC

Previous Item	Back to Contents	Next Item
Viewpoint	In Focus	Law Reform
Professional Practice	Law Societies' News	Just Published

Chancellor of the Exchequer's announcement on review of regulation for legal services

The Chancellor, George Osborne, announced at the end of November 2015 that there will be a review of regulation for legal services with a view to allowing greater freedom for alternative business structures, such as supermarkets and estate agents, to offer legal services like conveyancing, probate and litigation.

Previous Item	Back to Contents	Next Item
Viewpoint	In Focus	Law Reform
Professional Practice	Law Societies' News	Just Published

Opportunity to apply for ECJ referendaire position

Twelve new Judges of the General Court of the European Union will shortly be appointed by common accord of the governments of the Member States. In that context, posts for Legal Secretaries and assistants will need to be filled within those Judges' respective Chambers on the basis of Article 2(c) of the Conditions of Employment of Other Servants (temporary staff contracts of indefinite duration, limited to the Judge's term of office).

Anyone interested who satisfies the requirements laid down in Article 5(3)(a) of the Staff Regulations of Officials of the European Union (assistants) or Article 5(3)(c) of those Regulations (Legal Secretaries) should send their application (curriculum vitae and letter stating their reasons for applying), preferably before 20 January 2016, to the Directorate-General for Personnel and Finance of the Court of Justice of the European Union (Human Resources Unit) at the following email address: Cabinets.Tribunal@curia.europa.eu

Previous Item	Back to Contents	Next Item
Viewpoint	In Focus	Law Reform
Professional Practice	Law Societies' News	Just Published

Office move: 'End of an era' for the Law Society of Scotland

The Law Society of Scotland operated from its Victorian townhouse offices on Drumsheugh Gardens for the last time on 3 December.

The Society confirmed its plans to move from the B-listed buildings to new Edinburgh offices at Atria One on Morrison Street in May this year, with the new office premises offering more modern and environmentally-friendly surroundings for staff and visitors.

Lorna Jack, Chief Executive of the Law Society of Scotland, said: "The Law Society has seen an enormous amount of change during its 47 years at Drumsheugh Gardens. Since we moved from North Bank Street in 1969, there have been 43 Law Society presidents, four chief executives and our membership has more than tripled, from 3,232 practising Scottish solicitors to over 11,300.

"Our office move will help us to be relevant and effective in supporting our members, stakeholders and the

public in the years ahead."

From 7 December 2015 the Law Society's new postal address will be: The Law Society of Scotland, Atria One, 144 Morrison Street, Edinburgh, EH3 8EX. All email addresses and telephone numbers will remain the same.

[Previous Item](#)

[Back to Contents](#)

[Viewpoint](#)

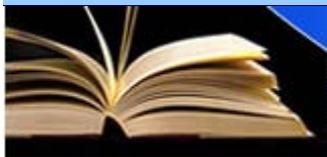
[In Focus](#)

[Law Reform](#)

[Professional Practice](#)

[Law Societies' News](#)

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COMING INTO FORCE

Financial services

- [Commission Implementing Regulation \(EU\) No 908/2014 of 6 August 2014 laying down rules for the application of Regulation \(EU\) No 1306/2013 of the European Parliament and of the Council with regard to paying agencies and other bodies, financial management, clearance of accounts, rules on checks, securities and transparency](#)
- [32015R0751: Regulation \(EU\) 2015/751 of the European Parliament and of the Council of 29 April 2015 on interchange fees for card-based payment transactions \(Text with EEA relevance\)](#)
- [32015R0760: Regulation \(EU\) 2015/760 of the European Parliament and of the Council of 29 April 2015 on European long-term investment funds \(Text with EEA relevance\)](#)
- [32014R0806: Regulation \(EU\) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation \(EU\) No 1093/2010](#)
- [32013R0575: Regulation \(EU\) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation \(EU\) No 648/2012 Text with EEA relevance](#)

Migration

- [32015D2248: Decision \(EU\) 2015/2248 of the European Parliament and of the Council of 28 October 2015 on the mobilisation of the Flexibility Instrument for immediate budgetary measures under the European Agenda on Migration](#)
- [32015D1208\(02\): Commission Decision of 24 November 2015 on the coordination of the actions of the Union and of the Member States through a coordination mechanism — the Refugee Facility for Turkey](#)

Environment

- [32015L2193: Directive \(EU\) 2015/2193 of the European Parliament and of the Council of 25 November 2015 on the limitation of emissions of certain pollutants into the air from medium combustion plants \(Text with EEA relevance\)](#)

Insurance/insolvency

- [32009L0138: Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance \(Solvency II\) \(Text with EEA relevance\)](#)

Taxation

- [32015R2378: Commission Implementing Regulation \(EU\) 2015/2378 of 15 December 2015 laying down detailed rules for implementing certain provisions of Council Directive 2011/16/EU on administrative cooperation in](#)

the field of taxation and repealing Implementing Regulation (EU) No 1156/2012

- **32015L2376: Council Directive (EU) 2015/2376 of 8 December 2015 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation**
- **32015L2060: Council Directive (EU) 2015/2060 of 10 November 2015 repealing Directive 2003/48/EC on taxation of savings income in the form of interest payments**
- **72014L0086GBR_232987: Income Tax Act 2010 (Amendment) Regulations 2015**

Single market

- **32015R2352: Commission Implementing Regulation (EU) 2015/2352 of 16 December 2015 setting out the weighted average of maximum mobile termination rates across the Union (Text with EEA relevance)**

Trade

- **22011A0514(01): Free trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part**

Consumer contracts

- **Commission Proposal for a directive of the European Parliament and of the Council on certain aspects concerning contracts for the supply of digital content**
- **Commission Proposal for a Directive of the European Parliament and of the Council on certain aspects concerning contracts for the online and other distance sales of goods**

CASE LAW CORNER

Court of Justice preliminary rulings: Case C—223/14 Tecom Mican and Arias Dominiguez, judgment of 11 November 2015

- The Court defines for the first time the concept of extrajudicial documents of which the formal transmission to addressees residing in another Member State is necessary
- The competent national authorities must transmit such documents automatically where the documents satisfy the conditions laid down by EU law

Case C-115/14 RegioPost, judgment of 17 November 2015

- The award of public contracts may be made subject by law to a minimum wage
- EU law does not preclude the exclusion from a procedure for the award of a contract of a tenderer who refuses to undertake to pay staff concerned the minimum wage

Case C-326/14 Verein für Konsumenteninformation, judgment of 26 November 2015

- An increase in telecommunications charges in accordance with a consumer price index does not allow subscribers to withdraw from their contract
- There is no modification to the conditions of a contract where standard terms and conditions provide for the possibility of increasing charges in accordance with an objective consumer price index compiled by a public institution

Case C-333/14 The Scotch Whisky Association, judgment of 23 December 2015

- The Scottish legislation introducing a minimum price per unit of alcohol is contrary to EU law if less restrictive tax measures can be introduced
- A tax measure might provide additional benefits and a broader response to the objective of combating alcohol misuse
- The court decided that the effect of the Scottish legislation is significantly to restrict the market, which might be avoided by the introduction of a tax measure designed to increase the price of alcohol instead of a measure imposing a minimum price per unit of alcohol.

Infringement proceedings:

Case C-180-14 Commission v Greece, judgment of 23 December 2015

- By allowing doctors to work 24 hours or more consecutively, Greek law infringes EU law
- Greece failed to implement a maximum weekly working time of 48 hours and to make provision for a minimum daily rest period or a compensatory rest period
- The Greek law had the effect of making it possible to impose a working week exceeding the 48-hour limit, without any clear provision ensuring that the on-call hours actually spent by doctors at the hospital do not result in that limit being exceeded
- By providing that the 24-hour rest period to be granted to doctors after each active period on-call can be postponed until a week after the period on-call was completed, the Greek law failed to comply with the working time Directive

Annulment actions:

Case T-544/13 Dyson v. Commission, judgment of 11 November 2015

- From the UK: Dyson's action for annulment of a Commission regulation on energy labelling of vacuum cleaners was unsuccessful
- The British company failed to demonstrate that there were more reliable, accurate and reproducible tests than that endorsed by the Commission

Joined Cases T-424&425/14 Client Earth v Commission, judgment of 13 November 2015

- According to the General Court, impact assessments intended to guide the Commission in drawing up its proposal for legislative acts are not, in principle, to be accessible to the public before those proposals have been disclosed
- Premature access to such documents could seriously undermine the Commission's decision making process

November/December infringement package:

Infringement number 20154206, decision of 19 November 2015:

- A formal notice was served under Art. 258 TFEU for a Legislative response to the Court of Justice ruling in C-18/11 Philips Electronics (concerning the offsetting of losses by group relief and impacts on freedom of establishment) in the field of Taxation and Customs Union.

Infringement number 20152195, decision of 10 December 2015:

- A formal notice was served under Art. 258 TFEU against the UK for Non-communication of national measures transposing **Directive 2011/89/EU** concerning the supplementary supervision of financial entities in a financial conglomerate, in the field of Financial Stability, Financial Services and Capital Markets Union.

Infringement number 20122081, decision of 10 December 2015:

- Case closed concerning waste products and the definition of End of waste concerning processed fuel oil in the policy area of the environment.

Infringement number 20130080, decision of 19 November 2015:

- Case closed in the field of energy, imposing an obligation on Member States to maintain minimum stocks of crude oil and/or petroleum products, under **Council Directive 2009/119/EC** of 14 September 2009

Air quality proceedings under **Directive 2008/50/EC**

- Following Commission **proceedings** against Poland concerning poor air quality under **Directive 2008/50/EC** (an area where the Commission is frequently launching proceedings), the Commission is currently pursuing infringement actions for excessive fine dust levels against 16 Member States (not including the UK) with a court action having been brought against Bulgaria.

Additionally, the Commission has started legal action concerning nitrogen dioxide (NO₂), for which EU Ambient Air Quality Directive (2008/50/EC) has set air quality standards since 2010. Infringement proceedings have been opened against six Member States including the UK. **See for example**

ONGOING CONSULTATIONS

Justice and Fundamental Rights, Environment, Climate Action, Banking and finance:

- **Public consultation on long-term and sustainable investment:** 18.12.2015 – 23.03.2016

Banking and finance:

- **Green Paper on retail financial services: better products, more choice, and greater opportunities for consumers and businesses:** 10.12.2015 – 18.03.2016
- **Call for evidence: EU regulatory framework for financial services:** 30.09.2015 – 31.01.2016

Internal Market:

- **Public consultation on the evaluation and modernisation of the legal framework for the enforcement of intellectual property rights:** 09.12.2015 – 01.04.2016

Transport, Justice and Fundamental Rights, Home Affairs:

- **Evaluation of Directive 2015/413/EU facilitating cross-border exchange of information on road-safety-related traffic offences:** 27.11.2015 – 19.01.2016

Communications Networks, Content & Technology, Information Society:

- **Public consultation on the review of national wholesale roaming markets, fair use policy and the sustainability mechanism referred to in the Roaming Regulation 531/2012 as amended by Regulation 2015/2120:** 26.11.2015 – 18.02.2016
- **Public consultation on the contractual public-private partnership on cybersecurity and possible accompanying measures:** 18.12.2015 – 11.03.2016
- **Public stakeholder consultation on next phase of EU-US cooperation in eHealth/Health IT:** 22.12.2015 – 15.03.2016

Energy:

- **Preparation of a new Renewable Energy Directive for the period after 2020:** 18.11.2015 – 10.02.2016

Environment:

- **Streamlining monitoring and reporting obligations in environment policy:** 18.11.2015 – 10.02.2016

Competition:

- **Empowering the national competition authorities to be more effective enforcers:** 04.11.2015 – 12.02.2016

Communications Networks, Content & Technology:

- **Public consultation: eGovernment Action Plan 2016-2020:** 30.10.2015 – 22.01.2016

Taxation:

- **Re-launch of the Common Consolidated Corporate Tax Base (CCCTB):** 08.10.2015 – 08.01.2016

About us

The Law Society of England & Wales set up the Brussels office in 1991 in order to represent the interests of the solicitors' profession to EU decision-

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makers and to provide advice and information to solicitors on EU issues. In 1994 the Law Society of Scotland joined the office and in 2000, the Law Society of Northern Ireland joined. The office follows a wide range of EU issues which affect both how solicitors operate in practice and the advice which they give to their clients. For further details on any aspect of our work or for general enquiries, please contact us: brussels@lawsociety.org.uk

Brussels Office also produces regular EU updates covering: Civil Justice; Family Law; Criminal Justice; Employment Law; Environmental Law; Company Law and Financial Services; Tax Law; Intellectual Property; and Consumer Law as well as updates on the case-law of the European Court of Justice. To receive any of these, contact [Antonella Verde](#) stating which update(s) you would like.

Editorial Team

Mickaël Laurans

Head of the Joint Brussels Office of the Law Societies

mickael.laurans@lawsociety.org.uk

Anna Drozd

EU Policy Advisor (Professional Practice)

anna.drozd@lawsociety.org.uk

Helena Raulus

EU Policy Advisor (Internal Market)

helena.raulus@lawsociety.org.uk

Rita Giannini

EU Policy Advisor (Justice)

rita.giannini@lawsociety.org.uk

Peter Finney

Trainee Solicitor

peter.finney@lawsociety.org.uk

Ben Wild

Trainee Solicitor

ben.wild@lawsociety.org.uk

Joint Brussels Office

85 Avenue des Nerviens - B-1040 Brussels

Tel.: (+32-2-) 743 85 85 - Fax: (+32-2-) 743 85 86 - brussels@lawsociety.org.uk

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