The Law Societies
JOINT BRUSSELS OFFICE

Brussels Agenda

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The Law Societies' monthly publication with the latest EU news

Editorial

This month's Brussels Agenda focuses on migration. As you will appreciate migration remains a hot topic in the news as the crisis continues to put serious pressure on the EU and its Member States.

In March an **article** on the BBC website stated over 130,000 people had reached Europe by sea since the start of 2016 whilst **Eurostat** published that almost 90,000 of asylum applicants in 2015 were unaccompanied minors.

There is considerable difference of opinion across the EU on how best to deal with the migration crisis and how to resettle people. The EU-Turkey deal which was reached in March 2016 aimed to address the flow of migrants and asylum seekers into Europe. However many rights organisations have voiced concern over the agreement.

With this Brussels Agenda we would like to present you with viewpoint articles from Timothy Kirkhope MEP (ECR, UK) who writes about the Dublin system and the relocation of asylum seekers and from Kati Piri MEP (S&D, Netherlands) on the EU-Turkey deal and the situation in Greece.

In addition to the above we have updates on the recently published General Data Protection Regulation and the e-privacy consultation, a theme which is prominent as the commission makes efforts to modernise data protection legislation. We also have articles ranging from Anti-Money Laundering and the impact of the Panama Papers to the free movement of citizens and the services passport consultation as well as an update on the Trade in Services Agreement.

We hope you enjoy this full edition of the Brussels Agenda.

Back to Contents **Next Item**

Viewpoint **In Focus** **Law Reform** **Professional practice** **Law Societies' News** **Just Published**

Timothy Kirkhope MEP
Dublin System: Something old, something new

I was relieved earlier this month to see that the European Commission had decided to keep in place in their revision of the Dublin System the basic principles regarding the reception of Asylum seekers. Now is certainly not the time for the EU to be going against those long standing international principles which say that the first safe country reached, should be the place where asylum is requested, and as a result of pressure from me and others this key requirement has been retained. Hopefully this is an indication that the European Commission is listening to Member States, and listening to the wider European and British electorate through their elected representatives as they tell us that they don't want an EU centralised system for all asylum applications.

It is my opinion that such a system, if adopted, would only fuel human trafficking, and would lead to a total breakdown of the EU's cross-State co-operation. Obligatory Relocation of Refugees does not work, and I have always had real concerns about such a proposal. Both EU governments and MEPs have acknowledged that our experiment with emergency relocation so far has not be a success; now the Commission needs to accept this and realise that there is no point in further pursuing it.

The proposal this time is that a relocation mechanism would contain a penalty system for Member States who chose not to take in refugees through the scheme, amounting to no less than 250,000 euros per person. The Commission must realise that such a disproportionate sum is like a punishment to Member States, rather than a credible and attractive alternative for participating in relocation. The EU needs policies which will unite the EU, not create a permanent gulf between the institutions and Member States.

Instead, we should be looking at other ways in which countries can contribute to the migrant crisis; by sharing assets, expertise, and money and most critically through the implementation of voluntary resettlement schemes.

The UK and Prime Minister Cameron led the way in calling for resettlement rather than relocation last year, resettling approximately 1,000 of the most vulnerable refugees directly from UN camps by December. Of course, resettlement alone is not the answer, but the UK's contribution to resettlement schemes together with significant direct Foreign aid cannot be questioned and should be more recognised by the commission.

The UK has repeatedly made it clear that it will never be part of any compulsory relocation scheme, but it was reassuring that the European Commission clarified that the UK is entitled to continue participating in the Dublin provisions under its existing legal arrangements, but, of course, we remain in possession of our broad opt-out in the field of Immigration generally and outside of the Schengen open borders zone.

Although we have been highlighting domestic concerns, the UK is by no means alone in its concerns over relocation and I am hopeful that a more acceptable solution can soon be found with the assistance of our European friends.

It would be surely senseless to continue pursuing a relocation system that has already proven ineffective? For instance, of the 160,000 refugees who were eligible for relocation under the current scheme, only 1,145 refugees have so far been relocated to other EU countries – this is little more than the UK alone was able to accept through the alternative resettlement process in a matter of months.

But I am pleased with the proposals that once an asylum application has been made the applicant must remain in the State handling the claim unless ordered otherwise. The rights of unaccompanied children have been recognised and strengthened and this must be a sensible course. The clarity indicating that those who do not have an admissible claim because they come from a first country of asylum or a safe third country will

be returned automatically to that first or safe country is also most welcome and will have the effect if strictly pursued of lessening the movements of people around the EU. Shortening the time limits for the processing procedures is also a good thing as it will bring faster decisions on individuals applications. Speeding up the processes with adequate legal safeguards is very necessary, in my opinion.

Under pressure there is always a temptation to find completely new approaches but with solidarity at stretching point, as it is now, the Commission has been right to keep in place most of the basic Dublin principles.

I hope this is a big step forward in gaining back the trust and confidence of the British and European electorates and the start of finding our way out of this Migrant crisis.

Biography

Timothy Kirkhope is Conservative MEP for Yorkshire and The Humber, and he has been in the European Parliament since 1999, after being a Member of Parliament in Westminster and a member of the Government. He has been working on immigration and border security since the 1990s, firstly as Minister in charge of immigration at Home Office between 1995 and 1997, and now as the Conservative Spokesman on Justice and Home Affairs in the European Parliament.

MIGRATION

Kati Piri MEP
A viable solution to Europe's migration problem?

The EU-Turkey Statement that was adopted on 18 March 2016 by the European Council and the Turkish government was presented as a *game changer* for the migration crisis that emerged in Europe last year. A couple of months later, the number of migrants arriving irregularly in the EU has indeed significantly dropped , but that does not mean the work can now be considered as complete. Decreasing this number is just one element of the deal while it remains crucial that all other components are implemented as well.

Just as crucial is the notion that the EU should always operate within the framework of international law and its own *acquis*, especially in the field of asylum and the rights of refugees. Even though all parties involved are very much trying to do this, there are still many problems regarding the implementation of this deal with Turkey.

For example, on the mainland of Greece there are thousands of people that are no longer able to travel onward to other European Member States and should therefore request asylum in Greece, but its ministry for migration is utterly lacking funds and means to deal with these high numbers of asylum applications. As a result, there are major problems with the procedures such as the obligation for asylum seekers to register themselves through Skype, which is only possible in English and only twice a week — if the call is answered by the Greek asylum service at all, which is often not the case. In the meantime these people have no other option than to wait in camps that are not complying with basic minimum standards.

However, on the Greek islands the situation is quite different. Migrants that have arrived there are actively being registered and assessed individually on their situation, which is a legal requirement. If a migrant has arrived after 20 March 2016, and cannot be considered as vulnerable according to the eight categories in Greek law, that person might be eligible to be returned to Turkey. If a person is however, considered as 'vulnerable', he or she is transferred to a separate camp and will be contacted directly by the Greek asylum service. Giving priority to vulnerable groups of people seems therefore to result in a better protection of rights for those who need it the most.

In contrast to the above, in order to accelerate asylum procedures and to prevent migrants from travelling to the mainland, all migrants are transferred to a *closed facility* immediately after arrival on the islands. In other words, they should await the start of their asylum procedure in overcrowded detention centres such as camp Moria on Lesbos. According to Greek law, one cannot be detained for longer than twenty-five days in this

case. Despite this, for many people the procedure takes longer than that, so the effectiveness of detaining them is at least questionable, especially on a relatively small island.

Further, unaccompanied minors are being detained despite the fact that these children are legally considered as a vulnerable group and could therefore not be returned to Turkey anyway. On this issue it is thus quite clear that fundamental rights are not being respected as they should be. Considering all this, it is clear that the EU should increase its assistance to Greece in order to improve the conditions for refugees and enhance the capacity of the Greek asylum service.

In addition to the discussion on the situation within the EU, it was heavily debated whether Turkey could be considered as a 'safe third country' in order to make it possible to return migrants to Turkey. That debate is not over yet because not all legal problems on this issue have been resolved so far. Nevertheless, several outstanding issues have altered positively in Turkey during the last months. The 'temporary protection regime' for Syrians is being extended to other nationalities, and the Turkish labour market has opened up for registered refugees as well. Also, the UN Refugee Agency (UNHCR) is now granted access to all refugee camps in Turkey and will be involved in appeal procedures. Despite many concerns on the situation in Turkey, these developments do improve the legal protection for (returned) refugees.

Overall, the recent assessment of the Council of Europe that the deal "at best strains and at worst exceeds the limits of what is permissible under European and international law" might be accurate. Nevertheless, if all aspects of the deal start to function — including large-scale relocation and resettlement of refugees to the EU — and if fundamental rights problems will be addressed properly, it might just be the most humane approach to manage the migration crisis in Europe.

Kati Piri is a Socialist and Democrat Member of the European Parliament for the Netherlands. She focuses on foreign affairs, human rights, justice and home affairs, and civil liberties. She is the standing rapporteur on Turkey, drafting the EP's annual progress report on Turkey's accession process. Piri is also member of the EU-Ukraine delegation and the Euronest Parliamentary Assembly. The Euronest Parliamentary Assembly is the inter-parliamentary forum in which members of the European Parliament and the national parliaments of Ukraine, Moldova, Belarus, Armenia, Azerbaijan and Georgia participate. It was established as a component of the Eastern Partnership. After the elections in Belarus in 2010 were declared as flawed by the OSCE, the membership of Belarus in Euronest was automatically suspended.
Previously, she worked as programme manager for the South Caucasus at the Netherlands Institute for Multiparty Democracy (NIMD) and as political advisor for the Socialists and Democrats (S&D Group) in Brussels.

Whither tax and anti-money laundering regulations? The aftermath of Panama Papers revelations on beneficial ownership

On 4 April 2016, the press published extracts from documents which were leaked from an anonymous source, who had stolen over 11 million documents, or 1.8 terabytes of data, from the Panamanian law firm, Mossack Fonseca. The leak shows how shell companies and trusts can be used to form complex arrangements to avoid paying tax. Some major public figures came under public scrutiny including the UK Prime Minister, David Cameron, with earlier investments of this nature having been made by his father. There also appears to have been some more sinister attempts to hide unknown wealth from several famous individuals as diverse as: Russian President Vladimir Putin's close circle; Petro Poroshenko of Ukraine; Argentinean football star Lionel Messi; and Hong Kong film star Jackie Chan. The full **database** of stolen documents was published online on 9 May 2016.

The leak, which is described as the biggest in the history of whistleblowing, has shown yet again the need for coherence and transparency in tax regulations around the globe, and how there is a need to adapt tax regulation in situations where where capital can move freely. Added transparency in this area will mean that information on the income and wealth of individuals, as well as companies (in particular on the beneficial owners of companies) and trusts will be made available at least to the tax authorities, if not listed publicly.

As a result, the Commission's corporate tax proposals are also likely to gain extra pace, as reported in the last

Brussels Agenda from April. On 14 April 2016, the European Parliament set up a **special inquiry committee** to investigate the Panama Papers. In addition, the issue of beneficial ownership is now also back on the agenda.

Much of the information that has been leaked has shown that shell companies and, in some cases trusts, have been used for aggressive tax planning. The companies and/or trusts have been set up in such a way that the true owner is not identified as owning the assets and has in a few cases created a mechanism to evade tax, hide activities and even launder money.

While it is not illegal to own an offshore shell company or a trust, the leaks have drawn attention to the fact that these legally established structures, can be used for both legal and illegal purposes, such as tax evasion and money laundering. Famous whistleblower Edward Snowden **tweeted** that '[T]he scandal is what's legal.'

The repercussions of the Panama Papers leaks were swift and widespread. Following mass protests, the Prime Minister of Iceland, who was mentioned in the leaked documents, resigned. The leaks also ended the short political career of the new Argentinean President Mauricio Marci. Even the President of the Chilean branch of Transparency International was forced to resign after the Panama Papers showed he was linked to at least five offshore companies. The UK Prime Minister also came under heavy criticism for his father's offshore financial arrangements and for his opposition to a public register of beneficial owners of trusts. He, along with the leaders of several major UK political parties, published their tax returns in the following days.

Transparency of information, in particular concerning the beneficial ownership of companies and trusts, is a key issue for law enforcement and has already been tackled in several international and EU initiatives. The Financial Action Task Force (FATF), which is an international body which sets the standards for tackling money laundering and terrorist financing, has already developed **guidelines** on beneficial ownership. The 4th Anti Money Laundering Directive (4AMLD), which was agreed in May 2015 and which will start to apply from June 2017, also addresses the issue by introducing the requirement to set up public registers listing the beneficial owners of companies . In the case of trusts, Member States must register those trusts that generate tax consequences and access to the information is restricted to law enforcement and competent authorities.

In the EU, the revelations have given further impetus to new proposals and the issue of beneficial ownership has now come back to the EU policy agenda. It is likely to be discussed in the context of the transposition of the 4AMLD and there has been further discussion regarding whether there is already a need to begin work on a 5th ALMD.

The regulatory response that is likely to be the result of the leaks seems to be backed, at least in part, by the corporate sector itself. The findings of the 2016 edition of the EY's **Global Fraud Survey** indicate the broad support of senior executives for moves to make information on beneficial ownership more transparent.

Previous Item **Back to Contents** **Next Item**

Viewpoint **In Focus** **Law Reform** **Professional practice** **Law Societies' News** **Just Published**

Trade Secrets Directive versus Whistleblowers

On 14 April 2016, the European Parliament adopted the Trade Secrets Proposal. The Parliament simply approved **the deal** reached in December 2015, in trilogue with the European Council.

The Directive will lay down common rules against the unlawful acquisition, use and disclosure of trade secrets aiming to act as a deterrent against the illegal disclosure of trade secrets - whilst ensuring that fundamental rights or public interests, such as public safety, consumer protection, public health, environmental protection and mobility of workers are not undermined. In particular, media investigations and journalistic sources will be protected.

This matter is very topical in light of the present **trial** in Luxembourg against Antoine Deltoir, Raphael Halet and journalist Edouard Perrin, the whistleblowers in the Lux-leaks case. The Directive has been criticised by a broad **coalition** of journalists, lawyers and judges who wanted Parliament to vote against the draft. According to **Tax Justice Network** the Directive adopts a very wide definition of a trade secret, whereby any secret that has "commercial value" falls within the scope of the Directive. Furthermore, the burden of proof is reversed as a whistleblower must prove that the disclosure of the secret was necessary and in the public interest.

Before the Directive comes into force, the Council must formally adopt the Directive. Member States will then have two years to implement the Directive fully. The issue of the burden of proof will be decided under national law and in national implementing legislation.

It should be noted that in view of arguments that the Directive does not do enough to safeguard whistleblowers, the Commission has **reportedly** commenced work on a proposal protecting whistleblowers, particularly those who suspect fraud or corruption.

Conclusion of the EU-US Umbrella Agreement

On 8 September 2015, the European Commission concluded the terms of the Protection of Personal Information Relating to the Prevention, Investigation, Detection and Prosecution of Criminal Offenses Agreement with the United States. This agreement referred to as the 'Umbrella Agreement' is a framework for data protection on the transfer of data for transatlantic criminal investigations. This Agreement should not be confused with the EU-US Privacy Shield, which represents a separate data protection agreement for transferring commercial data to the US.

The Umbrella Agreement was conditional upon the US Congress' passing of the Judicial Redress Act, which was passed in February 2016. This act gives EU citizens the right to challenge how their data is used in US Courts, in particular in the case of privacy breaches.

The purpose of the Umbrella Agreement is to ***'ensure a high level of protection of personal information and enhance cooperation between the US and the EU in relation to the prevention, investigation, detection or prosecution of criminal offenses, including terrorism.'***

The Agreement is designed to provide safeguards and guarantees of the lawfulness of data transfers and processing. The data must only be processed in relation to criminal matters and cannot be further processed for any other purpose. In particular, the Agreement provides that the US must not transfer the data onward to a third country without obtaining the consent of the relevant law enforcement agency in the EU which transferred the data to the US. Other provisions stipulate that: data must not be retained for longer than necessary; individuals are entitled to access and request rectification of their data subject to certain conditions; and to ensure a mechanism is in place to ensure notification of data breaches.

There has however, been **controversy over the Umbrella Agreement** within the European Parliament with some arguing that the Agreement would act as an adequacy agreement and potentially have the ability to override EU legislation. Other arguments against the text raise the issue of the compatibility of the Agreement with EU law, since the right to redress before US courts only applies to EU citizens, whereas EU law sets out safeguards for all EU *residents* i.e. those who are not EU citizens.

The European Data Protection Supervisor has expressed support for the Umbrella Agreement in an **opinion dated 12 February 2016**. The opinion makes the following recommendations:

- clarification that the safeguards apply to all individuals, not just EU nationals;
- ensuring the judicial redress provisions are effective; and
- the prevention of bulk transfer of sensitive data.

The Agreement is currently awaiting final approval by the European Parliament.

The Right to Privacy: Commission Consultation on the Privacy of Online Communications

The Commission launched its **public consultation** on the revision of the e-Privacy Directive on 12 April 2016. The move is part of a larger effort to modernise data protection legislation to match the requirements and challenges of the digital age. The consultation, which will close on 5 July 2016, aims to gather views on the current e-Privacy Directive and to seek opinions on possible changes in light of technological advances. The Commission will be holding workshops with telecommunications firms and other stakeholders with an interest in the Directive.

In essence, the e-Privacy Directive aims to protect privacy and personal data in electronic communications. Although it was last amended in 2009, the adoption of the General Data Protection Regulation led the Commission to carry out a **study** on the Directive. The study outlines the likely changes and updates to the Directive, for example a change to the current rules on the use of cookies and the processing of location data.

In its current form, the e-Privacy Directive applies only to the telecoms operators and not to content providers that process personal data over those networks. This has caused major controversy by arguably creating differing legal standards between businesses which provide a very similar service. For example, services such as Skype, Facebook and Whatsapp are 'information society services' and thus do not fall within the scope of the definition of 'electronic communications services', despite the fact that they process data over networks.

Furthermore, internet service providers currently have far greater restrictions on the use of location data than other businesses which collect location data over private networks, such as the abovementioned WhatsApp or Facebook. It is likely, therefore, that the new instrument will broaden the scope of the rules to apply to these businesses as well.

Some provisions of the current Directive already apply to information society providers. These include the provision of cookies which are small text files which store the user's online activity. Since it is necessary for the user to consent to the use of cookies, the relevant provisions may need to change due to the new provisions on consent in the General Data Protection Regulation (GDPR).

Finally, the Commission's study hints at the possibility of replacing the Directive with a regulation to ensure maximum harmonisation of rules. Whether it will succeed remains to be seen.

Regulation on promoting the free movement of citizens by simplifying the conditions for presenting certain public documents in the European Union and amending Regulation (EU) n. 1024/2012

The Regulation has been agreed by the European Council and the European Commission and is now awaiting final approval by the European Parliament, which is expected in May 2016.

The **Regulation** provides for a system of exemption from legalisation and other similar formalities, in relation to certain public documents and their certified copies which are issued by the authorities of a Member State, which have to be presented to the authorities of another Member State. The system should be regarded as a separate and autonomous instrument from the Apostille Convention.

The documents covered by the Regulation must have been issued by a competent national authority of one of the Member States and have the primary purpose of establishing one of the following facts:

- birth;
- that a person is alive;
- death;
- name;
- marriage (including capacity to marry and marital status);
- divorce, legal separation or marriage annulment;
- registered partnership (including capacity to enter into a registered partnership and registered partnership status);
- dissolution of a registered partnership, legal separation or annulment of a registered partnership;
- parenthood;
- adoption;
- domicile and/or residence;
- nationality;
- absence of criminal record;
- legality of a European national application to stand as a candidate/vote in European and/or local elections.

The Regulation does not oblige Member States to issue documents which are not contemplated by their national legislation.

The Regulation establishes multilingual standard forms to be used as a translation aid attached to certain public documents. These forms do not have autonomous legal value and will be available through the European e-justice portal and/or different locations accessible at national level.

In addition, in order to allow for fast and secure cross-border information exchange and to facilitate mutual assistance, the Regulation establishes a mechanism for administrative co-operation between authorities designated by the Member States. The use of that mechanism will be based on the Internal Market Information System ('IMI'), established by Regulation (EU) No 1024/2012. Where the authorities of a Member State have a reasonable doubt as to the authenticity of the presented documents, they will be able to check the models of documents available in IMI and to submit requests for information to the relevant authorities of the Member State where those documents were issued. The time of the response must not exceed five days, or ten days in a case of central authority.

Member States now have twenty-four months to communicate to the Commission the following:

- the languages they will accept for the public documents to be presented to their authorities;
- an indicative list of public documents falling within the scope of the Regulation;

- the list of public documents to which multilingual standard forms may be attached as a suitable translation aid;
- the lists of persons qualified, in accordance with national law, to carry out certified translations, where such a list exists;
- an indicative list of types of authorities empowered by national law to make certified copies;
- information relating to the means by which certified translations and certified copies can be identified;
- information about the specific features of certified copies.

Recognition of domestic adoptions - is there the need for an EU intervention?

At present, there are no legal mechanisms available under EU law for the recognition and enforcement of the domestic adoption of a child. Neither are there any mechanisms at the global level. Currently cross-border recognition of domestic adoptions in the EU are governed by the domestic law of individual Member States or by bilateral agreements.

The absence of a unified and harmonised system can create legal uncertainty for adoptive parents who move from one country to another, subjecting them to differing treatment depending on the country that they move to. Conflicts of family statuses may result in conflicts of substantive rights and obligations for the individuals concerned.

This problem is not specific to the EU since the cross-border recognition of domestic adoption is not regulated at any level. However, in the case of the EU, the situation potentially creates an obstacle to the exercise of the right to free movement within the territory of the Member States, as recognised in the Treaties (Article 22(2)a and 21(1)TFEU). The Legal Affairs Committee of the European Parliament is preparing a Report on this issue.

Potential problems as a result of a lack of harmonisation include:

1) The non-recognition of an adoption can create disputes in relation to inheritance rights

In the Negropontis case, the European Court of Human Rights (ECtHR) had to decide on a situation where an adoption had been ordered in one of the USA states, the adoptive parent had property in Greece and no steps had been taken to have the adoption recognised in Greece. Although the case involved a third country, the situation would have been similar if it involved two EU Member States. After the death of the adoptive father, a dispute arose between his sinblings and the adoptee regarding the succession. The ECtHR found in favour of the adoptee, concluding that the failure by Greece to recognise the status of adopted child amounted to a violation of the European Convention on Human Rights.

2) The non-recognition of an adoption can create uncertainty in relation to the citizenship of the child

In the case of an adoption made in one Member State where the adoption order indicates that the child bears the nationality of that State, issues may arise if the family relocate to a second Member State which does not automatically confer citizenship on the adopted child.

3) Same-sex couples are allowed to adopt in some EU Member States

The family link created by adoption may not be recognised by other EU Member States to which the family may move. This creates problems in terms of parental responsibility and practical issues such as school registration and medical care.

The non-recognition of an adoption could hinder the recognition of decisions on parental responsibility

The recognition of decisions on parental responsibility is automatic under the Brussels IIa Regulation, even if the Regulation does not cover adoption orders or the establishment of the parent-child relationship.

Possible Solutions

a) Allowing conflict of family statuses but co-ordinating their effects

A Member State would have the possibility not to recognise an adoption conducted in another Member State under conditions that were not legal under its own domestic law (e.g. adoptions by same-sex couples). However, it would be obliged to give effect to the status created in the first State (e.g. in the case of succession, parental responsibility, family name, etc.).

b) Making mutual recognition of family statuses compulsory

This solution would be simpler to implement but may be perceived as an intrusion on the sovereignty of Member States. In order to avoid 'legal tourism', the Member State creating the status would need to ensure that the individuals concerned had a sufficient geographical connection with that State (e.g. same-sex adopting parents residing in Member State A should be prevented from going to Member State B to benefit from a more liberal legal system and having the adoption further recognised in their less liberal State of residence A).

c) Having two (or more) Member States participate in the creation or termination of status through co-decision mechanisms

Such a co-decision model can be found in the basic scheme of the 1993 Hague Convention, which aims to bring together the authorities of two States – that of residence of the child and that of residence of the adoptive parents – in order to agree on the adoption process.

d) Enacting EU laws on creation and termination of family statuses and setting up EU authorities to administer them

This solution is based on the idea of enacting EU optional legislation (without replacing the substantive legislation of the Member States), relying on EU administrative authorities such as EU civil registrars and EU judicial authorities and following the model of the Unified Patent Court. EU legislation would provide an option typically for mobile EU citizens, having contact with more than one EU Member State.

e) Engage in the development of an international instrument for the cross- border recognition of domestic adoptions

Since issues relating to the non-recognition of domestic adoptions are not limited to relations amongst EU Member States and there is no global regulation of cross-border recognition of domestic adoptions, EU Member States could decide to engage in the development of a global instrument to solve the issue on a wider scale.

How prepared are you for the new data protection regime?

The General Data Protection Regulation (GDPR) was finally approved on 14 April 2016, following over three years of negotiation. It was **published** in the Official Journal of the EU on 4 May 2016. The Regulation will replace the current 1995 Directive and will start to apply, without the need for any UK implementing legislation, from 25 May 2018.

The Regulation represents a major overhaul of the current data protection regime and this article aims to focus briefly on the key changes it introduced.

- The Regulation's jurisdictional rules reach outside the EU when data controllers offer goods or services to, or monitor, data subjects in the EU.
- It also applies a risk-based approach to data protection which will increase businesses' reliance on internal and external guidance.
- The Regulation introduces direct obligations for processors and more obligations for controllers (partly due to the expanded rights of the data subjects). What is very likely to pose a great challenge for businesses is the regulation of the relationship between the controllers and processor, especially with regard to allocation of liability in case of data breaches.
- The maximum level of penalties is increased for data breaches and is up to 4% of an undertaking's global turnover, or €20m. The fines are tiered according to nature of the infraction.
- Data breaches have to be notified to the supervisory authorities within seventy-two hours, and to affected data subjects 'without undue delay' unless there is no risk for the data subject. Businesses and organisations, including law firms, will therefore need to have an adequate system in place for identifying any breach and a clear policy and procedure of what to do in the case of a data breach. This will be of particular relevance to those controllers where activities such as cleaning, copying and document storage are subcontracted to third parties which may increase the likelihood of a breach.
- The Regulation introduces the requirement of a mandatory data protection officer (DPO) in public

authorities or bodies; and where the controller and/or processor is involved in a. regular and systematic monitoring of data subjects on a large scale or b. large scale processing of special categories of data and/or data relating to criminal offences. Although the above criteria would not apply to most law firms, the nature of information held by them means that designating a person responsible for data protection could be advisable and most firms may consider appointing a DPO.

- The DPO must be someone with sufficient expert knowledge of data protection law. He or she will advise on and monitor compliance with the Regulation and act as a contact point for the regulator and for those making subject access requests. It is important to note that the position of DPO is independent as he or she will report directly to the executive board and cannot be dismissed for performing their tasks.
- The Regulation substantially expands the data subjects' rights and introduces new rights, such as the right to portability. Under the new regime, subject access requests (SARs) will have to be handled without undue delay and at the latest within one month. This will pose a challenge to those dealing with the SAR to be able to find, retrieve and compile the data on the subject within the timeframe. The controller or processor must also provide information on the length of the storage period and/or the selection criteria determining that period. They also must inform the data subject that they have the right to request rectification or erasure of their data, the right to object to processing and the right to file a complaint with the relevant data protection authority.
- The Regulation imposes an obligation on controllers and processors to carry out data impact assessments if the processing presents a high risk to the rights and freedoms of the data subject. This applies in particular to cases where processing involves new technologies, where the controller must look at the 'likelihood and severity' of the risk. Such assessments aim to ensure that privacy is ingrained into data collection processes from the outset and to highlight any risks upfront.
- The Regulation stipulates that processing and personal data should be limited to what is necessary and linked to its purpose (data minimisation and storage limitation principles). The Regulation also introduces an obligation to keep internal records of all processing operations. The records should include information such as the purposes of processing, a description of the categories of personal data and the envisaged time limits for erasure of the data amongst others.
- The Regulation introduces important changes to the conditions for consent. The consent must be 'freely given, specific, informed and [an] unambiguous indication' given by a 'statement or by clear affirmative action' therefore suggesting that a simple 'tick box' opt in will not suffice as consent under the GDPR. It is worth noting that consent is not the only basis for processing personal data. Grounds such as the legitimate interest of the data controller or performance of contractual obligations remain lawful. However, whenever the controller relies solely on consent, they must make sure that the consent given by the data subject is well documented.

Key dates:

- January 2012 - Regulation proposed
- March 2014 – European Parliament adopted its draft report
- June 2015 – Council adopted its general approach
- 15 December 2015 – Compromise text of the GDPR was agreed
- April 2016 - GDPR formally adopted by the EU
- 4 May 2016 - Publication in the Official Journal
- 25 May 2018 – GDPR will become applicable

Previous Item **Back to Contents** **Next Item**

Viewpoint **In Focus** **Law Reform** **Professional practice** **Law Societies' News** **Just Published**

Services Passport Consultation

On the 3 May 2016, the European Commission launched a **public consultation** on the proposal to introduce a services passport. The consultation aims to gather stakeholders' views on how to best address regulatory barriers in the business services and construction sectors in particular. Some questions will also focus on addressing barriers in the insurance sector. The deadline to respond to the consultation is 26 July 2016.

In its **communication** on the Single Market Strategy, the Commission pointed out that there still remain barriers to cross-border trade in services within the EU. Part of the communication focused on business services and regulated professions as these are viewed as benefiting most from a high growth in cross-border activities. These are, however, hampered by the existence of many requirements that would need to be re-examined as to their necessity and proportionality. This remark also applies to the legal form and shareholding requirements or licensing procedures in different Member States. Indeed, earlier this year, the Commission launched **infringement proceedings** against several European countries for maintaining unjustified barriers to access their domestic markets.

One of the ways to address the regulatory burden for service providers in the EU is to introduce a **services**

passport. The passport will allow for single common procedure for services providers and one lead Member State authority to deal with matters relating to running a business.

Update on the Trade in Services Agreement (TiSA) negotiations

On 15 April 2016, the twenty-three negotiating parties to the Trade in Services Agreement (TiSA) concluded the **17th round of talks**. The discussions focused on telecoms, movement of natural persons (so called mode 4), e-commerce (including data flows, localisation and source code), financial services and legal services. Overall, the negotiators reported good progress on almost each of the areas. However, some outstanding issues still remain. One of the most important issues concerns data flows and localisation, whereby an agreement has not yet been reached.

Data localisation is a set of requirements to store data locally and/or to restrict the transfer of data beyond a given country's borders. These provisions are crucial for e-commerce but also for professional services where most of the transactions depend upon the free flow of data. The EU is not currently taking any position on that issue pending the adoption of the adequacy decision concerning the EU-US Privacy Shield agreement.

Concerning legal services, the parties discussed a model schedule of commitments for legal services. It is a text that sets out the commitments to be taken by each party and the way these are to be phrased. At the moment, the text will not be compulsory for each party. The issue which is important for professional services is 'fly-in fly-out' services which remain unresolved so far.

There are three more negotiation rounds envisaged this year. The parties also exchanged their revised services offers on 6 May 2016 and are expected to focus on them during the 18th round (26 May – 3 June 2016).

Explanatory Note

TiSA is a trade agreement currently being negotiated by twenty-three members of the World Trade Organisation (WTO), including the EU. Together, the participating countries account for 70% of world trade in services. The parties to the negotiations are: Australia, Canada, Chile, Chinese Taipei, Colombia, Costa Rica, the EU, Hong Kong China, Iceland, Israel, Japan, Korea, Liechtenstein, Mauritius, Mexico, New Zealand, Norway, Pakistan, Panama, Peru, Switzerland, Turkey and the United States.

TiSA is based on the WTO's General Agreement on Trade in Services (GATS), which involves all WTO members. The key provisions of the GATS – scope, definitions, market access, national treatment and exemptions – are also found in TiSA.

Uncertainty over the EU-US data transfers continues...

The uncertainty over the conditions in which it is lawful to transfer personal data from the EU to the US continues. On 13 April 2016, the Article 29 Working Party (WP29), consisting of heads of data protection authorities in the twenty-eight Member States, issued its opinion on the Commission's draft adequacy decision on the EU-US Privacy Shield. The draft decision was published earlier this year and is the successor of the invalidated decision 520/2000/EC on the Safe Harbor scheme.

The WP29 acknowledged the substantial progress made since the Safe Harbor scheme, especially with regard to more precise definitions. However, it also expressed concerns regarding the commercial aspects of the scheme and the provisions governing access to data by public authorities. It urged the Commission to resolve these matters and provide clarification on the issues raised in order to improve the draft decision and the protection that it aims to grant.

The WP29 pointed out that the Privacy Shield's provisions are set out in several documents, which makes the relevant information difficult to find. In relation to commercial aspects, the major reservations of the WP29 were the insufficient reflection of the 'purpose limitation principle' and the fact that data retention was not expressly mentioned in any of the documents. The WP29 also raised concern over the redress mechanism, stressing that the mechanism may be too complicated in practice to be effective. The most 'popular' concern centres around the rights of access to data by public authorities. The WP29 regretted that US authorities did not provide adequate details to exclude mass and indiscriminate surveillance. In line with the current case law and a democratic society, mass surveillance cannot be considered as proportionate and strictly necessary. It remains to be seen which further criteria on mass collection and retention of data will be set out by the Court,

following its forthcoming judgment in Tele2 and Davis-Watson.

The mostly negative opinion of the WP29 creates further uncertainty about the future regime for data transfers outside the EU. The invalidation of the previous adequacy decision by the Court of Justice of the European Union (CJEU) created substantial uncertainty for those businesses that relied on the transfers of data to the US and who were required to comply with the new legal order. The Commission will now have to address the comments of the WP29 in the final text of the adequacy decision. Although the Commission is not bound by the opinion, the Working Party's view remains very important. Moreover, as **pointed out** by some, the arguments in the opinion may serve as a basis for a potential legal challenge of the new decision.

Solicitors sought for Law Society mentoring scheme

The Law Society of Scotland is calling for solicitors and trainees from all areas of practice to become mentors as part of its expanding mentoring scheme.

The legal careers mentoring scheme aims to match mentors and mentees, helping them share knowledge and expertise, give advice and gain fresh perspectives.

Elaine MacGlone, Equality and Diversity Manager at the Law Society, said: "Being a mentor can be a really rewarding experience and it gives you a great opportunity to pass on valuable knowledge, skills and expertise. It's also a chance to develop your own leadership and management skills while helping another individual develop their career.

"Both mentors and mentees can benefit from a fresh perspective and we have had really positive feedback from those who have already been involved. I'd encourage anyone who feels they could have benefitted from having a mentor in their early career to get involved."

Mentors and mentees can be from all areas of practice and at any stage of their career. Mentors will be supported throughout the process and training can count towards CPD.

The next training day for mentors takes place on Wednesday 15 June at the Law Society of Scotland, Atria One, 144 Morrison Street, Edinburgh. Applications are currently open to Scottish solicitors and trainees from all areas, including England and Wales.

Anyone interested in being a mentor or being mentored can find out **more information here**.

7 June 2016 - State Aid and Taxation: A change of Direction?

On 7 June 2016 the Law Society of England and Wales Competition section and ICAEW will be hosting a seminar on state aid and taxation at the Brussels office.

The European Commission's state aid investigations into tax rulings and its recent decisions regarding national tax treatment of a number of multinational companies have highlighted the need to analyse further the scope of the application of state aid law to national measures of taxation.

The seminar provides an opportunity to hear from state aid law experts and practitioners about the application of the state aid rules to taxation and to discuss the way forward.

We are pleased to announce that the keynote speaker will be:

• **Pierpaolo Rossi**, *a senior member from the Commission's Legal Service*

The panellists include:

- **Luc De Broe**, *Partner at Laga and Professor at the KU Leuven*
- **Nina Niejahr**, *Counsel at Baker & McKenzie and co-chair of the European State Aid Group*

- **Jan Blockx**, *Counsel at Hogan Lovells*

The event will run from 12.00 to 14.00 at the Law Societies Office - Avenue des Nerviens 85, 5th floor, 1040 Brussels, Belgium.

To sign up to attend the event please click on the following link: **STATE AID AND TAXATION: A CHANGE OF DIRECTION?**

For more information please contact Helena Raulus at Helena.Raulus@lawsociety.org.uk

Previous Item **Back to Contents** **Next Item**

Viewpoint **In Focus** **Law Reform** **Professional Practice** **Law Societies' News** **Just Published**

Broaden your horizons: Exciting opportunity in Brussels for trainee solicitors

The Brussels Office of the three Law Societies (England & Wales, Scotland and Northern Ireland) acts as the voice of the Solicitors' profession in Europe. Situated in the heart of the EU district, we are well placed to represent the interests and views of the legal profession to key decision makers and legislators. We are currently offering trainee solicitors from the UK a unique opportunity to undertake a six-month secondment in the Brussels Office commencing in September 2016.

As a trainee in the office you will assist the Brussels team in actively monitoring EU legal developments that range from competition law to criminal justice, public procurement to private international law. Specific tasks will include: preparing and writing the Brussels Agenda and the European Court of Justice case reports as well as drafting legislative updates highlighting developments in the corporate client and private client areas. You will also regularly attend European Parliament committees and high level conferences offering the opportunity to develop contacts with MEPs, key Commission officials, and UK Government departments.

Trainees interested in applying will need to provide a letter from their firm/employer confirming that it will continue to pay their salary during the secondment.

Trainees are invited to send their application, which should comprise a CV and covering letter and confirmation from your firm/employer of consent to the secondment to Antonella Verde at Antonella.Verde@lawsociety.org.uk.

The closing date for applications is Thursday 9 June 2016 and interviews will take place the following week.

If you require an information note or would like to discuss the secondment, please contact Antonella.Verde@lawsociety.org.uk

Previous Item **Back to Contents** **Next Item**

Viewpoint **In Focus** **Law Reform** **Professional Practice** **Law Societies' News** **Just Published**

26 May 2016 - Law Society of Scotland's Annual General Meeting

The Law Society's 2016 Annual General Meeting will be be held at 5.30pm on Thursday 26 May at the Law Society of Scotland, Atria One, 144 Morrison Street, Edinburgh.

The AGM is open to all members of the Society. Registration opens at 5pm and all attendees should be registered by 5.30pm.

The 2016 AGM agenda and supporting information is now available. The agenda includes a motion on the Society's practising certificate fee for 2015/2016, a motion on amendments to the Society's practice rules and a motion on changes to the Society's constitution. Our president, Christine McLintock, will give an address reviewing her term of office and our Chief Executive, Lorna Jack, will be updating members on the Society's current operational plan.

Find out more about the Law Society AGM 2016

Previous Item **Back to Contents** **Next Item**

Viewpoint **In Focus** **Law Reform** **Professional Practice** **Law Societies' News** **Just Published**

28 June 2016 - European capital markets: Common rules for dispute

settlement and regulation

There is still time to register for this year's conference, held at the Law Society, London which offers a varied and lively programme exploring the latest developments in European capital markets relating to dispute settlement and regulation.

The timing of the event will enable participants to explore the direction of European capital markets in a post-EU referendum environment.

Conference speakers include:

- **Ugo Bassi**, director of Financial Markets at the European Commission.
- **The Hon. Mr Justice Blair,** currently Judge in Charge of the Commercial Court.
- **Jeffrey Golden,** chairman of P.R.I.M.E. Finance Foundation in The Hague, and a member of the Foundation's Panel of Recognised International Market Experts in Finance.
- **Susannah Haan,** an independent adviser with over 18 years' experience in capital markets.
- **Richard Samuel** who's main dispute-resolution practice lies in international commercial trade - particularly contract law, fiduciary duties, company law, negligence and employment law.
- **Kay Swinburne MEP** was elected as the Conservative MEP for Wales in June 2009.
- **Richard Middleton,** Managing Director at AFME with responsibility for all tax, VAT and accounting policy matters.

Benefits of attending

- **The chance to hear a range of perspectives from experts** on issues facing capital markets practitioners, including: cross-border dispute resolution, the impact of the banking regulation on the capital markets, and EU initiatives relating to the Capital Markets Union, including taxation.
- **A mixture of high-level strategic insight and practical advice** from those making arbitration and regulatory decisions, such as judges, MEPs and EU Commission officials, to practitioners working with the regulation and dispute settlement.
- **Quality networking** opportunities.

For more information and to register please click **here.**

Previous Item **Back to Contents** **Next Item**

Viewpoint **In Focus** **Law Reform** **Professional Practice** **Law Societies' News** **Just Published**

9-10 June 2016 - Academy of European Law seminar on migrant smuggling

The Academy of European Law is organising a seminar on countering migrant smuggling. The seminar will be held in Trier on 9 and 10 June 2016.

The smuggling of migrants is a growing concern within the EU. Profit-seeking criminals smuggle migrants across borders, making it one of the most profitable forms of trans-national crime within Europe, with a coordinated judicial and law enforcement response across the EU not being sufficient in dealing with this growing problem. In order to better counter the criminal groups standing behind such smuggling and to bring them to justice, more coherent action and coordination at EU level and among the Member States is necessary.

This seminar will look into the various aspects that need to be considered when dealing with migrant smuggling, in order to provide a better picture of the various actions that can and should be taken to enhance cross-border judicial and law enforcement cooperation in dealing with migrant smuggling.

For more information and to register please click **here**.

COMING INTO FORCE THIS MONTH

Data Protection

- **Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (Text with EEA relevance)**
- **Directive (EU) 2016/681 of the European Parliament and of the Council of 27 April 2016 on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime**
- **Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA**

Environment

- **Commission Implementing Regulation (EU) 2016/662 of 1 April 2016 concerning a coordinated multiannual control programme of the Union for 2017, 2018 and 2019 to ensure compliance with maximum residue levels of pesticides and to assess the consumer exposure to pesticide residues in and on food of plant and animal origin (Text with EEA relevance)**
- **Commission Implementing Regulation (EU) 2016/669 of 28 April 2016 amending Implementing Regulation (EU) No 808/2014 as regards the amendment and the content of rural development programmes, the publicity for these programmes, and the conversion rates to livestock units**

CASE LAW CORNER

To Note:

On 11 May 2016 the Court of Justice of the European Union launched its application, CVRIA, for smartphones and tablets, which runs under both IOS and Android. The application is available in 23 EU languages which can be selected in the menu by the user. It gives access to case law, press releases and the judicial calendar.

Decided Cases:

Citizen's Initative

Case T- 529/13 *Balázs-Árpád Izsák and Attila Dabis v Commission*, Judgment of 10 May 2016

- The General Court confirms that the proposed European citizens' initiative intended to promote the development of geographical areas populated by national minorities cannot be registered.

Environment and Consumers

Judgment of the Court of Justice in Joined Cases C-191/14, C-192/14, C-295/14, C-

389/14, C-391/14, C-392/14, C-393/14 28 April 2016

- The Court declares invalid the maximum annual amount of free allowances for greenhouse gas emissions determined by the Commission for the period 2013-2020.

Case C-377/14 *Ernst Georg Radlinger and Helena Radlingerová v Finway a.s.,* Judgment dated 21 April 2016

- The Court finds that the obligation of the national court to examine, of its own motion, compliance with the rules of EU consumer protection law applies to insolvency proceedings.

Family and Justice

Case C-558/14 *Mimoun Khachab v Subdelegación del Gobierno en Álava,* Judgment of 21 April 2016

- The Member States may refuse an application for family reunification if it is apparent from a prospective assessment that the sponsor will not have stable and regular resources which are sufficient in the year following the date of submission of the application.

State Aid

Case T-47/15 *Germany v Commission,* Judgment of 10 May 2016

- The General Court confirms that the German law on renewable energy of 2012 (the EEG 2012) involved State aid even though the Commission, ultimately, largely approved the aid.

Upcoming decisions and Advocate General Opinions in May and early June:

Consumer Contracts

Case C-119/15 *Biuro podrozy Partner,* Opinion of Advocate General Saugmandsgaard expected on 2 June 2016

- Can the use of standard contract terms with content identical to that of terms which have been declared unlawful by a judicial decision having the force of law and which have been entered in the register of unlawful standard contract terms be regarded, in relation to another undertaking which was not a party to the proceedings culminating in the entry in the register of unlawful standard contract terms, as an unlawful act which, under national law, constitutes a practice which harms the collective interests of consumers and for that reason forms the basis for imposing a fine in national administrative proceedings?

Case C-191/15 *Verein fur Konsumenteninformation,* Opinion of Advocate General Saugmandsgaard expected on 2 June 2016

- In an action for an injunction for the protection of consumers' interests must the law applicable be determined in accordance with the law applicable to non-contractual obligations (Rome II) where the action is directed against the use of unfair contract terms by an undertaking established in a Member State that in the course of electronic commerce concludes contracts with consumers resident in other Member States, in particular, in the State of the court seised?

Employment

Case C-157/15 *Achbita v G4s Secure Solutions,* Opinion of Advocate General Kokott expected on 31 May 2016

- Should Article 2(2)(a) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation be interpreted as meaning that the prohibition on wearing, as a female Muslim, a headscarf at the workplace does not constitute direct discrimination where the employer's rule prohibits all employees from wearing outward signs of political, philosophical and religious beliefs at the workplace?

Case C-201/15 *AGET Iraklis,* Opinion of Advocate General Wahl expected on 9 June 2016

- Question referred by the Greek Court: Is a national provision which lays down as a condition in order for collective redundancies to be effected in a specific undertaking

that the administrative authorities must authorise the redundancies in question on the basis of criteria as to (a) the conditions in the labour market, (b) the situation of the undertaking and (c) the interests of the national economy, compatible with Directive 98/59/EC in particular and, more generally, Articles 49 TFEU and 63 TFEU?
- If the answer to the first question is in the negative, is a national provision with the aforementioned content compatible with Directive 98/59/EC in particular and, more generally, Articles 49 TFEU and 63 TFEU if there are serious social reasons, such as an acute economic crisis and very high unemployment?

Free movement of goods and medicinal products

Case C-148/15 *Deutsche Parkinson Vereinigung,* Opinion of Advocate General Szpunar expected on 2 May 2016

- Referred questions:
- (1) Must Article 34 TFEU be interpreted as meaning that a system of fixed prices laid down by national law applicable to prescription-only medicinal products constitutes a measure having equivalent effect within the meaning of Article 34 TFEU? If the Court answers Question 1 in the affirmative:
- (2) Is the system of fixed prices for prescription-only medicinal products justified under to Article 36 TFEU on grounds of the protection of health and life of humans if that system is the only means of ensuring a consistent supply of medicinal products to the population across the whole of Germany, in particular in rural areas? If the Court also answers Question 2 in the affirmative:
- (3) What is the degree of judicial scrutiny required when determining whether the condition mentioned in Question 2 is in fact satisfied?

Procurement

Case C-396/14 *MT Hojgaard and Zublin v Banedanmark,* Judgment expected on 24 May 2016

- The question referred was: Is the principle of equal treatment in Article 10, cf. Article 51 of Directive 2004/17/EC (1) of the European Parliament and of the Council to be interpreted as precluding, in situation such as the one at issue here, a contracting authority from awarding the contract to a tenderer which had not applied for pre-selection and therefore was not pre-selected?

Case C-27/15 *Pizzo,* Judgment expected on 2 June 2016

- Must Articles 47 and 48 of Directive 2004/18/EC on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts be interpreted as precluding national legislation which allows divided reliance upon the capacities of other entities, on the terms set out above, in respect of services?
- Do the principles of EU law, and, in particular, those of protection of legitimate expectations, legal certainty and proportionality, preclude a legal rule of a Member State which permits the exclusion from a public tendering procedure of an undertaking which did not understand, because this was not expressly provided in the tender documents, that it was obliged, on pain of exclusion from that procedure, to fulfil the obligation to pay a sum in order to participate in that procedure, even though the existence of that obligation cannot be clearly deduced from the wording of the law in force in the Member State, but can nevertheless be inferred, by means of a twofold legal operation, which involves, first, interpreting extensively certain provisions of that Member State's positive law and, then, incorporating — in accordance with the outcome of that broad interpretation — the mandatory provisions in the tendering documents?

Case C-410/14 *Falk Pharma,* Judgment expected on 2 June 2016

- Question referred by the German Court: Does the concept of a 'public contract' under Article 1(2)(a) of Directive 2004/18/EC no longer apply if a contracting authority carries out an authorisation procedure in which it awards the contract without selecting one or more economic operators ('openhouse model')?
- (2) If the answer to question 1 is that the selection of one or more economic operators is a characteristic of a public contract, the following question arises: is the characteristic of the selection of economic operators to be interpreted as meaning that contracting authorities may refrain from selecting one or more economic operators by way of an authorisation procedure only if the following conditions are satisfied:

- the carrying out of an authorisation procedure is published at European level,
- clear rules concerning the conclusion of the contract and acceding to the contract are set,
- the terms of the contract are set in advance in such a way that no economic operator is able to influence the content of the contract,
- economic operators are granted the right to accede to the contract at any time;
- the contracts concluded are published at European level?

Taxation

Case C-503/14 *European Commission v Portuguese Republic,* Opinion of advocate General Wathelet expected on 12 May 2016

- Order sought that the Court declare the Portuguese Republic has failed to fulfil its obligations under Articles 21 TFEU, 45 TFEU and 49 TFEU and Articles 28 and 31 of the EEA Agreement in adopting and maintaining in force legislation regarding tax treatment of residents and non residents.

Case C-48/15 *NM (L) International,* Judgment expected on 26 May 2016

- The Brussels Court of Appeal has referred questions concerning indirect taxes on raising capital, the Belgian Inheritance Tax Code and whether these provisions are in contravention of freedom of establishment, free movement of services and directive of facilitating the marketing of shares.

Case C-244/15 *Commission v Greece,* Judgement expected on 26 May 2016

- The applicant claims that the Court should declare that the Hellenic Republic, by enacting and maintaining in force legislation which provides for exemption from inheritance tax on the first place of residence, which gives rise to discrimination because it applies only to EU nationals who reside in Greece, has failed to fulfil its obligations under Article 63 of the Treaty on the Functioning of the European Union and Article 40 of the EEA Agreement.

Case C-252/14 *Pensioenfonds Metaal en Techniе v Skatteverket,* Judgment expected on 2 May 2016

- Question referred by the Swedish Court: Does Article 63 TFEU constitute an obstacle to national legislation under which dividends from a resident company are taxed at source if the shareholder is resident in another Member State, while such dividends — if paid to a resident shareholder — are subject to a tax calculated as a definitive lump sum and on a fictive yield, which, over time, is intended to correspond to the normal taxation of all yields on capital?

Case C-479/14 *Hunnebeck v Krefeld* , Judgment expected on 8 June 2016

- Question referred by the German Court: Must Article 63(1) TFEU be interpreted as precluding legislation of a Member State which provides that, for the calculation of gift tax, the allowance to be set against the taxable value in the case of a gift of real property situated in that Member State is lower in the case where the donor and the recipient had their place of residence in another Member State on the date of execution of the gift than the allowance which would have been applicable if at least one of them had had his or her place of residence in the former Member State on that date, even if other legislation of the Member State provides that, on the application of the recipient of the gift, the higher allowance is to be applied, on condition that account is taken of all assets transferred gratuitously by the donor ten years prior to and within ten years following the date of execution of the gift?

Transport

Case C-482/14 *Commission v Germany,* Opinion of Advocate General Campos Sanchez-Bordona expected on 26 May 2016

- Germany allows the Deutsche Bahn group, by means of profit transfer agreements, to use railway infrastructure managers' revenues in the form of infrastructure charges and public funds for purposes other than the management of infrastructure. Those funds could, in particular, be used for the purposes of transport services. Therefore is this contrary to Articles 6(1) and 31(1) of Directive 2012/34/EU?

ONGOING CONSULTATIONS

Data Protection and Online Privacy:

- **Public consultation on the evaluation and review of the e-privacy directive**
  12.04.2016 – 05.07.2016

General and Institutional Affairs:

- **Public Consultation on a proposal for a mandatory Transparency Register**
  01.03.2016 – 01.06.2016

Justice and Fundamental Rights:

- **Consultation on an effective insolvency framework within the EU**
  23.03.2016 – 14.06.2016
- **Public consultation for the Fitness Check of EU consumer and marketing law**
  12.05.2016 – 02.09.2016

Trade:

- **Public consultation on the future of EU-Turkey trade and economic relations**
  16.03.2016 – 09.06.2016
- **Public consultation on the evaluation of Commission Recommendation 2009/396/EU on the Regulatory treatment of fixed and mobile termination rates in the EU**
  15.03.2016 – 07.06.2016
- **Public consultation on the future of EU-Australia and EU-New Zealand trade and economic relations**
  11.03.2016 – 03.06.2016

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-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**

Subscriptions/Documents/Updates

For those wishing to subscribe for free to the Brussels Agenda electronically and/or obtain documents referred to in the articles, please contact **Antonella Verde**. The 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.

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